UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV and GRUPO MODELO S.A.B de C.V., Defendants, CONSTELLATION BRANDS, INC., 207 High Point Drive, Building 100, Victor, New York 14564, *Proposed Defendant-Intervenor*, and CROWN IMPORTS LLC, One South Dearborn Street, Suite 1700 Chicago, Illinois 60603, *Proposed Defendant-Intervenor*.	Civil Action No. 13-127 (RWR)

<u>CONSTELLATION BRANDS, INC.'S AND CROWN IMPORTS LLC'S MOTION TO INTERVENE AS DEFENDANTS</u>

Constellation Brands, Inc. and Crown Imports LLC respectfully move to intervene in this case as party defendants under Federal Rule of Civil Procedure 24. Pursuant to Local Civil Rule 7(j), Movants attach as Exhibit 1 to this motion a proposed Answer setting forth the defenses for which intervention is sought.

For the reasons set forth in the accompanying Statement of Points and Authorities, Movants are entitled to intervention of right under Federal Rule of Civil Procedure 24(a)(2). Alternatively, this Court should permit Movants to intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

Pursuant to Local Civil Rule 7(m), counsel for Movants have discussed this motion with counsel for Plaintiff and Defendants. Defendants support this Motion to Intervene; Plaintiff does not consent.

Pursuant to Local Civil Rule 78.1, Movants respectfully request an oral hearing. Additionally, Movants respectfully request that the Court grant expedited review of this Motion and set an accelerated briefing schedule. Challenges to mergers by the Department of Justice such as this one are resolved quickly, and it is imperative to resolve this motion on an expedited basis to enable Movants to participate from the early stages of this case.

Dated: February 8, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jon B. Dubrow, certify that on February 8, 2013, I served the foregoing Motion to Intervene by emailing PDF copies of the same to the following counsel:

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EXHIBIT 1

UNITED STATES DISTRICT COURT
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ANSWER OF DEFENDANTS CONSTELLATION BRANDS, INC. AND CROWN IMPORTS LLC

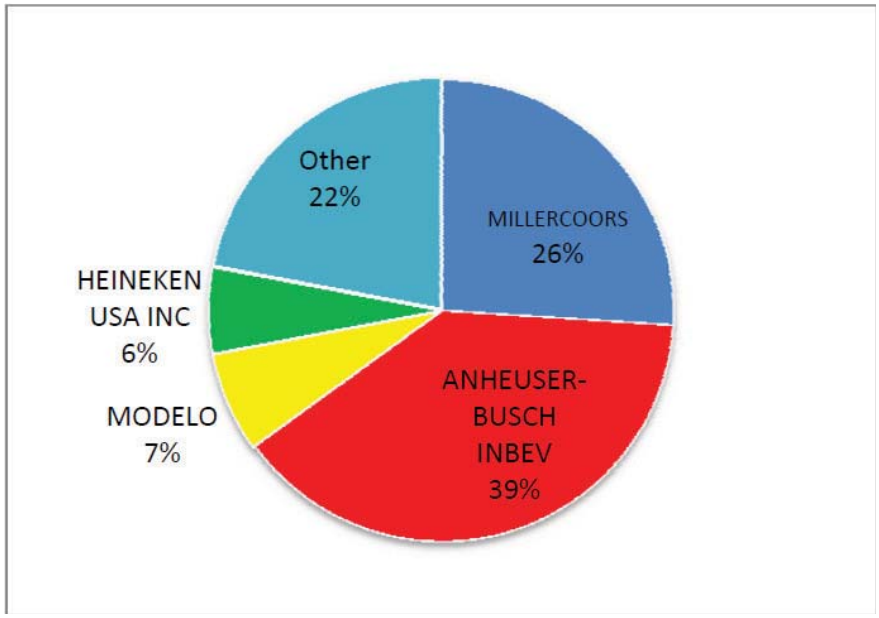
Defendants Constellation Brands, Inc. ("Constellation") and Crown Imports LLC ("Crown") (collectively, "Intervenors"), by and through their undersigned counsel, answer the Complaint as follows:

I. INTRODUCTION

1. Fundamental to free markets is the notion that competition works best and consumers benefit most when independent firms battle hard to win business from each other. In industries characterized by a small number of substantial competitors and high barriers to entry, further consolidation is especially problematic and antithetical to the nation's antitrust laws. The U.S. beer industry – which serves tens of millions of consumers at all levels of income – is highly concentrated with just two firms accounting for approximately 65% of all sales nationwide. The transaction that is the subject of this Complaint threatens competition by combining the largest and third-largest brewers of beer sold in the United States. The United States therefore seeks to enjoin this acquisition and prevent a serious violation of Section 7 of the Clayton Act.

ANSWER: Paragraph 1 states legal conclusions, to which no responsive pleading is required. To the extent Paragraph 1 contains allegations, Intervenors deny them, except that they admit that the United States seeks to enjoin ABI's acquisition of Modelo.

2. Today, Modelo aggressively competes head-to-head with ABI in the United States. That competition has resulted in lower prices and product innovations that have benefited consumers across the country. The proposed acquisition would eliminate this competition by further concentrating the beer industry, enhancing ABI's market power, and facilitating coordinated pricing between ABI and the next largest brewer, MillerCoors, LLC. The approximate market shares of U.S. beer sales, by dollars, are illustrated below:



ANSWER: Intervenors deny the allegations contained in Paragraph 2. Modelo does not compete with ABI in the United States because it does not sell beer in the United States. Rather, Crown, the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

3. Defendants' combined national share actually *understates* the effect that eliminating Modelo would have on competition in the beer industry, both because Modelo's share is substantially higher in many local areas than its national share, and because of the interdependent pricing dynamic that already exists between the largest brewers. As the two largest brewers, ABI and MillerCoors often find it more profitable to follow each other's prices than to compete

aggressively for market share by cutting price. Among other things, ABI typically initiates annual price increases in various markets with the expectation that MillerCoors' prices will follow. And they frequently do.

ANSWER: Intervenors deny the allegations contained in Paragraph 3, except that they admit that ABI and MillerCoors currently are the two largest brewers in the United States. Intervenors lack knowledge or information sufficient to form a belief about the truth of what ABI and MillerCoors find profitable, or what are ABI's expectations following any increase in the price of its products and, therefore, deny those allegations.

4. In contrast, Modelo has resisted ABI-led price hikes. Modelo's pricing strategy – "The Momentum Plan" – seeks to narrow the "price gap" between Modelo beers and lower-priced premium domestic brands, such as Bud and Bud Light. ABI internal documents acknowledge that Modelo has put "increasing pressure" on ABI by pursuing a competitive strategy *directly at odds* with ABI's well-established practice of leading prices upward.

ANSWER: Intervenors deny the allegations contained in the first two sentences of Paragraph 4. Crown, not Modelo, designed and implemented the "Momentum Plan" strategy for a period of time in response to a specific set of market conditions in order to maintain profitable growth of its business. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 4 and, therefore, deny those allegations, but refer to the documents referenced therein for their contents.

5. Because Modelo prices have not closely followed ABI's price increases, ABI and MillerCoors have been forced to offer lower prices and discounts for their brands to discourage consumers from "trad[ing] up" to Modelo brands. If ABI were to acquire the remainder of Modelo, this competitive constraint on ABI's and MillerCoors' ability to raise their prices would be eliminated.

ANSWER: Intervenors deny the allegations contained in Paragraph 5. As stated above, Modelo does not compete with ABI in the United States.

6. The acquisition would also eliminate the substantial head-to-head competition that currently exists between ABI and Modelo. The loss of this head-to-head competition would

enhance the ability of ABI to unilaterally raise the prices of the brands that it would own post-acquisition, and diminish ABI's incentive to innovate with respect to new brands, products, and packaging.

ANSWER: Intervenors deny the allegations contained in Paragraph 6. As stated above, Modelo does not compete with ABI in the United States.

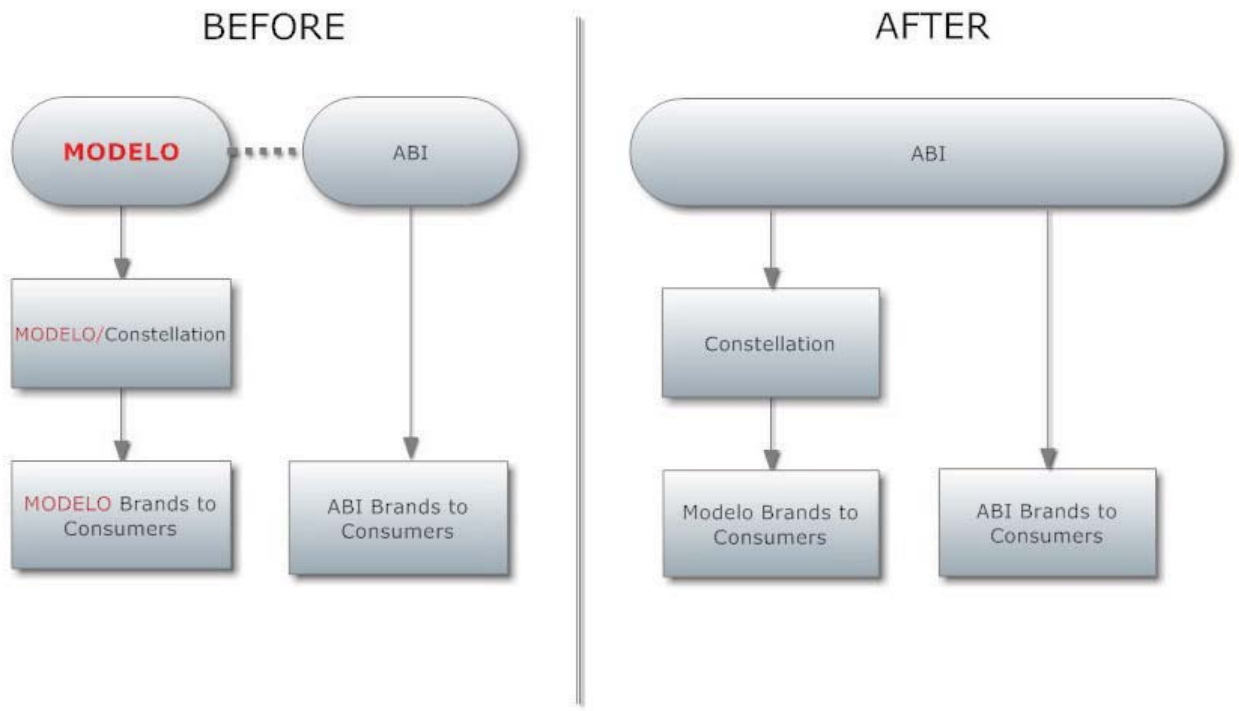
7. Accordingly, ABI's acquisition of the remainder of Modelo would likely substantially lessen competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Paragraph 7 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 7 contains allegations, Intervenors deny them.

