

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

MEGAN BROWNING, *et al.*,

Plaintiffs,

v.

ANHEUSER-BUSCH, LLC,

Defendant.

CASE NO.: 20-cv-00889-SRB

**SETTLEMENT AGREEMENT**

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This settlement agreement (“Settlement” or “Settlement Agreement”) is entered into by Plaintiffs Megan Browning, Allen Kesselring, Tanya Cooper, Joseph Rose, Terri Cole, and Judy Scaturro (“Plaintiffs” or “Class Representatives”), individually and on behalf of the Settlement Class and Injunctive Relief Class (defined herein), and by Defendant Anheuser-Busch, LLC (“A-B”) (collectively with the Plaintiffs, the “Parties”), in the above-captioned action (the “Action”). This Settlement Agreement is intended by the Parties to fully and finally resolve, discharge, and settle the Released Claims, as defined herein, subject to the terms and conditions set forth below, and the approval of the District Court.

**RECITALS**

1. On September 11, 2020, Plaintiffs Tanya Cooper and Joseph Rose (the “*Cooper* Plaintiffs”) commenced a proposed consumer class action on behalf of New York purchasers in the United States District Court for the Southern District of New York against A-B styled as *Cooper, et al. v. Anheuser-Busch, LLC*, Case No. 7:20-cv-07451-KMK, in connection with A-B’s marketing and sale of its Ritas™ brand Margarita, Spritz, and Fizz products (the

“Products”) (the “*Cooper* Action”). The Complaint alleged that the packaging and marketing of A-B’s Ritas beverages misled consumers into believing that the beverages contained distilled spirits and/or wine, which they do not.

2. On September 17, 2020, Plaintiff Terri Cole also commenced a similar consumer class action on behalf of California purchasers in the United States District Court for the Central District of California against A-B styled as *Cole v. Anheuser-Busch, LLC*, Case No.: 2:20-cv-08545, also in connection with A-B’s marketing and sale of the Products (the “*Cole* Action”).
3. On November 6, 2020, Plaintiffs Megan Browning and Allen Kesselring (“*Browning* Plaintiffs”) commenced a similar consumer class action on behalf of both Missouri and nationwide purchasers against A-B in this District styled as *Browning, et. al., v. Anheuser-Busch, LLC*, Case No. 20-cv-00889-SRB, also in connection with A-B’s marketing and sale of the Products (the “*Browning* Action”).
4. Also on November 6, 2020, the Court in the *Browning* Action issued a Notice of Inclusion in the Mediation and Assessment Program (“MAP”) instructing the Parties to designate an outside mediator and to attend a mediation no later than 75 days after the Rule 26 meeting (the “MAP Notice”).
5. On January 5, 2021, A-B filed a Motion to Dismiss the *Browning* Action pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (“*Browning* MTD”).
6. In coordination with the MAP Director, the Parties agreed to postpone the mandatory mediation until after the Court ruled on the *Browning* MTD.

7. On January 14, 2021, Plaintiff Cole voluntarily dismissed the *Cole* Action, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), without any inducement from or agreement with A-B.
8. On February 9, 2021, the *Browning* Plaintiffs opposed the *Browning* MTD.
9. On February 23, 2021, A-B filed a reply in support of the *Browning* MTD.
10. On March 23, 2021, A-B filed a Motion to Stay and Transfer the *Browning* Action to the Eastern District of Missouri under 28 U.S.C. § 1404 (“Transfer Motion”).
11. On April 19, 2021, the *Browning* Plaintiffs opposed the Transfer Motion.
12. On April 19, 2021, the *Browning* Action was reassigned to District Judge Stephen R. Bough for all further proceedings.
13. On May 3, 2021, A-B filed a reply in support of the Transfer Motion.
14. On May 4, 2021, the Court entered an Order denying the Transfer Motion.
15. On May 13, 2021, the Court entered an Order granting in part and denying in part the *Browning* MTD.
16. On May 26, 2021, A-B answered the complaint in the *Browning* Action.
17. On June 4, 2021, the Court entered a Scheduling Order in the *Browning* Action which provided for, *inter alia*, a class certification hearing to be held on July 6, 2022.
18. Pursuant to the MAP Notice, the Parties agreed to attend mediation with mediator Jack T. Bangert of Kutak Rock, LLP.
19. Prior to the mediation, Class Counsel served discovery requests and obtained discovery relating to, *inter alia*, class-wide sales and potential damages.
20. On July 7, 2021, the Parties attended mediation with Mr. Bangert. The scope of the mediation contemplated a nationwide class action settlement that would provide global

peace and encompass the putative classes pled in *Browning*, *Cole*, and *Cooper*, which cases all were brought by the same national counsel. The Parties were unable to reach a settlement that day.

