

Superior Court of California
County of Los Angeles

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Superior Court of California
County of Los Angeles

MAR - 1 2015

JOHN BONILLA, et al.;

Plaintiffs,

vs.

ANHEUSER-BUSCH LLC ;

Defendant.

Case No.: BC537188 ^{Sherril R. Carter, Executive Officer/Clerk}

By Daniel Haro, Deputy

DEPARTMENT 45

Mc
~~[TENTATIVE]~~ ORDER

Complaint Filed: February 21, 2014

Trial Date: Not scheduled

Hearing date: March 4, 2015
Moving Party: John Bonilla, Rafael Delgado, Jr., Jesse Garrett and Rachel Padilla (Plaintiff)
Responding Party: None

Motion to Approve Amended Consent Judgment

The Court considered the moving papers, supporting declaration and attached exhibits.

Granted
The motion is ~~CONTINUED~~ to allow Plaintiffs to provide the California Attorney

~~General with the requisite 45 days' notice.~~

On March 30, 2014, the Court approved a Consent Judgment between Plaintiffs and the Initial Settling Defendants, resolving Plaintiff's claims to be informed of the presence of certain chemicals (listed in California Health & Safety Code Section 25249.8) in Defendants' alcoholic beverage products. The Consent Judgment also creates a program that will ensure California consumers are warned about these chemicals in compliance with Proposition 65.

At sections 3.5 to 3.8 of the approved Consent Judgment, the parties agreed to allow entities that receive a notice of an alleged violation from Plaintiffs to become Opt In Defendants if they employ ten or more people and manufacture and/or distribute alcohol beverage products.

The entities may opt into the Consent Judgment by providing Plaintiffs with an executed signature page no later than seven months after the effective date (June 14, 2014). Thereafter, Plaintiffs are to move for approval of the amended Consent Judgment within 90 days of an entity providing an executed signature page. The Court has authority to approve the amended Consent Judgment pursuant to CCP Section 664.6 and Section 10.1 of the Consent Judgment, both of which provide for continuing jurisdiction over the terms of the Consent Judgment.

The motion for approval must comply with Cal. Health & Safety Code Section 25249.7(f)(4) and provide at least 45 days' notice to the California Attorney General, pursuant to Section 3.7 of the Consent Judgment. The motion was not timely served. Plaintiffs mailed the motion on January 16, 2015, providing only 41 days' notice. (*See* CCP § 1013(b) (adding five days' notice when service is provided by mail).)

In order to comply with Cal. Health & Safety Code Section 25249.7(f)(4), Plaintiffs must demonstrate that (A) Any warning that is required by the settlement complies with this chapter; (B) Any award of attorney's fees is reasonable under California law; and (C) any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b)." The Court already made a determination that the Consent Judgment satisfies (A), in approving the Consent Judgment on May 30, 2014.

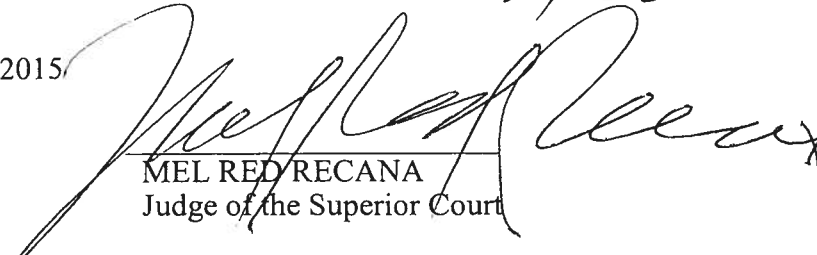
With respect to (B), Plaintiffs originally sought \$78,000.00 in attorneys' fees, which the Court deemed reasonable. Section 3.8 of the Consent Judgment, however, allocates 85 percent of the Opt In Defendants' payment to be allocated to Plaintiffs' attorneys' fees. Of a \$1,500.00 payment, this amounts to \$1,285.00. Given that there are 243 Opt In Defendants, Plaintiffs' attorneys will be awarded an additional \$312,255.00. Plaintiffs' attorneys' however, are limiting their total request to \$309,825. Plaintiffs' attorneys' lodestar calculation is \$353,250, based on 706.5 hours of attorney time billed at \$500.00. (Dubey Decl., ¶8-9.) Therefore, the request for \$309,825.00 in attorneys' fees is reasonable.

With respect to (C), the Opt In Defendants are to pay \$1,500.00, 85 percent of which goes to attorneys' fees and 15 percent of which goes to civil penalties. (Consent Judgment § 3.8.) As noted in the Court' earlier ruling regarding the Consent Judgment, the violations in this case are not pervasive. The penalty is significant enough to remind Opt In Defendants regarding compliance without being onerous, and will be apportioned as provided for under Proposition 65.

Accordingly, the amended Consent Judgment complies with Cal. Health & Safety Code Section 25249.7(f)(4). However, *atty Gen aware of punishment* given the lack of proper notice, the motion is CONTINUED to *mail - to sent by phone* allow Plaintiffs to provide the requisite 45 days' notice to the California Attorney General.

It is so ordered.

Dated: March 4, 2015

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MEL RED RECANA
Judge of the Superior Court