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

ANSWER: Intervenors deny the allegations contained in Paragraph 8 and refer to the agreements referenced for their contents.

9. The sale of Modelo's 50% interest in Crown to Constellation is designed predominantly to help ABI win antitrust approval for its acquisition of Modelo, creating a façade of competition between ABI and its importer. In reality, Defendants' proposed "remedy" eliminates from the market Modelo – a particularly aggressive competitor – and replaces it with an entity wholly dependent on ABI. As Crown's CEO wrote to his employees after the acquisition was announced: "our #1 competitor will now be our supplier . . . it is not currently or will not, going forward, be 'business as usual.'" The deficiencies of the "remedy" are apparent from the illustrations of the pre- and post-transaction chains of supply below, demonstrating how the "remedy" transforms horizontal competition into vertical dependency:



ANSWER: Intervenors deny the allegations contained in Paragraph 9 and refer to the email document referenced for its contents.

10. Constellation has already shown through its participation in the Crown joint venture that it does not share Modelo's incentive to thwart ABI's price leadership. In fact, Constellation consistently has urged *following* ABI's price leadership. Given that Constellation was inclined to follow ABI's price leadership *before* the acquisition, it is unlikely to reverse course after – when it would be fully dependent on ABI for its supply of beer, and will effectively be ABI's business partner. In addition, Constellation would need to preserve a strong relationship with ABI to encourage ABI from exercising its option to terminate the agreement after 10 years.

ANSWER: Intervenors deny the allegations contained in Paragraph 10, except that they admit that ABI would supply Modelo brand beer to Crown for sale in the United States after the transactions.

11. For these reasons, as alleged more specifically below, the proposed acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act. The likely anticompetitive effects of the proposed acquisition would not be prevented or remedied by the sale of Modelo's existing interest in Crown to Constellation and the supply agreement between ABI and Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 11.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

12. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants ABI and Modelo from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

ANSWER: Intervenors admit that the statutes cited in Paragraph 12 provide a legal basis for the Unites States to bring claims similar to the ones made in the Complaint.

13. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337, and 1345.

ANSWER: Intervenors admit the allegations contained in Paragraph 13.

14. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391.

ANSWER: Intervenors admit the allegations contained in Paragraph 14.

15. Defendants are engaged in, and their activities substantially affect, interstate commerce. ABI and Modelo annually brew several billion dollars worth of beer, which is then advertised and sold throughout the United States.

ANSWER: Intervenors admit the allegations in Paragraph 15, except that they deny that Modelo sells any beer in the United States.

16. This Court has personal jurisdiction over each Defendant. Modelo has consented to personal jurisdiction in this judicial district. ABI is found and transacts business in this District through its wholly-owned United States subsidiaries, over which it exercises control.

ANSWER: The first sentence of Paragraph 16 states a legal conclusion to which no responsive pleading is required. Intervenors otherwise admit the allegations contained in Paragraph 16 to the extent applicable to the Intervenors.

III. THE DEFENDANTS AND THE TRANSACTIONS

17. ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI is the largest brewer and marketer of beer sold in the United States.

ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 beer brands, including Bud Light, the number one brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 17.

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

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 18, except that they deny that Modelo sells any beer in the United States.

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

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 19, except that they deny the allegations contained in the final sentence of Paragraph 19 and refer to the annual report referenced therein for its contents.

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

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 and, therefore, deny those allegations. They deny specifically that there is vigorous competition between the ABI and Modelo brands in the United States.

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

ANSWER: Intervenors deny the allegations contained in Paragraph 21, except that they admit, upon information and belief, that Modelo executives run Modelo's day-to-day business, including its relationship and interaction with Crown, and that Modelo owns half of Crown and may exercise a call option in an attempt to acquire the other half of Crown in 2016 over Constellation's objection.

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

ANSWER: Intervenors deny the allegations contained in paragraph 22, except that they admit that the proposed transactions will give ABI control of Modelo and that ABI presently has no day-to-day role in the sale of Modelo brands in the United States. Upon information and belief, Intervenors admit that ABI is "walled off" from strategic discussions regarding Modelo sales in the United States.

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

ANSWER: Intervenors admit that ABI agreed to purchase the remaining equity interest from Modelo's owners on June 28, 2012, for approximately $20.1 billion and deny the remaining allegations in Paragraph 23.

24. As noted above, in an effective acknowledgement that the acquisition of Modelo raises significant competitive concerns, Defendants simultaneously entered into another transaction in an attempt to "remedy" the competitive harm caused by ABI's acquisition of the remainder of Modelo: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, so that Crown, previously a joint-venture between Modelo and Constellation, would become wholly owned by Constellation. As part of this strategy, ABI and Constellation have negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for ten years. These transactions are contingent on the closing of ABI's acquisition of Modelo.

ANSWER: Intervenors deny the allegations contained in Paragraph 24, except that they admit that: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, resulting in Crown becoming wholly owned by Constellation; ABI and Constellation negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for at least ten years; and the ABI/Constellation transaction is contingent upon the closing of the ABI/Modelo transaction.

IV. THE RELEVANT MARKET

A. Description of the Product

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

ANSWER: Intervenors admit the allegations contained in the first sentence of Paragraph 25. Intervenors deny the allegations contained in the second sentence of Paragraph 25.

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

ANSWER: Intervenors deny the allegations of Paragraph 26, except that they admit that beer producers sometimes, but not always, sell, market, and develop multiple brands.

27. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those end accounts are primarily grocery stores, large retailers such as Target and Wal-Mart, and convenience stores, liquor stores, restaurants, and bars which, in turn, sell beer to the consumer. Beer brewed in foreign countries may be sold to an importer, which then arranges for distribution to retailers.

ANSWER: Intervenors deny the allegations contained in Paragraph 27 because, for example, foreign brewers such as Modelo must sell their beer to an importer, like Crown, which then sells it to wholesalers for distribution to retailers.

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

ANSWER: Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and, therefore, deny those allegations.

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

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of whether brewers with a broad portfolio of brands generally seek to maintain "price gaps" between each segment and, therefore, deny those allegations. Intervenors admit the remaining allegations contained in Paragraph 29.

30. Beers compete with one another across segments. Indeed, ABI and Modelo brands are in regular competition with one another. For example, Modelo, acting through Crown in the United States, usually selects "[d]omestic premium" beer, namely, ABI's Bud Light, as its benchmark for its own brands' pricing.

ANSWER: Intervenors deny the allegations contained in Paragraph 30, except that they admit that ABI and Modelo brands, to some extent, compete with one another and that beers can compete across segments. Modelo does not develop pricing strategy for its beers in the United States. Rather, Crown decides how Corona and the other Modelo brands will be priced and sold in the United States. Crown, not Modelo, employs field personnel and other persons who gather market data and engage in a deliberative, competitive process to formulate a customized pricing decision appropriate for each situation.

B. Relevant Product Market

31. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline at least a small but significant and nontransitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

ANSWER: Intervenors deny the allegations contained in Paragraph 31.

C. Relevant Geographic Market

32. The 26 local markets, defined by Metropolitan Statistical Areas ("MSAs"), identified in Appendix A, are relevant geographic markets for antitrust purposes. Each of these local markets currently benefits from head-to-head competition between ABI and Modelo, and in each the acquisition would likely substantially lessen competition.

ANSWER: Intervenors deny the allegations contained in Paragraph 32. ABI and Modelo do not compete with one another in the United States.

33. The relevant geographic markets for analyzing the effects of this acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries. Brewers develop pricing and promotional strategies based on an assessment of local

demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

ANSWER: Intervenors admit the allegations contained in the first and third sentences of Paragraph 33. Intervenors deny the allegations in the second sentence of Paragraph 33 because Modelo does not develop pricing and promotional strategies for its beer with respect to the United States—Crown does.

34. Brewers are able to price differently in different locations, in part, because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and their importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage difficult.

ANSWER: Intervenors admit that the same brand and package of beer might be sold at different prices in different locations. Intervenors admit that wholesale distributors typically contract to sell beer within an exclusive territory for any particular brand. Intervenors admit that states have different laws governing the distribution and sale of beer. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence of Paragraph 34 and, therefore, deny those allegations. Intervenors deny all remaining allegations contained in Paragraph 34.

35. Accordingly, a hypothetical monopolist of beer sold into each of the local markets identified in Appendix A would likely increase its prices in that local market by at least a small but significant and non-transitory amount.

ANSWER: Intervenors deny the allegations contained in Paragraph 35.

36. Therefore, the MSAs identified in Appendix A are relevant geographic markets and "sections of the country" within the meaning of Section 7 of the Clayton Act.

ANSWER: Paragraph 36 states legal conclusions, to which no responsive pleading is required. To the extent Paragraph 36 contains allegations, Intervenors deny those allegations.

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

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the final four sentences of Paragraph 37 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 37.

V. ABI'S PROPOSED ACQUISITION IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. The Relevant Markets are Highly Concentrated and the Merger Triggers a Presumption of Illegality in Each Relevant Market

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

ANSWER: Intervenors deny the allegations contained in Paragraph 38.

39. ABI is the largest brewer of beer sold in the United States. MillerCoors is the second largest brewer of beer sold in the United States. MillerCoors owns the Miller and Coors brands and also many smaller brands including Blue Moon and Keystone Light. Modelo is the third largest brewer of beer sold in the United States, with annual U.S. sales of $2.47 billion, 7% market share nationally, and a market share that is nearly 20% in some local markets. Modelo owns the Corona, Modelo, Pacifico, and Victoria brands. The remaining sales of beer in the U.S. are divided among Heineken and fringe competitors, including many craft brewers, which the Defendants characterize as being "fragmented . . . small player[s]."