21. After the first mediation, Plaintiffs continued to obtain relevant discovery and continued settlement discussions with A-B with the assistance of the mediator, Mr. Bangert. Class Counsel also retained an economic expert to better understand and estimate potential class-wide damages. As a result of the continuing settlement discussions, the Parties ultimately were able to reach an agreement in principle on the terms of a settlement for the Injunctive Relief Class and Settlement Class. After the agreement on the class recovery was reached, the Parties scheduled a second mediation with Mr. Bangert to negotiate a cap on attorneys' fees and costs, and the Class Representative Service Awards, that Class Counsel and the Class Representatives, respectively, may seek.
22. On December 21, 2021, the Parties attended the second mediation. The Parties were unable to reach agreement on a cap on attorneys' fees and costs, and Class Representative Service Awards, that Class Counsel and the Class Representatives, respectively, may seek. After the second mediation, the Parties continued to negotiate, with the assistance of Mr. Bangert.
23. On March 22, 2022, the Parties executed a Memorandum of Understanding ("MOU") which, *inter alia*, outlines the Parties' agreement in principle regarding the proposed settlement.
24. As provided for in the MOU, on March 24, 2022, the *Cooper* Plaintiffs voluntarily dismissed the *Cooper* Action, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).
25. Similarly, in accordance with the terms of the MOU, on May 4, 2022, the *Browning* Plaintiffs sought leave to amend the complaint in the *Browning* Action to include Plaintiff

Cole, the *Cooper* Plaintiffs, and Plaintiff Judy Scaturro in the *Browning* Action. On May 5, 2022, Plaintiffs filed their First Amended Complaint.

26. Each Plaintiff and Class Counsel have weighed the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement (including the amount of recovery it makes available to each putative class member), and they each have concluded that the terms and conditions of this settlement are fair, reasonable, adequate, in the best interests of the Class, and preferable to the risks and uncertainties inherent in continued litigation, including the risk that the class recovers nothing.
27. A-B, while continuing to deny all allegations of wrongdoing, and disclaiming all liability with respect to all claims, considers it desirable to resolve the Action on the terms stated herein to avoid further expense, inconvenience, and burden associated with further litigation, and therefore determines that this Settlement Agreement is in A-B's best interests.
28. NOW, THEREFORE, without any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by A-B, or any admission or concession of the lack of merit of this Action whatsoever by Plaintiffs, and in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, the Injunctive Relief Class, and A-B, that the Action and all claims of the Settlement Class and Injunctive Relief Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval as required by

Federal Rules of Civil Procedure 23, on the terms and conditions set forth herein and upon the Effective Date (as defined below).

29. Each Party affirms that the Recitals above are true and accurate and are hereby made a part of this Settlement Agreement.

## I. DEFINITIONS

As used in this Settlement Agreement and the Exhibits hereto, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below. Unless otherwise indicated, defined terms include the plural as well as the singular. The recitals above and definitions stated below are incorporated into this Agreement and made a part of this Agreement as if fully set forth herein.

30. “**Action**” means the proposed consumer protection class action captioned *Browning, et al., v. Anheuser-Busch, LLC* Case No. 20-cv-00889-SRB, in the United States District Court for the Western District of Missouri.
31. “**Agreement**” or “**Settlement Agreement**” means this settlement agreement in its entirety, including any and all of its Exhibits attached hereto and incorporated herein.
32. “**CAFA Notice**” means the notice which the Settlement Administrator shall serve upon the appropriate State and Federal officials, providing notice of the proposed settlement in compliance with 28 U.S.C. § 1715.
33. “**Claim Deadline**” means the date to be set by the Court as the deadline for Settlement Class Members to submit Claim Forms, and which shall be no more than one hundred and twenty (120) calendar days, beginning from the Notice Date.
34. “**Claim Form**” means the document which Settlement Class Members must submit to the Settlement Administrator in order to obtain the Settlement Payment. Settlement Class

Members may complete the Claim Form on the Settlement Website, substantially in the form of **Exhibit 1** hereto, and submit it electronically to the Settlement Administrator. Alternatively, Settlement Class Members may obtain a hard copy of the Claim Form, substantially in the form of **Exhibit 2** hereto, by downloading it from the Settlement Website or requesting it from the Settlement Administrator. If using a hard copy of the Claim Form, Settlement Class Members must mail the Claim Form to the Settlement Administrator. The Claim Form may be modified as deemed necessary by the Settlement Administrator, to comply with the provisions of any order by the Court, or upon agreement by both Parties.

35. “**Claims Period**” means the period of time from the Notice Date until the Claim Deadline.
36. “**Claimant**” means a Settlement Class Member who submits a Claim Form.
37. “**Class Counsel**” or “**Plaintiffs’ Counsel**” means the law firms of Faruqi & Faruqi, LLP and Dollar, Burns, Becker, & Hershewe L.C.
38. “**Class Period**” or “**Settlement Class Period**” means the period of time from January 1, 2018 through the Preliminary Settlement Approval Date.
39. “**Class Representatives**” or “**Plaintiffs**” means Plaintiffs Megan Browning, Allen Kesselring, Tanya Cooper, Joseph Rose, Terri Cole, and Judy Scaturro.
40. “**Class Representative Service Award**” means the monetary award, sought by application and subject to Court approval, which is payable to a Class Representative for their efforts and diligence in prosecuting this Action on behalf of the Settlement Class and Injunctive Relief Class.
41. “**Court**” means the United States District Court for the for the Western District of Missouri, the Honorable Stephen R. Bough presiding.