ANSWER: Upon information and belief, Intervenors admit the allegations contained in the first three and the fifth sentences of Paragraph 39. Intervenors also admit that Modelo is the third largest brewer of beer sold in the United States. Intervenors deny the remaining allegations contained in the fourth sentence of Paragraph 39. Crown, not Modelo, has annual

sales of approximately $2.47 billion and 7% market share. Intervenors admit that Heineken and craft brewers brew beer that is sold in the United States. Intervenors deny the remaining allegations contained in Paragraph 39.

40. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI"). Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2,500 points are considered highly concentrated.

ANSWER: Intervenors admit that the 2010 Horizontal Merger Guidelines published by the Federal Trade Commission and the Department of Justice Antitrust Division assert the allegations contained in the final sentence of Paragraph 40 but deny that such markets are considered "highly concentrated" in all cases. Intervenors admit the remaining allegations contained in Paragraph 40, except that they deny that the HHI is the appropriate measure of market concentration in all situations.

41. The beer industry in the United States is highly concentrated and would become substantially more so as a result of this acquisition. Market share estimates demonstrate that in 20 of the 26 local geographic markets identified in Appendix A, the post-acquisition HHI exceeds 2,500 points, in one market is as high as 4,886 points, and there is an increase in the HHI[3] of at least 472 points in each of those 20 markets. In six of the local geographic markets, the post-merger HHI is at least 1,822, with an increase of the HHI of at least 387 points, and in each of those six markets the parties combined market share is greater than 30%.

ANSWER: Intervenors deny the allegations contained in Paragraph 41. The transactions described above do not increase concentration in the alleged market for the sale of beer in the United States. Crown—not Modelo—prices, markets, sells, and distributes Modelo brands in the United States and will remain independent after the transactions.

42. In the United States, the Defendants will have a combined market share of approximately 46% post-transaction. The post-transaction HHI of the United States beer market will be greater than 2800, with an increase in the HHI of 566.

ANSWER: Intervenors deny the allegations contained in Paragraph 42. The transactions described above do not increase concentration in the alleged market for the sale of beer in the United States. Crown—not Modelo—prices, markets, sells, and distributes Modelo brands in the United States and will remain independent after the transactions.

43. The market concentration measures, coupled with the significant increases in concentration, described above, demonstrate that the acquisition is presumed to be anticompetitive.

ANSWER: Intervenors deny the allegations contained in Paragraph 43.

B. Beer Prices in the United States Today are Largely Determined by the Strategic Interactions of ABI, MillerCoors, and Modelo

1. ABI's Price Leadership

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

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44 and, therefore, deny those allegations.

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

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 45 and, therefore, deny those allegations.

46. ABI's Conduct Plan emphasizes the importance of being "Transparent – so competitors can clearly see the plan;" "Simple – so competitors can understand the plan;" "Consistent – so competitors can predict the plan;" and "Targeted – consider competition's structure." By

pursuing these goals, ABI seeks to "dictate consistent and transparent competitive response." As one ABI executive wrote, a "Front Line Driven Plan sends Clear Signal to Competition and Sets up well for potential conduct plan response." According to ABI, its Conduct Plan "increases the probability of [ABI] sustaining a price increase."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 46 and, therefore, deny those allegations.

47. The proposed merger would likely increase the ability of ABI and the remaining beer firms to coordinate by eliminating an independent Modelo – which has increasingly inhibited ABI's price leadership – from the market.

ANSWER: Intervenors deny the allegations contained in Paragraph 47.

2. Modelo Has Constrained ABI's Ability to Lead Prices Higher

48. In the past several years, Modelo, acting through Crown, has disrupted ABI's pricing strategy by declining to match many of the price increases that were led by ABI and frequently joined by MillerCoors.

ANSWER: Intervenors deny the allegations contained in Paragraph 48.

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

ANSWER: Intervenors deny the allegations in the first three sentences contained in Paragraph 49. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the last sentence of Paragraph 46 and, therefore, deny those allegations.

50. Under the Momentum Plan, Modelo brand prices essentially remained flat despite price increases from ABI and other competitors, allowing Modelo brands to achieve their targeted price gaps to premium beers in various markets. After Modelo implemented its price gap strategy, Modelo brands experienced market share growth.

ANSWER: Intervenors deny the allegations contained in Paragraph 50.

51. Because of the Momentum Plan, prices on the Modelo brands have increased more slowly than ABI has increased premium segment prices. Thus, as ABI has observed, in recent years, the "gap between Premium and High End has been reducing . . . due to non [high-end] increases." Over the same time period, the high-end segment has been gaining market share at the expense of ABI's and MillerCoors' premium domestic brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 51.

52. In internal strategy documents, ABI has repeatedly complained about pressure resulting from price competition with the Modelo brands: "Recent price actions delivered expected Trade up from Sub Premium, however it created additional share pressure from volume shifting to High End where we under-index;" "Consumers switching to High End accelerated by price gap compression;" "While relative Price to MC [MillerCoors] has remained stable the lack of Price increase in Corona is increasing pressure in Premium." An ABI presentation from November 2011 stated that ABI's strategy was "Short-Term []: We must slow the volume trend of High End Segment and cannot let the industry transform." Owning the Modelo brands will enable ABI to implement that strategy.

ANSWER: Intervenors deny the allegations contained in the final sentence of Paragraph 52. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 52 and, therefore, deny those allegations.

53. The competition that Modelo has created by not following ABI price increases has constrained ABI's ability to raise prices and forced ABI to become more competitive by offering innovative brands and packages to limit its share losses and to attract customers.

ANSWER: Intervenors deny the allegations contained in Paragraph 53. Crown, not Modelo, is responsible for pricing, marketing, selling, and distributing the Modelo brands in the United States.

54. Competition between the ABI and Modelo brands has become increasingly intense throughout the country, particularly in areas with large Latino populations. As the country's Latino population is forecasted to grow over time, ABI anticipates even more rigorous

competition with Modelo. Here are some examples of how the Modelo brands have disciplined the pricing of the market leaders.

ANSWER: Intervenors deny the allegations contained in Paragraph 54. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

a. California

55. Modelo, acting through Crown, has not followed ABI-led price increases in local markets in California. Because of the aggressive pricing of the Modelo brands, ABI's Bud and Bud Light brands have reported "[h]eavy share losses" to Modelo's Corona and Modelo Especial.

ANSWER: Intervenors deny the allegations contained in Paragraph 55. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

56. Consumers in California markets have been the beneficiaries of Modelo's aggressive pricing. ABI rescinded a planned September 2010 price increase because of the share growth of Modelo's Corona brand. ABI also considered launching a new line, "Michelob Especial," – a Modelo brand is "Modelo Especial" – targeted at California's Latino community. ABI recognized that Corona's strength in California meant that "innovation [is] required." Nonetheless, Modelo continued "eating [Budweiser's] lunch" in California to the point where ABI's Vice President of Sales observed that "California is a burning platform" for ABI, which was "losing share" because of "price compression" between ABI and Corona.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second and third sentences of Paragraph 56 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 56. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is

responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

57. In 2012, ABI's concern about losing market share to Modelo in California caused a full-blown price war. ABI implemented "aggressive price reductions . . ." that were seen as "specifically targeting Corona and Modelo." These aggressive discounts appear to have been taken in support of ABI's expressed desire to discipline Modelo's aggressive pricing with the ultimate goal of "driv[ing] them to go up" in price. Both MillerCoors and Modelo followed ABI's price decrease, and ABI responded by dropping its price even further to stay competitive.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations regarding MillerCoors in Paragraph 57 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 57. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

b. Texas

58. Competition between the ABI and Modelo brands in local markets in Texas is also intense. Beginning in or about 2010, some Modelo brands began to be priced competitively with ABI's Bud Light, the leading domestic brand throughout the state. Modelo brands also benefited from price promotions and regional advertising. By 2011, Modelo had begun gaining market share at ABI's expense. ABI recognized Modelo's aggressive price strategy as an issue contributing to its market share loss.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations regarding ABI contained in Paragraph 58 and, therefore, deny those allegations. Intervenors deny all remaining allegations contained in Paragraph 58. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in Texas.

59. Ultimately, aggressive pricing on some Modelo brands forced ABI to lower its prices in local Texas markets, and adjust its marketing strategy to better respond to competition from the Modelo brands. According to an ABI Regional Vice President of Sales, ABI set "pricing, packaging and retail activity targets to address [Modelo's] Especial" brand. In both Houston and San Antonio, ABI also lowered the price of its Bud Light Lime brand to match Modelo Especial price moves.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 59 and, therefore, deny those allegations.

c. New York City

60. In the summer of 2011, Modelo, acting through Crown, sought to narrow the gap in price between its brands and those of domestic premiums, including the ABI brands in New York City. ABI became concerned that "price compression on Premiums by imports" would cause premium domestic customers to trade up to the import segment. ABI's Vice President of Sales observed that the price moves on Modelo's Corona brand, and corresponding reductions by MillerCoors and Heineken, meant that ABI would "need to respond in some fashion," and that its planned price increase was "in jeopardy." ABI ultimately chose to respond by delaying a planned price increase to "limit the impact of price compression on our premiums as a result of the Corona . . . deeper discount."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second, third, and fourth sentences of Paragraph 60 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 60. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in New York City.

C. The Elimination of Modelo Would Likely Result in Higher Coordinated Pricing by ABI and MillerCoors

61. Competition spurred by Modelo has benefitted consumers through lower beer prices and increased innovation. It has also thwarted ABI's vision of leading industry prices upward with MillerCoors and others following. As one ABI executive stated in June 2011, "[t]he impact of Crown Imports not increasing price has a significant influence on our volume and share. The case could be made that Crown's lack of increases has a bigger influence on our elasticity than

MillerCoors does." ABI's acquisition of full ownership and control of Modelo's brands and brewing assets will facilitate future pricing coordination.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second and third sentences of Paragraph 61 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 61. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

D. The Loss of Head-to-Head Competition Between ABI and Modelo Would Likely Result in Higher Prices on ABI-Owned Brands

62. ABI is intent on moderating price competition. As it has explained internally: "We must defend from value-destroying pricing by: [1] Ensuring competition does not believe they can take share through pricing[,] [and] [2] Building discipline in our teams to prevent unintended initiation or acceleration of value-destroying actions." ABI documents show that it is increasingly worried about the threat of high-end brands, such as Modelo's, constraining its ability to increase premium and sub-premium pricing. In general, ABI, as the price leader, would prefer a market not characterized by aggressive pricing actions to take share because "[t]aking market share this way is unsustainable and results in lower total industry profitability which damages all players long-term."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 62 and, therefore, deny those allegations.

63. ABI would have strong incentives to raise the prices of its beers were it to acquire Modelo. First, lifting the price of Modelo beers would allow ABI to further increase the prices of its existing brands across all beer segments. Second, as the market leader in the premium and premium-plus segments, and as a brewer with an approximate overall national share of approximately 46% of beer sales post-acquisition, coupled with its newly expanded portfolio of brands, ABI stands to recapture a significant portion of any sales lost due to such a price increase, because a significant percentage of those lost sales will go to other ABI-owned brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 63. ABI will have no ability to affect the pricing of Modelo brands in the United States after the transactions.

64. Therefore, ABI likely would unilaterally raise prices on the brands of beer that it owns as a result of the acquisition.

ANSWER: Intervenors deny the allegations contained in Paragraph 64. ABI will have no ability to affect the pricing of Modelo brands in the United States after the transactions.

E. The Loss of Head-to-Head Competition Between ABI and Modelo Will Harm Consumers Through Reduced New Product Innovation and Product Variety

65. Modelo's growth in the United States has repeatedly spurred product innovation by ABI. In 2011, ABI decided to "Target Mexican imports" and began planning three related ways of doing so. First, ABI would acquire the U.S. sales rights to Presidente beer, the number one beer in Central America, and greatly expand Presidente's distribution in the United States. Second, ABI would acquire a "Southern US or Mexican craft brand," and use it to compete against Mexican imports. Finally, ABI would license trademarks to another tropical-style beer, in a project that the responsible ABI manager described as a "Corona killer."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 65 and, therefore, deny those allegations. Intervenors also deny these allegations to the extent they purport to describe competitive activity by Modelo within the United States. Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

66. ABI's Bud Light Lime, launched in 2008, was also targeted at Corona (commonly served with a slice of lime), going so far as to mimic Corona's distinctive clear bottle. As one Modelo executive noted after watching a commercial for Bud Light Lime, the product was "invading aggressively and directly the Corona territory." Another executive commented that the commercial itself was "[v]ery similar" to one Modelo, through Crown, was developing at the same time.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 66 and, therefore, deny those allegations, except that they admit that Bud Light Lime was sold in a clear bottle and was an innovation that competed with many beer and other alcohol brands, including the Modelo brands.

67. The proposed acquisition's harmful effect on product innovation is already evident. If ABI were to acquire Modelo and enter into the supply agreement with Constellation, ABI would be forbidden from launching a "Mexican-style Beer" in the United States. Further, ABI would no longer have the same incentives to introduce new brands to take market share from the Modelo brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 67 and refer to the agreements referenced for their contents. The proposed transactions would not result in less innovation or new brands in the United States. In fact, immediately upon closing of the transactions, Crown would be entitled to import any of the other six beers produced by Modelo and sold only in Mexico.

F. Summary of Competitive Harm from ABI's Acquisition of the Remainder of Modelo

68. The significant increase in market concentration that the proposed acquisition would produce in the relevant markets, combined with the loss of head-to-head competition between ABI and Modelo, is likely to result in unilateral price increases by ABI and to facilitate coordinated pricing between ABI and remaining market participants.

ANSWER: Intervenors deny the allegations contained in Paragraph 68.

VI. ABSENCE OF COUNTERVAILING FACTORS

69. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each of these harmed markets include: (i) the substantial time and expense required to build a brand reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the difficulty of securing shelf-space in retail outlets; (iv) the time and cost of building new breweries and other facilities; and (v) the time and cost of developing a network of beer distributors and delivery routes.

ANSWER: Intervenors deny the allegations contained in Paragraph 69.

70. Although ABI asserts that the acquisition would produce efficiencies, it cannot demonstrate acquisition-specific and cognizable efficiencies that would be passed-through to U.S. consumers, of sufficient size to offset the acquisition's significant anticompetitive effects.

ANSWER: Intervenors deny the allegations contained in Paragraph 70.

VII. DEFENDANTS' PROFFERED "REMEDY" DOES NOT PREVENT THE ANTICOMPETITIVE EFFECT OF ABI'S ACQUISITION OF MODELO

71. In light of the high market concentration, and substantial likelihood of anticompetitive effects, ABI's acquisition of the remainder of Modelo is illegal. Defendants thus evidently structured their transactions with a purported "remedy" in mind: the sale of Modelo's interest in Crown to Constellation, coupled with a supply agreement that gives Constellation the right to import Modelo beer into the United States. This proposal is inadequate to remedy Defendants' violation of Section 7 of the Clayton Act.

ANSWER: Intervenors deny the allegations contained in Paragraph 71, except that they admit that ABI has agreed to sell Modelo's interest in Crown to Constellation and enter into a supply agreement that gives Constellation the right to import Modelo beer into the United States.

A. Constellation Has Not Shown Modelo and Crown's Past Willingness to Resist ABI's "Leader-Follower" Industry Plan

72. Constellation has not shown Crown and Modelo's past willingness to thwart ABI's price leadership. While Modelo supported narrowing the gap between the prices of its brands and those of ABI premium brands, Constellation's executives have sought to follow ABI's pricing lead. In August 2011, Constellation's Managing Director wrote to Crown's CEO: "Since ABI has already announced an October general price increase I was wondering if you are considering price increases for the Modelo portfolio? . . . . From a positioning and image perspective I believe it would be a mistake to allow the gaps to be narrowed … I think ABI's announcement gives you the opportunity to increase profitability without having to sacrifice significant volume." Similarly, in December of 2011, Constellation's CFO wrote to his counterpart at Crown that he thought price increases on the Modelo brands were viable "if domestics [i.e. Bud and Bud Light] keep going up" but worried that "Modelo gets a vote as well." And in June of 2012, a Crown executive stated that Constellation's plan for annual price increases "put at risk the relative success" of the Momentum Plan.

ANSWER: Intervenors deny the allegations contained in Paragraph 72 and refer to the documents referenced for their contents.

73. Crown executives have recognized the differing incentives, as it relates to pricing, of their two owners. As one Crown executive observed in a March 2011 email, "Modelo has a higher interest in building volume so that they can cover manufacturing costs, gain manufacturing profits and build share as the brand owners." Constellation, however, "is interested primarily in the financial return on a short-term or at the most on a mid-term basis."

ANSWER: Intervenors admit the allegations contained in the first sentence of Paragraph 73. Intervenors deny the allegations contained in the second sentence of Paragraph 73 and refer to the documents referenced for their contents.

74. Post-transaction, Constellation would no longer be so constrained. Even if Crown's own executives wanted to continue an aggressive pricing strategy, they would be required to answer to Crown's new sole owner – Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 74.

75. Crown executives were concerned about what would happen if Constellation gained complete control of Crown. Crown's CEO wrote to Constellation's CEO after Defendants' proposed "remedy" was announced: "the Crown team [] is extremely anxious about this change in ownership. This is in no small part the result of Constellation's actions over the term of the joint venture to limit investment in the business in the areas of manpower and marketing." Constellation's CEO responded internally: "[Q]uite something. I see a management issue brewing." In another email, Crown's CEO wrote to his employees that Constellation had been "consistently non supportive of the business through Crown's history . . . seeking to drive profits at all costs."

ANSWER: Intervenors deny the allegations contained in Paragraph 75 and refer to the documents referenced for their contents.

76. Crown's fears appear well-grounded. In 2010, Modelo sued Constellation for breach of fiduciary duty, after Constellation had refused to invest in marketing the Modelo brands. In its Complaint, Modelo alleged "Constellation [] knew that [Crown] management's plan was in Crown's best interests, but they blocked it anyway in an effort to secure unwarranted benefits for Constellation."

ANSWER: Intervenors deny the allegations contained in Paragraph 76, except that they admit that Modelo sued Constellation for breach of fiduciary duty and refer to the documents referenced for their contents.

77. Post-acquisition, Constellation would not need to ask Modelo for permission to follow ABI's price-leadership. Instead, Constellation would be free to follow ABI's lead. Moreover, ABI and Constellation will have every incentive to act together on pricing because of the vast profits each would stand to make if beer prices were to increase.

ANSWER: Intervenors deny the allegations contained in Paragraph 77, except that they admit the allegations in the second sentence of Paragraph 77. They specifically deny the implication that such pricing behavior would occur.

78. The contingent supply relationship between ABI and Constellation would also facilitate joint pricing between the two companies. Post-acquisition, there would be day-to-day interaction between ABI and Constellation on matters such as volume, packaging, transportation of product, and new product innovation. ABI and Constellation would have countless opportunities that could creatively be exploited, and that no one could predict or control, to allow ABI to reward Constellation (or refrain from punishing Constellation) in exchange for Constellation raising the price of the Modelo brands. The lucrative supply agreement from which Constellation seeks to gain billions of dollars in profits itself incentivizes Constellation to keep ABI happy to avoid terminating Constellation's rights in ten years.

ANSWER: Intervenors deny the allegations contained in Paragraph 78.

79. ABI and Constellation are more likely to decide on mutually profitable pricing. Unlike ABI and Modelo, which are horizontal competitors, Constellation would be a mere participant in ABI's supply chain under the proposed arrangement.

ANSWER: Intervenors deny the allegations contained in Paragraph 79. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

80. ABI and Modelo have sought to avoid acting together on matters of competitive significance in the relevant markets in the U.S. Accordingly, they have built in several firewalls – including ABI's exclusion from sensitive portions of Modelo board meetings concerning the sale of Modelo beer in the U.S. – to insulate ABI from Modelo's U.S. business. Post-acquisition, those firewalls would be gone.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 80 and, therefore, deny those allegations.

81. The loss of Modelo also, by itself, facilitates interdependent pricing. Today, ABI would need to reach agreement with both Modelo and Constellation to ensure that pricing for the

Modelo brands followed ABI's lead. After the proposed transactions, working together on price would be easier because only Constellation would need to follow or agree with ABI.

ANSWER: Intervenors deny the allegations contained in Paragraph 81.

B. Constellation Will Not Be an Independent Firm Capable of Restoring Head-To-Head Competition Between ABI and Modelo

82. Even if Constellation wanted to act at odds with ABI post-transaction, it would be unlikely to do so. Constellation will own no brands or brewing or bottling assets of its own. It would be dependent on ABI for its supply. Thus, Defendants' proposed remedy puts Constellation in a considerably weaker competitive position compared to Modelo, which owns both brands and breweries.