42. **“Defendant”** or **“A-B”** means Anheuser-Busch, LLC.
43. **“Defendant’s Counsel,” “Defense Counsel,”** or **“A-B’s Counsel”** means the law firm of Dowd Bennett LLP.
44. **“Direct Notice”** means notice of the proposed Settlement, substantially in the form of **Exhibit 3** hereto, to be emailed or mailed directly to Persons for whom A-B maintains email or physical addresses in its custody, possession, or control, or which Class Counsel has obtained or may obtain through third-party subpoenas. The Direct Notice may be modified as deemed necessary by the Settlement Administrator, as necessary to comply with the provisions of any order by the Court, or upon agreement by both Parties.
45. **“Effective Date”** means the date the Final Approval Order becomes a final, non-appealable judgment approving the Settlement and is no longer subject to review, rehearing, appeal, petition for certiorari, or other review of any kind.
46. **“Fee Application”** means the motion for a Fee Award and Class Representative Service Awards, which Plaintiffs will file at least thirty-five (35) calendar days before the Final Approval Hearing.
47. **“Fee Award”** means an award of attorneys’ fees, costs and expenses in an amount up to Two Million One Hundred Thousand Dollars (\$2,100,000), sought by application and subject to Court approval, which is payable to Class Counsel.
48. **“Final Approval”** or **“Final Approval Order”** means the Court’s entry of an Order following the Final Approval Hearing, approving the Settlement pursuant to the terms and conditions of this Settlement Agreement without material change and confirming the



certification of the Settlement Class and Injunctive Relief Class for purposes of this Agreement only.

49. **“Final Approval Hearing”** means the hearing that is to take place after the entry of a Preliminary Approval Order and after the Notice Date for purposes of, *inter alia*, (a) considering any objections and determining whether the Settlement Agreement complies with the requirements of Rule 23 and should be approved as fair, reasonable, adequate; (b) entering the Final Approval Order and Final Judgment and dismissing the Action with prejudice; and (c) ruling upon a Fee Application.
50. **“Final Judgment”** means the Court’s entry of a judgment following the Final Approval Hearing, entering final judgment, dismissing the Action with prejudice, and releasing all claims of Plaintiffs, the Settlement Class Members, and the Injunctive Relief Class Members.
51. **“Final Settlement Approval Date”** means the Court enters the Final Approval Order.
52. **“Fraudulent Claims”** means any Claim Form(s) that the Settlement Administrator, in conjunction with the Parties, determines in good faith contain indicia of fraud or deceit, including but not limited to, any attempts to bypass the terms and limitations set out in this Settlement Agreement regarding Claim Forms, Claimants, Settlement Class Members and Settlement Payment.
53. **“Household”** means any number of Persons cohabitating and related by blood, marriage, or civil union, in the same dwelling unit or physical address.
54. **“Injunctive Relief”** means the injunctive relief to which the Defendant has agreed and which benefits the Injunctive Relief Class as further described below in Paragraphs 84-85.

55. **“Injunctive Relief Class Members”** or **“Injunctive Relief Class”** means, for settlement purposes only, and upon the express terms and conditions set forth in this Settlement Agreement: All persons who purchased for personal consumption, and not for resale, any Ritas™ Brand Product in the U.S., from January 1, 2018 through 60 days following the Effective Date. Excluded from the Injunctive Relief Class shall be the Honorable Stephen R. Bough, the Honorable Kenneth M. Karas, the Honorable Stanley Blumenfeld, Jr., the Honorable Howard Sachs, counsel to the Parties (and their respective law firms), Mediator Jack T. Bangert, and their employees, legal representatives, heirs, successors, assigns, or any member of their immediate family; any government entity; A-B, any entity in which A-B has a controlling interest, any of A-B’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, or any members of their immediate family.
56. **“Long Form Notice”** means notice of the proposed settlement to be provided to Settlement Class Members substantially in the form of **Exhibit 4** hereto. The Long Form Notice shall be published on the Settlement Website. The Long Form Notice may be modified as necessary to comply with the provisions of any order by the Court.
57. **“Motion for Final Approval”** means the unopposed motion that the Plaintiffs shall make seeking an entry of the Final Approval Order and Final Judgment by the Court.
58. **“Motion for Preliminary Approval”** means the unopposed motion that the Plaintiffs shall make seeking an entry of the Preliminary Approval Order.
59. **“Notice”** means notice of this Settlement Agreement as defined in Section IV.
60. **“Notice Date”** means the date that Direct Notice is given, and the first date that the Notice Plan commences, as set forth in Section IV below.