ANSWER: Intervenors deny the allegations contained in Paragraph 82, except that they admit that after closing the proposed transactions Constellation will not own brands or brewing or bottling assets and would have a favorable contract for exclusive supply of Modelo beer from ABI.

83. ABI could terminate the contingent supply agreement at any time. And if ABI is displeased with Constellation's strategy in the United States, it might simply withhold or delay supply to punish Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 83.

84. The supply agreement may also be renegotiated at any time during the 10-year period. Thus, it provides no guaranteed protection for consumers that any of its terms will be followed if ABI is able to secure antitrust approval for this acquisition.

ANSWER: Intervenors deny the allegations contained in Paragraph 84. The supply agreement referenced in Paragraph 84 could not be renegotiated because the parties have committed that they will not renegotiate that agreement or strike any new agreement between the parties under court order. Further, Constellation would have no desire or incentive to renegotiate that agreement given its favorable terms.

VIII. VIOLATIONS ALLEGED

85. The United States incorporates the allegations of paragraphs 1 through 84 above as if set forth fully herein.

ANSWER: Intervenors incorporate their responses to the incorporated allegations above as if set forth fully herein.

Violation of Clayton Act § 7, 15 U.S.C. § 18

ABI Agreement to Acquire Remainder of Modelo

86. The proposed acquisition of the remainder of Modelo by ABI would likely substantially lessen competition – even after Defendants' proposed "remedy" – in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The transactions would have the following anticompetitive effects, among others:
(a) Eliminating Modelo as a substantial, independent, and competitive force in the relevant markets, creating a combined firm with reduced incentives to lower price or increase innovation or quality;
(b) Competition generally in the relevant markets would likely be substantially lessened;
(c) Prices of beer would likely increase to levels above those that would prevail absent the transaction, forcing millions of consumers in the United States to pay higher prices;
(d) Quality and innovation would likely be less than levels that would prevail absent the transaction;
(e) The acquisition would likely promote and facilitate pricing coordination in the relevant markets; and
(f) The acquisition would provide ABI with a greater incentive and ability to increase its pricing unilaterally.

ANSWER: Paragraph 86 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 86 contains allegations, Intervenors deny those allegations.

IX. REQUEST FOR RELIEF

87. The United States requests that:
(a) The proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
(b) The Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 28, 2012, and the "Transaction Agreement" dated June 28, 2012, between Modelo, Diblo, and ABI, or from entering into or carrying out any agreement, understanding, or plan by which ABI would acquire the remaining interest in Modelo, its stock, or any of its assets;
(c) The United States be awarded costs of this action; and
(d) The United States be awarded such other relief as the Court may deem just and proper.

ANSWER: Paragraph 87 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 87 contains allegations, Intervenors deny those allegations.

X. AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that ABI, Modelo, or Intervenors bear the burden of proof on each or any of the matters, nor does it excuse Plaintiff from establishing each element of its purported claim for relief.

88. The Complaint fails to state a claim upon which relief may be granted.

89. The Complaint fails to name one or more parties in interest.

90. The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

91. Efficiencies and other pro-competitive benefits of the transaction outweigh any and all proffered anti-competitive effects.

92. Intervenors reserve the right to assert any other defenses as they become known.

WHEREFORE, Intervenors respectfully request the following relief:

(1) judgment in their favor and the favor of the other Defendants;

(2) a declaration that the proposed transactions do not violate Section 7 of the Clayton Act or any other applicable law;

(3) an award of Intervenors' costs of suit, including attorneys' fees; and

(4) for such other relief as may be appropriate under the circumstances.

Dated: February 8, 2013

Respectfully submitted,

By: _____

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CROWN IMPORTS LLC

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH INBEV SA/NV, and GRUPO MODELO S.A.B. de C.V., Defendants.	)	Civil Action No. 13-127 (RWR)

[PROPOSED] ORDER GRANTING MOTION TO INTERVENE OF CONSTELLATION BRANDS, INC. AND CROWN IMPORTS LLC

Upon review of the Motion to Intervene of Constellation Brands, Inc. ("Constellation") and Crown Imports LLC ("Crown"), it is hereby

ORDERED that the Motion is GRANTED with respect to Constellation pursuant to Rule 24(a)(2) [or 24(b)(1)] of the Federal Rules of Civil Procedure; and

ORDERED that the Motion is GRANTED with respect to Crown pursuant to Rule 24(a)(2) [or 24(b)(1)] of the Federal Rules of Civil Procedure.

DATED:

_____
Richard W. Roberts
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV and GRUPO MODELO S.A.B de C.V., Defendants, CONSTELLATION BRANDS, INC., 207 High Point Drive, Building 100, Victor, New York 14564, *Proposed Defendant-Intervenor*, and CROWN IMPORTS LLC, One South Dearborn Street, Suite 1700 Chicago, Illinois 60603, *Proposed Defendant-Intervenor*.	Civil Action No. 13-127 (RWR)

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF CONSTELLATION BRANDS, INC.'S AND CROWN IMPORTS LLC'S MOTION TO INTERVENE

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INTRODUCTION

The Complaint in this action, filed January 31, 2013, and to which no responsive pleading has yet been filed, seeks to enjoin transactions transformational to Movants' businesses. The United States Department of Justice ("DOJ") sues to block Anheuser-Busch InBev SA/NV's ("ABI") acquisition of additional shares in Grupo Modelo S.A.B de C.V. ("Modelo"), a Mexican brewer of beer ("ABI/Modelo transaction").

Movant Constellation Brands, Inc. ("Constellation") entered an agreement with ABI pursuant to which, upon ABI's acquisition of Modelo shares, Constellation will become the sole owner of Movant Crown Imports LLC ("Crown"). Crown is the organization that markets, sells, and promotes the Modelo brand products in the United States. Constellation has been involved in the sale of Modelo's beer products in the United States since 1983, due to its ownership of Crown and, before that, Barton Beers Ltd. ("Barton"). Through the proposed transactions, Constellation intends to ensure that it will retain that position long into the future.

DOJ seeks to enjoin ABI's acquisition of Modelo shares, which fundamentally threatens Constellation's future in the beer business. And such an injuction would prevent Crown from achieving the benefits of an improved supply agreement that would enhance its competitive position. Constellation and Crown hold direct and substantial interests in the outcome of DOJ's requested injunction of ABI's acquisition of Modelo, because Constellation's acquisition of Crown is contingent upon the completion of the ABI/Modelo transaction that DOJ seeks to enjoin.

The federal courts favor intervention to allow parties with an interest in a transaction that is the subject of an action to participate in the defense of that case. The bar to intervene is low.

Federal Rule of Civil Procedure 24 compels intervention of right in these circumstances. Alternatively, the Court, for its own benefit in ruling on a case of such economic significance, should exercise its discretion to allow permissive intervention. Adjudicating this action without Constellation and Crown participating as defendants would work manifest unfairness and invite discord with circuit precedent favoring intervention.

Constellation and Crown's intervention will serve the Court's and the parties' interest to ensure a complete record on which to resolve this significant case. Indeed, ABI and Modelo support intervention. DOJ opposes it.

Constellation and Crown respectfully request expedited briefing and an early oral argument on their Motion to Intervene.

STATEMENT OF FACTS

I. OVERVIEW OF CONSTELLATION BRANDS

Founded in 1945 and headquartered in Victor, New York, Constellation is a beverage alcohol company (beer, wine, and spirits) with sales in approximately 125 countries. (Ex. 1, Robert S. Sands Decl. ¶ 2.) Constellation operates approximately 30 wineries and other facilities, employing approximately 4,300 people worldwide. (*Id.*) Constellation has been active in the United States beer industry since 1993, when it acquired the Barton business. (*Id.* at ¶ 3.) Constellation currently participates in the beer industry by virtue of its interest in Crown, a joint venture half-owned by each of Constellation and Modelo. (*Id.* at ¶ 2.)

II. HISTORY OF MODELO BRANDS IN THE UNITED STATES

A. United States Sales Pre-Crown

Modelo began exporting its brands from Mexico for sale in the United States in the 1970s. Barton was the United States importer that handled those products, including Corona Extra® and Negra Modelo®. (Ex. 2, William F. Hackett Decl. ¶ 3.) Barton also imported non-Modelo brands such as Peroni®, St. Pauli Girl®, and Tsingtao®. (Ex. 1, Sands Decl. ¶ 3.)

In 1987, a second importing company, Gambrinus Import Company ("Gambrinus"), began importing the Modelo brands as well. (Ex. 2, Hackett Decl. ¶ 4.) At that time, the United States import rights were split: Barton sold the brands in the western United States and Gambrinus in the eastern United States. (*Id.*; Ex. 1, Sands Decl. ¶ 3.)

Constellation entered the beer industry in 1993 with its acquisition of Barton. (Sands Decl. Ex.1 ¶ 3.) Through that acquisition, Constellation gained exclusive control over pricing, marketing, sales, and distribution of the Modelo brands within its territory, which lasted until the end of 2006 when Crown became the importer across the United States. (*Id.* at ¶¶ 3-4.) During that time, Modelo brand sales in the United States increased from approximately 20 million cases per year to approximately 160 million cases per year. (Ex. 2, Hackett Decl. ¶ 6.) In 2006, Modelo terminated the Gambrinus importer agreement, and partnered with Constellation to form Crown which became the sole importer of the Modelo brands throughout the United States. (*See* Ex. 1, Sands Decl. ¶ 4; Ex. 2, Hackett Decl. ¶ 4.)

B. Formation and Operation of Crown

Crown began selling beer in 2007. (Ex. 1, Sands Decl. ¶ 4; Ex. 2, Hackett Decl. ¶ 2.) To develop the infrastructure of the Crown joint venture, Constellation contributed the Barton

organization (which at that time included importer rights for St. Pauli Girl® and Tsingtao®), along with its experienced executive team, and many of the administrative and back-office functions. (Ex. 1, Sands Decl. ¶ 5.) Modelo contributed an amount of cash equal to the value of the Barton assets. (*Id.*) Constellation and Modelo each appoints four members to the Crown Board of Directors. (*Id.* at ¶ 8; Ex. 2, Hackett Decl. ¶ 11.)