61. “**Notice Plan**” means the plan for dissemination of Notice of this Settlement Agreement by the Settlement Administrator in accord with the terms and provisions set forth in Section IV below.
62. “**Notice of Missing or Inaccurate Information**” means the notice sent by the Settlement Administrator to a Claimant who has submitted a Claim Form with inaccurate, disqualifying, incomplete or missing information that is required for the Claimant to be considered eligible for the Settlement Payment provided by this Settlement.
63. “**Objection/Exclusion Deadline**” means the date to be set by the Court as the deadline for any person, or other interested party with legal standing to object to this Settlement Agreement, to submit an Objection or Request for Exclusion, and which shall be twenty-one (21) calendar days before the Final Approval Hearing.
64. “**Objection**” means the written communication that any person or other interested party with legal standing to object to this Settlement Agreement must submit to the Court by the Objection/Exclusion Deadline in order to object to the Settlement, as provided for in Section VI below.
65. “**Person(s)**” means any natural person.
66. “**Parties**” means Plaintiffs and A-B, collectively, and “**Party**” means either Plaintiffs or A-B, individually.
67. “**Preliminary Approval**” or “**Preliminary Approval Order**” shall mean the issuance of an Order by the Court, substantially in the form of **Exhibit 5** hereto, provisionally certifying the Settlement Class and Injunctive Relief Class, and preliminarily approving, *inter alia*, the terms of this Settlement and authorizing dissemination of Notice to the Settlement Class and Injunctive Relief Class.

68. **“Preliminary Settlement Approval Date”** means the date the Court enters the Preliminary Approval Order.
69. **“Proof of Purchase”** means a receipt, copies of receipts, or other legitimate proof showing payment for any of the Ritas™ Brand Products for personal consumption, and not for resale.
70. **“Released Claims”** means any claim, cross-claim, liability, right, demand, suit, petition, liability, right, matter, lawsuit, arbitration, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee, cost or expense, action or cause of action, and relief of every kind and description regarding the subject matter of the Action, including, but not limited to, compensatory, exemplary, statutory, punitive, restitutionary, expert or attorneys’ fees and costs, whether past, present, or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative, vicarious or direct, asserted or un-asserted, and whether based on federal, state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or misrepresentation, common law, violations of any state’s or territory’s deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties, or the Magnuson-Moss Warranty Act, or any other source, or any claim of any kind, in law or in equity, that the Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public against any of the Released Parties that are based on, arising from, connected with, related to, or in any way involving the marketing, advertising, labeling, or packaging of any of the Ritas™ Brand Products that are, or could have been, alleged, asserted or described in the complaints or

any amended complaints filed in the *Browning*, *Cooper*, or *Cole* Actions. Excluded from the Released Claims is any claim for alleged bodily injuries arising out of use of the Ritas™ Brand Products.

71. **“Released Parties”** means A-B, and all of its past, present and/or future parents, predecessors, successors, assigns, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and/or future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, representatives, advisors, consultants, brokers, distributors, wholesalers, any and all entities or persons upstream or downstream in the production/distribution channels, and subrogees and assigns of any of the foregoing, and representatives of any of the foregoing.
72. **“Releasing Parties”** means the Plaintiffs, each Settlement Class Member, and any Person claiming by or through such Settlement Class Member as his/her spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.
73. **“Request for Exclusion”** means the written communication that a Settlement Class Member must submit to the Settlement Administrator by the Objection/Exclusion Deadline in order to be excluded from the Settlement as provided for in Section VI below.
74. **“Ritas™ Brand Product(s)”** or **“Products”** means any packaged (bottles or cans, and including single-serve) Ritas™ brand Margarita, Spritz, or Fizz Product, or any variety pack containing any of the foregoing products, except that Ritas™ Brand Products as used in this Settlement Agreement specifically excludes any Ritas™ Brand Products that are

already in compliance with the labeling and packaging changes set forth in Paragraphs 84-85.

75. **“Settlement”** means the settlement embodied in this Agreement.
76. **“Settlement Administrator”** means Epiq Class Action and Claims Solutions, Inc. and/or its affiliate Hilsoft Notification (collectively, “Epiq”), the administrative firm jointly agreed to by the parties, and approved by the Court, which will be responsible for, *inter alia*, providing Notice to the Settlement Class and administering the Settlement as provided for in Sections IV and V below.
77. **“Settlement Notice and Administration Costs”** means the costs for providing Notice and administration of the Settlement. A-B shall pay the Settlement Notice and Administration Costs.
78. **“Settlement Class Members,” “Class Members,” “Class,” or “Settlement Class”** means, for settlement purposes only, and upon the express terms and conditions set forth in this Settlement Agreement: All persons who purchased for personal consumption, and not for resale, any Ritas™ Brand Product in the U.S., during the Class Period. Excluded from the Settlement Class shall be the Honorable Stephen R. Bough, the Honorable Kenneth M. Karas, the Honorable Stanley Blumenfeld, Jr., the Honorable Howard Sachs, counsel to the Parties (and their respective law firms), Mediator Jack T. Bangert, and their employees, legal representatives, heirs, successors, assigns, or any member of their immediate family; any government entity; A-B, any entity in which A-B has a controlling interest, any of A-B’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, or any members of their immediate family; and any Persons who timely opt-out of the Settlement Class.

79. “**Settlement Payment**” means the monetary payment described in Section II, available to Settlement Class Members who submit a timely and valid Claim Form.
80. “**Settlement Website**” means the ADA-compliant website to be established by the Settlement Administrator for purposes of providing Notice, Claim Forms, and other information regarding this Settlement Agreement. The Settlement Website will include, *inter alia*, (a) an FAQ section, (b) links to all pertinent documents including, the Settlement Agreement, Long Form Notice, Summary Notice, and all other relevant pleadings as agreed by the Parties or as ordered by the Court, (c) the Fee and Class Representative Service Award Applications and Motions for Preliminary Approval and Final Approval (and orders granting these motions if and when they are issued), (d) a toll-free number, (e) and other pertinent information about the Settlement, including the ability to complete and submit the Claim Form. The Settlement Website will be updated regularly with relevant documents as they become available.
81. “**Summary Notice**” means notice of the proposed Settlement published in the *People* magazine. Summary Notice is to be provided substantially in the forms of **Exhibit 6** hereto, but which may be modified as deemed necessary by the Settlement Administrator, as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court, or upon agreement by both Parties.

## **II. SETTLEMENT CONSIDERATION**

This Settlement consists of two forms of relief: (1) a monetary component consisting of payments to Claimants; and (2) an equitable relief component whereby A-B agrees to make certain changes to its marketing and advertising practices with respect to the Ritas™ Brand Products. The

monetary relief applies to all Settlement Class Members and the equitable relief applies to all Injunctive Relief Class Members. It is possible for individuals to be included in both classes.

**Consideration for the Settlement Class**

82. To each Claimant who submits a timely and valid Claim Form, A-B shall pay a monetary Settlement Payment as follows:

a. Settlement Class members may seek the following refund per Ritas™ Brand Products purchased during the Class Period, depending on the size or unit type purchased:

• 12 oz. bottles or cans	
▪ Four pack .....	\$0.15
▪ Six pack .....	\$0.25
▪ Twelve pack .....	\$0.45
▪ Twenty-four pack .....	\$0.85
• 16 oz. cans	
▪ Four pack .....	\$0.20
▪ Six pack .....	\$0.30
• 8 oz. cans	
▪ Twelve pack .....	\$0.30
▪ Twenty-four pack .....	\$0.60
• 25 oz. cans	
▪ Single .....	\$0.10
▪ Two pack .....	\$0.15
• 22 oz. bottle	
▪ Single .....	\$0.10
• Any Unlisted Package Configuration .....	\$0.50

b. **With Proof of Purchase** Settlement Class members may seek a refund for a maximum total refund of \$21.25 per Household with Proof of Purchase.

c. **Without Proof of Purchase.** Settlement Class members may seek a maximum total refund of \$9.75 per Household without Proof of Purchase.



- d. **Payment Methods.** Settlement Payments shall be paid via paper checks or digital payments, as selected by the Settlement Class Member.
- e. **Un-Cashed and Un-Negotiated Settlement Payments.** Paper checks and PayPal payments are the only methods of payment which require a Claimant to take additional action (other than submitting the Claim Form) to receive custody of the funds. For paper checks, the Settlement Class Members choosing this payment method shall be provided ninety (90) calendar days from issuance to negotiate the check. If the check is not cashed, deposited, or otherwise negotiated within this 90-day timeframe, the check will be voided, and the Settlement Administrator shall issue to the Settlement Class Member a second check. If a second check issued to a Settlement Class Member is not cashed or deposited within ninety (90) days after the date of issue, the check will be voided and the Settlement Administrator shall not issue any subsequent benefit check to the Settlement Class Member, provided however that the Settlement Administrator may, after consultation with the Parties, exercise its discretion to issue a third check to a Settlement Class Member who demonstrates special circumstances that warrant an exception. For purposes of this paragraph special circumstances are intended to encompass situations where a Settlement Class Member, despite exercising due diligence, was unable to cash, deposit, or otherwise negotiate the first or second check. All un-cashed or un-negotiated checks shall be immediately declared dormant immediately on the 97th day after issuance of the second attempted check (or third check in the event the Settlement Administrator has issued a third check) and shall immediately escheat to the Claimants last known state of residence. For PayPal payments, if the email

address provided by the Settlement Class Member is not associated with a PayPal account, the payment will fail. If the PayPal payment fails, the Settlement Administrator or their agent shall contact the Settlement Class Members and request that they either link the payment to an existing account under another email address or create a new PayPal account to obtain the funds. If neither of these actions are taken within 30 days, then the payment will be voided, and the Settlement Class Member shall be issued a payment card. No unclaimed Settlement Payments shall return to A-B under any circumstances.