Crown currently imports eight Modelo brands—Corona Extra®, Corona Light®, Coronita®, Modelo Especial®, Modelo Light®, Negra Modelo®, Pacifico®, and Victoria®—and two non-Modelo brands, Somersby Cider® and Tsingtao®. (Ex. 2, Hackett Decl. ¶ 2.) Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California; Stamford, Connecticut; and Irving, Texas. (*Id.* at ¶ 7; Ex. 1, Sands Decl. ¶ 6.) Field sales staff cover each of its approximately 600 wholesaler territories. (Ex. 2, Hackett Decl. ¶ 7; Ex. 1, Sands Decl. ¶ 6.) Sales for the fiscal year ended February 29, 2012 totaled $2.39 billion. (Ex. 2, Hackett Decl. ¶ 7; Ex. 1, Sands Decl. ¶ 6.)

As Modelo's exclusive United States importer, Crown is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the Modelo brands in the United States. (Ex. 2, Hackett Decl. ¶ 8.) Crown purchases beer from Modelo in Mexico, takes title to the beer in Mexico, and then sells it into the market in the United States that Crown, and previously Barton, created for the beer through decades of work in developing the Modelo brands in the United States. (*Id.*) William Hackett, Crown President, his management team, and the broader team of Crown employees, perform many tasks, including developing and executing pricing and promotion strategies for the products in every market in the country; managing the sale of Crown's ten brands by developing a network of approximately 600 wholesalers; coordinating

retail activity; developing and executing first-in-class national and local advertising and promotional programming; and coordinating the logistics of forecasting volumes and transporting the beer from the breweries to the wholesalers. (*Id.* at ¶ 9.) Through these activities Crown competes against other suppliers' beer brands for sales in the United States, including, among many others, ABI's brands. (*Id.*) And those activities are performed by Crown employees. (*Id.*) Crown also manages compliance with federal and state beverage alcohol regulations and engages in government-relations activity on behalf of itself and the beer industry. (*Id.*)

Crown's management team is steeped in competing in the United States beer industry. The team includes William Hackett, President; Bruce Jacobsen, Executive Vice President, Sales; James Sabia, Executive Vice President, Marketing; and Thomas Wyness, Executive Vice President, Business Operations. (Ex. 2, Hackett Decl. ¶ 10.) Of these four executives, only Mr. Sabia did not also work at Constellation's Barton subsidiary prior to the formation of Crown. (*Id.*) In fact, both Messrs. Hackett and Wyness worked at Barton prior to its acquisition by Constellation. (*Id.*)

C. Modelo's Call Option for Constellation's Interest in Crown

The agreement to establish the Crown joint venture provided for an initial term of ten years that will end on December 31, 2016. (Ex. 1, Sands Decl. ¶ 9.) At any time up to three years prior to the end of the initial term (or any subsequent renewal term), Modelo possesses a right to notify Constellation that it intends to purchase Constellation's interest in Crown at the end of the term. (*Id.*) Towards the beginning of the Crown relationship, Modelo stated that it intended to purchase Constellation's interest at the end of the initial term, and Modelo has

indicated a similar intention more recently. (*Id.*) Constellation would object to any such exercise on a number of grounds. (*Id.*)

Modelo's intention to exercise its "call option" has colored Constellation's view of its investment in Crown, and led to some differences in philosophy with Modelo. (*Id.* at ¶ 10.) As a consequence of what had the potential to be a relatively short-term interest in the Crown venture compared with Modelo's, Constellation has sometimes had less incentive to invest in the long-term growth of the Modelo brands. (*Id.*) This misalignment in incentives has at times produced tensions between the Crown parents and hindered some of Crown's growth opportunities. (*Id.*)

III. THE PROPOSED TRANSACTION

A. The Restructuring of Modelo and Crown Ownership

In first half of 2012, ABI entered negotiations with Modelo to purchase the remaining interest in Modelo that it did not own already ("the ABI/Modelo transaction"). (Ex. 1, Sands Decl. ¶ 11.) ABI also began discussions to sell Modelo's interest in Crown to Constellation ("the ABI/Constellation transaction"), contingent upon the completion of the ABI/Modelo transaction. (*Id.*) ABI entered into both agreements on June 28, 2012. (*Id.* at ¶ 12; Compl. ¶ 23.)

Under the ABI/Constellation transaction agreement, Crown will become a wholly-owned Constellation subsidiary. (*Id.*) The ABI/Constellation transaction provides both Constellation and Crown with a number of benefits. Acquiring Modelo's 50% interest in Crown represents a transformational transaction for Constellation that enables it to retain the beer business it has owned, in whole or in part, since 1993 when it acquired Barton. (*Id.* at ¶ 13.) After the ABI/Constellation transaction, Crown becomes a platform for Constellation to invest and build

its presence in the beer category long term. (*Id.*) Constellation's profit interest in Crown will double. (*Id.* at ¶ 14.) The investment community recognizes the significance of the transaction for Constellation. (*Id.*) On the day the transaction was announced in June 2012, Constellation's share price increased by approximately 24%. (*Id.*) The stock declined by approximately 17% on January 31, 2013, when DOJ filed its lawsuit challenging the transaction. (*Id.*)

In contrast to Constellation, ABI and Modelo do not risk exit from the United States beer industry if DOJ's suit is successful. ABI is the largest brewer and marketer of beer sold in the United States and is positioned to continue selling beer worldwide. (*See* Compl. ¶ 17.) Modelo would remain a Mexican brewer, will continue to have its beer sold in the United States, and will retain its fifty-percent interest in its United States importer, Crown. (*See* Ex. 1, Sands Decl. ¶ 9.)

After the transaction, Crown retains the exclusive right to import and manage the sale, marketing, and distribution of the Modelo brands in the United States, and does so under more favorable conditions. (Ex. 2, Hackett Decl. ¶ 13.) Consolidating the ownership under Constellation creates stability and a streamlined governance structure for Crown as it continues to expand its brand portfolio in the United States. (*Id.* at ¶ 14.) Crown will have a favorable new supply agreement to purchase beer from Modelo's Mexican plants, contingent upon the ABI/Modelo transaction closing. (*Id.* at ¶¶ 12, 15.) Initial prices Crown will pay Modelo for beer are set at the amounts Crown paid Modelo in May 2012, and the prices increase at a rate less than the rate of inflation. (*Id. at* ¶ 15.)

Crown also would obtain the right to import the Modelo brands not currently sold in the United States. (*Id.* at ¶ 16.) This aspect of the transaction is particularly attractive. Crown will be able to import *any* beer marketed or sold by Modelo outside of the United States. (*Id.*)

Further, Crown will have more rights to obtain additional, newly developed beer products from Modelo. (*Id.*) Moreover, Crown allocation priority improves; under the new agreement, in the event of supply shortages, Crown will not be disadvantaged relative to the Mexican market, as it is under the current supply agreement, and will receive its pro-rata share of production. (*Id.* at ¶ 17.) Crown stands to benefit greatly if the ABI/Modelo transaction and the contingent ABI/Constellation transaction are completed.

B. DOJ's Investigation And Lawsuit

In July 2012, DOJ began investigating the ABI/Modelo and ABI/Constellation transactions. Constellation and Crown both were fully enmeshed in DOJ's investigation. In August 2012, DOJ issued a document request to Constellation, to which both Constellation and Crown responded. (*See, e.g.*, Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) That request was substantially similar to the document requests DOJ issued to ABI and Modelo. Throughout the course of the investigation, DOJ included Constellation counsel on its communications with the parties. Constellation was treated as a party under the timing agreement governing DOJ's investigation and had its own legal representation at the parties' meetings with DOJ, and in some instances attended the DOJ meetings. Constellation and Crown worked with ABI and Modelo in submitting various white papers and making presentations to DOJ.

In the course of DOJ's investigation, Constellation and Crown produced voluminous documents to DOJ, and DOJ deposed five Crown employees and Constellation's President and CEO, Robert Sands. (*See, e.g.*, Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) Throughout this process, McDermott Will & Emery LLP ("McDermott") represented both Constellation and Crown. (*See* Ex. 1, Sands Decl. ¶ 15; Ex. 2, Hackett Decl. ¶ 18.) Modelo was represented by

different counsel, Cravath, Swaine & Moore LLP. DOJ made various requests of Crown through Constellation's counsel, not Modelo's. McDermott negotiated limitations to DOJ's document requests on behalf of Constellation and Crown. McDermott managed the production of Constellation's and Crown's documents, including those Crown documents to which DOJ cites in its Complaint and the accompanying press release. (*See* Ex. 2, Hackett Decl. ¶ 18.)

ARGUMENT

Constellation and Crown are entitled to intervene of right because they satisfy the requirements imposed by Federal Rule of Civil Procedure 24(a)(2). Alternatively, this Court should exercise its discretion and permit Constellation and Crown to intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

I. CONSTELLATION AND CROWN ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT

Timely intervention by affected entities is favored in the federal courts. The D.C. Circuit has long endorsed "a liberal application in favor of permitting intervention," *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967), so as to promote the "disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process," *id.* at 700. *See Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001) ("*AHPA*") (noting the "liberal and forgiving standard" for intervention).

Federal Rule of Civil Procedure 24(a)(2), governs intervention of right. That rule states:

> On timely motion, the court *must* permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Constellation and Crown meet this standard.

A. Constellation and Crown Demonstrate a Substantial Interest in the Transactions That Are the Subject of the Litigation

Constellation and Crown each have a compelling economic interest in defeating DOJ's lawsuit challenging the legality of ABI's acquisition of the remainder of Modelo. If this court enjoins ABI's further acquisition of Modelo shares, it will effectively enjoin Constellation's acquisition of the remaining interest in Crown.

The acquisition of Modelo's 50% interest in Crown is a transformational transaction for Constellation's beer business. The transaction will double Constellation's participation in the beer business. By eliminating Modelo's call right for Constellation's interest in Crown, it also ensures Constellation's robust, long term participation in the United States beer business. Constellation has participated in that business since its 1993 acquisition of Barton, a business that Constellation supported and oversaw while it greatly expanded U.S. sales of the Modelo brand beers. Crown also has a paramount interest in seeing DOJ's challenge fail, because it will improve Crown's corporate governance, returning to a more streamlined structure with a single owner, and provide it with a supply agreement that is far superior to the one under which it operates currently.

In keeping with the D.C. Circuit's liberal approach to intervention, "the most pragmatic test possible" determines whether Constellation and Crown have a sufficient interest to intervene, not a "narrow formulation." *Nuesse*, 385 F.2d at 700; *see also Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967) (interpreting intervention right broadly and permitting the State of California, a large investor-owned industrial user of energy, and a

competitor to intervene in a section 7 Clayton Act suit). Indeed, this Court has stated that "while the nature of the intervenor's interest in the litigation cannot be ignored, it is more profitable to place primary emphasis on the other provisions of [the Rule] which deal with impairment of the interest claimed and the adequacy of the representation of that interest by the existing parties." *AHPA*, 200 F.R.D. at 157.