- f. **Households.** For purposes of Paragraph 82(a)-(c), Settlement Class Members residing in the same Household who each submit a Claim Form shall only be entitled to a collective maximum payment of \$9.75 or \$21.25 per Household, depending on whether Proof of Purchase is submitted. If one or more Settlement Class Members from the same Household submit Claim Forms, the Settlement Administrator will only pay the aggregate amount of all claims from that Household, up to the maximum recovery of \$9.75 or \$21.25 (depending on whether Proof of Purchase is submitted), and it shall pay this aggregate amount to the first submitted valid and timely Claim in the Household.
- g. **Option to Terminate.** Subject to the above terms, should the Settlement Class Members submit more than one million (1,000,000) claims in this Settlement (irrespective of the dollar amount of such claims), A-B shall have the unconditional right, but not the obligation, to terminate this Settlement Agreement. If A-B elects to terminate this Settlement Agreement under this paragraph, A-B must provide written notice to Class Counsel, by hand delivery, mail, or e-mail within ten (10)

calendar days of the occurrence of the condition permitting termination. A-B shall be responsible for any Settlement Notice costs incurred if it chooses to exercise this option.

83. A-B shall pay the monetary relief to the Class separate from, and in addition to, all other payments it is obligated to make under the Settlement (e.g., Settlement Notice and Administration Costs, the Class Representative Service Awards, and the Fee Award).

**Consideration for the Injunctive Relief Class**

84. Not later than six (6) months from the Effective Date, A-B shall make the following changes to its business practices as to Ritas™ Brand Products manufactured and sold in the United States by A-B:

- a. inclusion of the phrase “Malt Beverage” on the Ritas™ Brand Products generally in the form and position shown in the attached **Exhibit 7** and approved by the TTB;
- b. the phrase “Malt Beverage” on the vertical panels (i.e., front, back, and sides) of all consumer facing packages of the Ritas™ Brand Products generally in the position and form shown in the attached **Exhibit 8**; and
- c. the phrase “Does not contain distilled spirits” on the individual product page of the Ritas™ Brand Products’ website (e.g. for Straw-Ber-Rita: <https://www.theritas.com/#a3aae76b6-fb45-497f-baac-30baf364bf290collapse>) in the general form and position shown in the attached **Exhibit 9**.
- d. The type face, type size, position, color and setoff of the disclosures as shown in **Exhibits 7-9** are agreed by the Parties to be sufficient to inform a reasonable consumer of the source of alcohol in the Ritas™ Brand Products while not unduly impairing A-B’s marketing.

85. These business practice changes as to the Ritas™ Brand Products shall be maintained for no less than five (5) years from the Effective Date, subject to all necessary regulatory approvals by appropriate governing agencies.
86. The Parties agree that A-B shall be permitted six (6) months from the Effective Date of this Settlement Agreement to sell off all of its existing inventory of primary labeling (bottles and cans) and secondary packaging (consumer-facing outer-packages) of the Ritas™ Brand Products before being required to use the packaging agreed to in Paragraph 84 (the “Sell-Off Period”), and that potential claims related to Ritas™ Brand Products sold by A-B during the Sell-Off Period shall be included within the Released Claims that are released by each member of the Settlement Class and the Injunctive Relief Class.
87. The Parties agree that no Injunctive Relief Class Member may opt-out of the injunctive relief agreed to in the Settlement Agreement and described in Paragraphs 84-86 and their subparts.

### **III. CLAIMS PROCESS AND PAYMENT**

#### **Submission of Claims**

88. To be eligible to receive the Settlement Payment under the Settlement Agreement, Settlement Class Members must submit a claim to the Settlement Administrator by either: (a) completing, certifying, and sending the Claim Form to the Settlement Administrator via U.S. Mail or electronic mail; or (b) completing, certifying, and submitting the Claim Form electronically to the Settlement Administrator via the Settlement Website.
89. In order to be timely, the Claim Form must be postmarked or submitted online no later than the Claim Deadline. Claim Forms received by the Settlement Administrator or electronically submitted after the Claim Deadline shall be denied by the Settlement

Administrator, unless otherwise agreed to by both parties, and A-B will not be obligated to make any payment on such claims.

90. In order to be valid, the Claim Form must: (a) be signed in hard copy or electronically by the Settlement Class Member under penalty of perjury; and (b) bear an attestation by the Settlement Class Member that he/she purchased the Ritas™ Brand Products during the Class Period for personal use and not for resale. Claim Forms that do not meet these requirements will be denied by the Settlement Administrator, in consultation as necessary with A-B's Counsel and Class Counsel, and A-B will not be obligated to make any payment on such claims, unless the Parties agree otherwise.
91. In completing the Claim Form, Claimants have two options: (1) if they have no Proof of Purchase, they must select Option A or (2) if they have Proof of Purchase for some or all of the Products purchased during the Class Period, they may select Option A or Option B. A claimant can only select one of these two options.

#### **Review of Claims**

92. The Settlement Administrator shall review all submitted Claim Forms within a reasonable time to determine the validity and timeliness of the Claim, each Settlement Class Member's eligibility for the Settlement Payment, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to A-B's Counsel and to Class Counsel upon request. Settlement Class Members who submit valid and timely Claim Forms shall be entitled to the Settlement Payment. Settlement Class Members who submit Claims Forms that do not meet the eligibility requirements described herein shall not be entitled to such relief, unless otherwise agreed to by both Parties.

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### **Fraudulent Claims**

93. The Settlement Administrator, in consultation with the Parties, shall use good faith and appropriate procedures to prevent, detect, and reject the payment of Fraudulent Claims and ensure payment of only legitimate claims.
94. A-B will not be obligated to make any payment for any Claim Forms that are initially determined to be valid, but are later discovered to be fraudulent.

### **Incomplete or Inaccurate Claim Forms**

95. After receipt of any Claim Forms containing incomplete or inaccurate information, and/or submitted Claims Forms omitting required information, the Settlement Administrator shall send the Claimant a Notice of Missing or Inaccurate Information explaining what information is missing or inaccurate. In the event of missing or invalid Proof of Purchase, submitted in connection with Option B, the Notice of Missing or Inaccurate Information sent by the Settlement Administrator shall inform the Claimant of his or her ability to convert or resubmit the Claim Form under Option A.
96. Claimants shall have thirty (30) calendar days from when the Notice of Missing or Inaccurate Information was mailed to reply to that Notice and provide the required information.
97. If a Claimant fails to respond within thirty (30) calendar days from when the Notice of Missing or Inaccurate Information was mailed or the Settlement Administrator is unable to provide a Notice of Missing or Inaccurate Information as a result of the omitted information, the Settlement Administrator will reject such Claimant's claim, and A-B will not be obligated to make any payment on such claim, unless otherwise agreed by the Parties. In the event the sole basis for the issuance of a Notice of Missing or Inaccurate

Information is missing or otherwise invalid Proof of Purchase, the Settlement Administrator may, in its discretion, treat such a claim as a claim without proof of purchase and may pay the Settlement Payment the Claimant would have been entitled to receive had the Claimant originally selected the no proof of purchase option on the Claim Form.

98. The Parties will each have the right to review and contest all claims approved for payment by the Settlement Administrator, including for Fraudulent Claims or Complete or Inaccurate Claim Forms. The Settlement Administrator will, however, ultimately be the final decision maker on the validity of any claim.

#### **Provision of Settlement Payments**

99. A-B shall transmit via check or wire transfer to the Settlement Administrator the aggregate dollar value of all Settlement Payments by the later of twenty-one (21) calendar days after the Effective Date or twenty-one (21) calendar days after the date the Settlement Administrator first informs A-B of the total aggregate dollar value of all Settlement Payments for valid and timely Claims.
100. The Settlement Administrator shall pay all Settlement Payments to Settlement Class Members who are eligible and who submit a valid and timely Claim Form within fourteen (14) calendar days of receiving the funds from A-B.
101. All Settlement Payments to Claimants shall be in the form of cash payments via whichever option the Claimant elects pursuant to Paragraph 82(d). To assist with claims administration, Claimants who elect to receive a Settlement Payment electronically must complete the Claim Form electronically. Claimants completing the Claim Form electronically can alternatively choose a physical payment method. However, Claimants who complete and mail the physical Claim Form to the Settlement Administrator will only

be allowed to choose a physical payment method (because account verification, which cannot be provided through the physical Claim Form, is needed for the electronic payment methods).

#### IV. NOTICE<sup>1</sup>

102. Notice of the Settlement shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable law, and shall otherwise be in the manner and form approved by the Court. The Notice Plan shall be designed and executed by the Settlement Administrator to reach at least 70% of the Settlement Class. To the extent any changes to the Notice Plan set forth herein need to be modified, the Parties agree to work cooperatively to make any such changes.

##### Forms of Notice

103. Upon Preliminary Approval, Notice of the Settlement to the Settlement Class shall be provided according to the following Notice Plan:
- a. Settlement Website Notice: Within thirty (30) calendar days of the Preliminary Settlement Approval Date, the Settlement Administrator shall launch a Settlement Website, which will include, *inter alia*, links to the Long Form Notice, the Summary Notice, the Fee and Class Representative Service Award Applications (once filed), this Settlement Agreement and Exhibits, the Claim Form, relevant filings and orders, and information relating to filing a claim, objecting to the

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<sup>1</sup> The Notice Plan described in this section described the mandatory notice for certification of the Settlement Class under Fed. R. Civ. P. 23(b)(3), however, because of the substantial overlap between the Settlement Class and the Injunctive Relief Class, the notice provided through this Notice Plan is also sufficient for any required notice of settlement under Fed. R. Civ. P. 23(e)(1) for settlement of the Injunctive Relief Class, certified under Fed. R. Civ. P. 23(b)(2).