Both Constellation and Crown hold a substantial interest in the transaction challenged in the Complaint, and therefore meet this threshold. As the Complaint recognizes explicitly (*see* Compl. ¶¶ 8-10, 24, 71-84), Constellation's right to purchase Modelo's interest in Crown is integral to this Court's determination of whether ABI's purchase of Modelo violates the Clayton Act. Neither transaction will occur without the other. (*See* Compl. ¶ 24 ("These transactions are contingent on the closing of ABI's acquisition of Modelo.").) ABI negotiated two agreements, one with Modelo and one with Constellation. DOJ conducted extensive discovery of Constellation and Crown in reviewing the matter. To consider ABI's proposed acquisition of Modelo in a vacuum is akin "to turning a blind eye to the elephant in the room." *Fed. Trade Comm'n v. Arch Coal, Inc.*, No. 1:04-cv-00534-JDB, Mem. Op. at 8 (D.D.C. July 7, 2004). Constellation and Crown indisputably possess an interest in the transactions that are the subject of this litigation.

B. Disposition of This Action Will Impair and Impede the Ability of Constellation and Crown To Protect Their Interests

Constellation and Crown must show only that disposition of the action "*may* as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). In considering this factor, courts look to the "practical consequences" of denying intervention. *Nuesse*, 385 F.2d at 702.

To deny intervention would impair and impede the ability of Constellation and Crown to protect their interests. They are organizations whose rights, business futures, and stock values are affected directly by the outcome of this litigation. DOJ's failure to name them as parties would deny Constellation and Crown the opportunity to participate directly in the litigation of this case, and they would not be guaranteed a seat at any potential settlement table. Constellation and Crown deserve their day in court to defend transactions transformative to their businesses.

C. The Existing Parties Do Not Adequately Represent the Interests of Constellation or Crown

This requirement is satisfied if the representation of Constellation's and Crown's interest by the existing parties *may be* inadequate—the burden here "should be treated as minimal," *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (internal quotes omitted), and "not onerous," *id.* (internal quotes omitted). To the extent that they bear this burden,[1] Constellation and Crown clearly satisfy it.

DOJ's factual allegations and proposed relief are directly adverse to Constellation's and Crown's interest. While ABI and Modelo certainly will oppose DOJ's Complaint, their interests differ in meaningful ways from Constellation's and Crown's. If DOJ's suit succeeds, each of Modelo and ABI will continue to operate in the United States beer business, but there is a possibility that Constellation will not (if Modelo is able to exercise its call option for

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[1] Case law suggests that the party opposing intervention may in fact bear the burden of proving that the existing parties adequately represent the interests of the intervenor. *See Fund for Animals, Inc.*, 322 F.3d at 736 n.7 (explaining that while some cases "suggest that the burden is on the aspiring intervenor[,] [o]thers declare that the burden is on the opponent of intervention, because Rule 24(a)(2) states that if its first three factors are satisfied, intervention 'shall' be permitted 'unless' the applicant's interest is already adequately represented").

Constellation's Crown interest, over Constellation's objection).[2] If the suit succeeds, Crown will continue to be saddled with the dual ownership structure. Also, ABI, which is Crown's competitor in the United States sale of beer, does not have identical interests with its competitor, Crown, or Constellation. Neither ABI's nor Modelo's counsel represented Crown or Constellation throughout the entire DOJ investigation. If DOJ is successful, Modelo will most likely seek to exercise its call option to purchase the remaining interest in Crown, a position adverse to Constellation. (*See* Compl. ¶ 21.)

This case demands Constellation and Crown's intervention, as DOJ seeks to extinguish the contractual rights of both without allowing either to present a defense. No existing party can, or will, adequately represent the interests of Constellation and Crown.

D. The Motion to Intervene Is Timely

The timeliness of this Motion to Intervene cannot be questioned. DOJ filed its Complaint on January 31, 2013. No responsive pleading has been filed yet.

II. IN THE ALTERNATIVE, THIS COURT SHOULD GRANT CONSTELLATION AND CROWN PERMISSIVE INTERVENTION UNDER RULE 24(B)

Alternatively, Constellation and Crown should be permitted to intervene under Federal Rule of Civil Procedure 24(b)(1), which allows a court to exercise its discretion "upon timely application" of an applicant who "has a claim or defense that shares with the main action a common question of law or fact." Here, the Court also must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P.

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[2] The market immediately recognized this possibility: On the day DOJ filed suit, Constellation's share price declined 17%. (*See* Ex. 1, Sands Decl. ¶ 14.)

24(b)(3). Rule 24(b) "provides basically that *anyone* may be permitted to intervene if his claim and the main action have a common question of law or fact" and as long as intervention does not delay adjudication of the existing parties' rights. *Nuesse*, 385 F.2d at 704 (emphasis added). Constellation and Crown meet both of these requirements.

A. Constellation and Crown Each Have Defenses That Share Common Issues of Law and Fact with DOJ's Complaint

While "the rule speaks in 'claim or defense,'" courts do not interpret it "strictly so as to preclude permissive intervention." *Id.* Like *Nuesse*, here, "the legal issues are the same." *Id.* Namely, whether the ABI/Modelo transaction, in light of Constellation's acquisition of complete ownership of Crown and an improved supply agreement for Crown, results in a substantial lessening of competition. *See* Clayton Act, 15 U.S.C. § 18 (2013) (prohibiting acquisition where "the effect of such acquisition may be substantially to lessen competition").

Indeed, DOJ included Constellation and Crown in almost every aspect of its investigation. Until the filing of this Complaint, DOJ communicated with ABI, Modelo, *and* Constellation. During the investigation, DOJ served ABI, Modelo, and Constellation with simultaneous and substantively identical document requests. Constellation's and Crown's counsel McDermott negotiated limits to the document request and produced documents for Constellation and for Crown. DOJ dealt with McDermott, not Modelo's counsel, in connection with seeking Crown documents and testimony in the investigation. Constellation produced Crown documents in response to DOJ's request to Constellation. DOJ deposed five Crown employees, including its president, as well as others responsible for the sales, marketing, pricing and other competitive issues described in the Complaint. Along with its legal counsel,

Constellation attended meetings with DOJ, and DOJ treated Constellation as a party under the timing agreement that governed the DOJ's investigation process.

DOJ now intends to capitalize on Constellation's and Crown's cooperation without allowing them to defend their own interests. Because the defense of those interests shares common questions of law and fact with DOJ's claim against ABI and Modelo, Constellation and Crown should be permitted to intervene.

B. Intervention Would Neither Delay Nor Prejudice the Adjudication of the Existing Parties' Rights, and Will Assist the Court

As explained above in section II.D., the Motion to Intervene raises no issues of delay, nor does it prejudice the adjudication of the existing parties' rights. Rather, to allow Constellation and Crown to intervene immediately facilitates a greater understanding of the sale of Modelo brands in the United States, for both entities have been involved in the importation and distribution of Modelo brands for decades. *See* 6 James Wm. Moore et al., *Moore's Federal Practice*, § 24.10[2][b] (3d ed. 2012) ("In deciding on a motion for permissive intervention, a court will consider whether the movant's input is likely to make a significant and useful contribution to the development of the underlying factual and legal issues, or alternatively, is likely to be counterproductive."). It is manifestly fair, and will assist the Court, to have these integral parties to the transactions as parties to the case.

CONCLUSION

The federal courts favor intervention and the bar to intervene is low. Constellation and Crown hold direct and substantial interests in the outcome of DOJ's requested injunction in this case. If granted, the injunction would prevent Constellation from completing a significant transaction that would ensure its long term presence in the beer business and would greatly

increase its overall sales. DOJ's injunction directly threatens Crown by preventing its accessing a superior supply agreement, and preventing it from moving to a streamlined and focused corporate governance structure under Constellation. For these reasons, this Court should grant Constellation's and Crown's Motion to Intervene.

Dated: February 8, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jon B. Dubrow, certify that on February 8, 2013, I served the foregoing Statement of Points and Authorities by emailing PDF copies of the same to the following counsel:

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Jon B. Dubrow

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV and GRUPO MODELO S.A.B de C.V., Defendants.	)	Civil Action No. 13-127 (RWR)

DECLARATION OF ROBERT S. SANDS

ROBERT S. SANDS declares:

1. I am the President and Chief Executive Officer of Constellation Brands, Inc. ("Constellation"), including its subsidiaries and ventures. I make this declaration in support of Constellation's Motion to Intervene in the above-captioned action. I have personal knowledge of the matters in this declaration.

2. Founded in 1945 and headquartered in Victor, New York, Constellation is a beverage alcohol company (beer, wine, and spirits) with sales in approximately 125 countries. We employ approximately 4,300 people worldwide. Constellation participates in the beer industry by virtue of its interest in Crown Imports LLC ("Crown"), a joint venture half owned by each of Constellation and Grupo Modelo S.A.B. de C.V. ("Modelo").

3. Constellation entered the beer industry in 1993 with its acquisition of Barton Beers Ltd. ("Barton"), which was then the importer of the Modelo brands in the western United States, as well as the national importer of Peroni®, St. Pauli Girl®, and Tsingtao®. Gambrinus

Import Company ("Gambrinus") sold the Modelo brands in the eastern United States. Through the Barton acquisition Constellation owned the firm with exclusive control over pricing, marketing, and sales of the Modelo brands within its territory until the end of 2006.

4. Modelo terminated the Gambrinus importer agreement at the end of 2006 and partnered with Constellation to form Crown to serve as the sole importer of the Modelo brands throughout the United States. Crown began selling beer in 2007.

5. To develop the infrastructure of the venture, Constellation contributed the Barton organization (which at that time included importer rights for St. Pauli Girl® and Tsingtao®), along with its experienced executive team, and many of the administrative and back-office functions. Modelo contributed an amount of cash equal to the value of the Barton assets.

6. Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California, Stamford, Connecticut, and Irving, Texas. Field sales staff cover each of its approximately 600 wholesaler territories throughout the United States. It had sales of $2.39 billion for the fiscal year ended February 29, 2012.

7. As Modelo's exclusive U.S. importer, Crown is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the brands in the United States.

8. The Crown Board of Directors consists of eight members, four of whom are appointed by Modelo and four of whom are appointed by Constellation. I serve as a Constellation-appointed Crown director. Board meetings generally are held quarterly. At these meetings, Crown executives present business plans for Board approval.

9. The agreement to establish the Crown joint venture provided for an initial term of ten years that will end on December 31, 2016. At any time up to three years prior to the end of the initial term (or any subsequent renewal term), Modelo has a right to notify Constellation that it intends to purchase Constellation's interest in Crown at the end of the term. Towards the beginning of the Crown relationship, Modelo stated that the firm intended to purchase Constellation's interest at the end of the initial term in 2016, and has indicated similar intent since then. Constellation would object to any such exercise on a number of grounds.

10. Modelo's intention to exercise its "call option" has colored Constellation's business analysis of its investment in Crown, and led to some differences in philosophy with Modelo. As a consequence of what had the potential to be a relatively short-term interest in the Crown venture compared with Modelo's, Constellation has sometimes had less incentive to invest in the long-term growth of the Modelo brands. This misalignment in incentives has at times produced tensions between the Crown parents and hindered some of Crown's growth opportunities.

11. In the first half of 2012, Anheuser-Busch InBev SA/NV ("ABI") informed me that it was entering negotiations with Modelo to purchase the remaining interest in Modelo which it did not already own ("the ABI/Modelo transaction"). At that time, ABI also began discussions with me to sell Modelo's interest in Crown to Constellation ("the ABI/Constellation transaction"), contingent upon the completion of the ABI/Modelo transaction.

12. On June 28, 2012, ABI and Constellation entered into a Membership Purchase Agreement, as well as an Amended and Restated Importer Agreement, to effect the ABI/Constellation transaction. Pursuant to the Membership Purchase Agreement, Crown would

become a wholly-owned Constellation subsidiary. Styled as a perpetual agreement, ABI would retain a right to recall the brand licenses in 10 years. Should ABI terminate the licenses, Constellation's buyout multiple is thirteen times earnings.

13. The ABI/Constellation transaction provides Constellation with a number of benefits. Acquiring Modelo's fifty percent interest in Crown represents a transformational transaction for Constellation that enables it to retain the beer business it has owned, in whole or in part, since 1993 when it acquired Barton. After the ABI/Constellation transaction, Crown becomes a platform for Constellation to invest and build its presence in the beer category long term.

14. As a result of this transaction, Constellation's profit interest in Crown will double. The investment community has recognized the significance of the transaction for Constellation. On the day the transaction was announced in June 2012, Constellation's share price increased by approximately 24%. The stock declined by approximately 17% on January 31, 2013, the day the United States Department of Justice ("DOJ") filed its lawsuit challenging the transaction.

15. In August 2012, DOJ issued a document request to Constellation. In response, documents of employees at Constellation, including myself, were collected and produced to DOJ. Additionally, I was deposed by DOJ on December 6, 2012. Beginning before the issuance of the document request, McDermott Will & Emery LLP has provided legal representation to Constellation and its employees in their official capacities.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED: February 8, 2013

Robert S. Sands
President & CEO
Constellation Brands, Inc.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV and GRUPO MODELO S.A.B de C.V., Defendants.	)	Civil Action No. 13-127 (RWR)

DECLARATION OF WILLIAM F. HACKETT

WILLIAM F. HACKETT declares:

1. I am the President of Crown Imports LLC ("Crown"). I make this declaration in support of Crown's Motion to Intervene in the above-captioned action. I have personal knowledge of the matters in this declaration.

2. Crown is a joint venture half owned by each of Grupo Modelo ("Modelo") and Constellation Brands, Inc. ("Constellation"), and it is the exclusive importer of the Modelo brands in the United States. Crown began selling beer in 2007. In addition to eight Modelo brands—Corona Extra®, Corona Light®, Coronita®, Modelo Especial®, Modelo Light®, Negra Modelo®, Pacifico®, and Victoria®—Crown also imports Somersby Cider® and Tsingtao®.

3. I have been continuously involved in various aspects of the sales, marketing, pricing, and brand development for Corona Extra® and other Modelo brands for almost thirty years. I have served as President of Crown since its formation. Prior to Crown, I worked for Barton Beers Ltd. ("Barton"). I joined Barton in January 1984. At that time Barton served as

sole importer of the Modelo brands in the United States, including Corona Extra® and Negra Modelo®.

4. In 1987, a second importing company, Gambrinus Import Company ("Gambrinus"), began importing the Modelo brands as well. At that time, the United States import rights were split: Barton sold the brands in the western United States and Gambrinus in the eastern United States. This two-importer arrangement continued until the formation of Crown which became the sole United States importer of the Modelo brands in 2007.

5. Barton became a subsidiary of Constellation in 1993.

6. From 1993 to 2007, total depletions (or sales) in the United States for the Modelo brand portfolio rose from 20 million cases per year to 160 million cases per year.

7. Crown employs approximately 400 people and is headquartered in Chicago, Illinois, with regional sales staff working in offices in Irvine, California, Stamford, Connecticut, and Irving, Texas. Field sales staff cover each of its approximately 600 wholesaler territories throughout the United States. It had sales of $2.39 billion for the fiscal year ended February 29, 2012.

8. As Modelo's exclusive United States importer, Crown purchases product from Modelo in Mexico and then, acting on its own account, is responsible for every aspect of the marketing, sales, and distribution to wholesalers of the Modelo brands in the United States including developing and executing pricing and promotion strategies. Crown purchases beer from Modelo, takes title to the beer, and then sells it into the market that Crown, and previously

Barton and Gambrinus, has created for the beer through decades of work in developing the Modelo brands in the United States.

9. My management team and I—with our broader team of Crown employees—perform many tasks, including developing and executing the day-to-day pricing and promotion strategies for the products in every market in the country which can change many times during the year; managing the sale of Crown's ten brands by developing a network of approximately 600 wholesalers; coordinating retail activity; developing and executing first-in-class national and local advertising and promotional programming; and coordinating the logistics of forecasting volumes and transporting the beer from the breweries to the wholesalers. It is those types of activities through which Crown competes its beer brands against other suppliers' beer brands for sales in the United States, including, among many others, those brands belonging to Anheuser-Busch InBev ("ABI"). And those activities are performed by Crown employees. Crown also manages compliance with federal and state beverage-alcohol regulations and engages in government relations activity on behalf of itself and the beer industry.

10. The Crown management team includes myself; Bruce Jacobsen, Executive Vice President, Sales; James Sabia, Executive Vice President, Marketing; and Thomas Wyness, Executive Vice President, Business Operations. Of these four executives, only Mr. Sabia did not also work at Constellation's Barton subsidiary prior to the formation of Crown. Mr. Wyness and I both worked at Barton prior to its being acquired by Constellation.

11. The Crown Board of Directors consists of eight members, four of whom are appointed by Modelo and four of whom are appointed by Constellation. Board meetings are

generally held quarterly. At these meetings, Crown executives, including myself, present business plans that we have developed for Board approval.

12. In the first half of 2012, ABI entered into agreements to acquire Modelo ("ABI/Modelo transaction") and to sell Modelo's interest in Crown to Constellation. ABI's agreements with Constellation included an Amended and Restated Importer Agreement ("Amended Importer Agreement"), which is contingent upon the ABI/Modelo transaction closing. The Amended Importer Agreement sets the terms under which Modelo will sell beer to Crown.

13. The Amended Importer Agreement provides Crown with a number of benefits. Crown retains the exclusive right to import and manage the sale, marketing, and distribution of the Modelo brands in the United States, and does so under more favorable conditions than have existed in the past.

14. Consolidating the ownership under Constellation creates stability and a streamlined governance structure for Crown as it continues grow its brand portfolio in the United States.

15. Under the favorable new Amended Importer Agreement, the initial prices Crown will pay Modelo for beer are set at May 2012 levels and increase at a rate less than that of inflation.

16. Crown would obtain the right to import the Modelo brands not currently sold in the United States. Crown will be able to import any beer marketed or sold by Modelo outside of the United States. Further, Crown will have more rights to obtain additional, newly developed

beer products from Modelo. All of these are improvements over Crown's current supply agreement.

17. Moreover, Crown allocation priority improves. Under the Amended Importer Agreement, in the event of supply shortages, Crown will not be disadvantaged relative to the Mexican market, as it is under the current supply agreement, and will receive its pro rata share of production.

18. In August 2012, the United States Department of Justice ("DOJ") issued a document request to Constellation. In response to DOJ's request, documents of employees at Crown, including myself, were collected and produced to DOJ. DOJ quoted in its Complaint and the accompanying press release some of my correspondence produced through this process. I was deposed by DOJ on December 3, 2012. Beginning before the issuance of the document request, McDermott Will & Emery LLP has provided legal representation to Crown and its employees in their official capacities.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED: February 8, 2013

William F. Hackett
President
Crown Imports LLC

CO-386-online
10/03

United States District Court
For the District of Columbia

UNITED STATES OF AMERICA,

Plaintiff

vs

ANHEUSER-BUSCH InBEV SA/NV,
GRUPO MODELO S.A.B de C.V.,
CONSTELLATION BRANDS, INC., and
CROWN IMPORTS LLC,

Defendant

Civil Action No. 13-127 (RWR)

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Constellation Brands, Inc. ("Constellation") certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Constellation which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

359009 (D.C.)
BAR IDENTIFICATION NO.

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CO-386-online
10/03

United States District Court
For the District of Columbia

UNITED STATES OF AMERICA,

Plaintiff

vs

ANHEUSER-BUSCH InBEV SA/NV,
GRUPO MODELO S.A.B de C.V.,
CONSTELLATION BRANDS, INC., and
CROWN IMPORTS LLC,

Defendant

Civil Action No. 13-127 (RWR)

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Crown Imports LLC ("Crown") certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Crown which have any outstanding securities in the hands of the public:

Constellation Brands, Inc. and Grupo Modelo S.A.B. de C.V. (Anheuser-Busch InBev SA/NV owns at least 10% of the stock of Grupo Modelo).

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

359009 (D.C.)
BAR IDENTIFICATION NO.

Margaret H. Warner
Print Name

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Address

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CERTIFICATE OF SERVICE

I, Jon B. Dubrow, certify that on February 8, 2013, I served the foregoing Certificates of Corporate Affiliations and Financial Interests by emailing PDF copies of the same to the following counsel:

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