Settlement, opting out of the Settlement, other deadlines relating to the Settlement, and instructions on how to access the case docket via PACER or in person at any of the Court's locations. The Settlement Website will also provide Settlement Class Members with the ability to submit Claim Forms and Requests for Exclusion from the Settlement Class and to obtain information contained without the Claim Form. The Settlement Administrator shall ensure that the Settlement Website is compliant with the Americans with Disabilities Act of 1990.

- b. Toll-Free Telephone Support: Within thirty (30) calendar days of the Preliminary Settlement Approval Date, the Settlement Administrator shall establish a toll-free live telephone support system to provide Settlement Class Members with (a) general information about the Action and Settlement; (b) frequently asked questions and answers; and (c) information relating to filing a Claim, objecting to the Settlement, opting out of the Settlement, and other deadlines relating to the Settlement.
- c. Direct Notice: Within ten (10) calendar days of the Preliminary Settlement Approval Date, the Parties shall provide the Settlement Administrator with a list of all Settlement Class Members for whom they have e-mail or physical addresses ("Direct Notice Recipients"). Within thirty (30) calendar days after the Preliminary Settlement Approval Date, the Settlement Administrator shall initiate the Direct Notice program to be sent via e-mail to all Direct Notice Recipients. For emails, the Direct Notice shall be in the body of the email. The Settlement Administrator shall implement protocols and procedures to ensure delivery of the Direct Notice via email by, *inter alia*, notifying major ISPs that it will begin a large email

campaign (thereby reducing the risk of the email being identified a spam or junk email). The Settlement Administrator will also make reasonable efforts to re-email the Direct Notice to all email addresses for which it receives any undeliverable or bounce back notices, to the extent possible. The Settlement Administrator will send direct notice via postcard to all Direct Notice Recipients with an associated physical address but without a valid email address, or for whom an email notice was ultimately undeliverable after multiple attempts. The Parties also agree to send reminder notices, or re-email, or re-send direct notice, to the extent the Settlement Administrator, in consultation with the Parties, deems it appropriate.

- d. Print Publication Notice: No sooner than thirty (30) calendar days after an order granting Preliminary Approval, the Settlement Administrator will publish the Summary Notice in *People* magazine.
- e. Internet Publication Notice: The Settlement Administrator will purchase Internet banner notice ads, social media ads, and search ads, that will allow access to the Settlement Website through an embedded hyperlink contained within the banner notice ad. This Internet Publication Notice will commence no sooner than thirty (30) calendar days after an order granting Preliminary Approval, and it shall continue for a period of sixty (60) calendar days.
- f. CAFA Notice: Within ten (10) calendar days after Plaintiffs file the Motion for Preliminary Approval, the Settlement Administrator shall provide CAFA Notice, in compliance with 28 U.S.C. § 1715, and the Settlement Administrator shall provide a declaration attesting to this.

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**V. ADMINISTRATION OF SETTLEMENT**

104. All Settlement Notice and Administration Costs shall be paid by A-B. If Notice is provided to the Settlement Class but the Settlement is not finally approved or A-B terminates the Settlement pursuant to either Paragraph 82.g or Paragraph 140, A-B shall be solely responsible for any notice costs claimed by the Settlement Administrator. Any supplemental or additional notice that may become necessary or appropriate, by Court order or as otherwise as agreed by the Parties, shall also be by paid by A-B, provided however, that A-B shall not be responsible or obligated to pay for any additional or supplemental notice that may become necessary or appropriate as a result of actions or inaction by Plaintiffs or Plaintiffs' Counsel.
105. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation:
- a. Arranging, as set forth in Section IV and in the Preliminary Approval Order, for distribution of Notice of the Settlement (in a forms substantially similar to that approved by the Court) and Claims Forms (in a forms substantially similar to that approved by the Court) to Settlement Class Members Injunctive Relief Class Members;
  - b. Answering inquiries from Injunctive Relief Class Members and Settlement Class Members pertaining to the mechanics of exercising their rights under the Settlement and directing any inquiries from Injunctive Relief Class Members and Settlement Class Members pertaining to the substantive terms of the Settlement to Class Counsel;

- c. Receiving and maintaining correspondence regarding Objections and Requests for Exclusion from the Settlement Class;
- d. Posting notices, Claim Forms, and other related documents on the Settlement Website and otherwise maintaining the Settlement Website;
- e. Receiving and processing Claim Forms, including sending rejection notices for potential invalid/fraudulent claims;
- f. Providing prompt updates to A-B's Counsel and Class Counsel regarding the number of Claims, Notice of Missing or Inaccurate Information issued, Requests for Exclusion, and Objections;
- g. Providing declaration(s) in support of preliminary and final approval as necessary and appropriate;
- h. Distributing all payments under the Settlement, including payments to Settlement Class Members and the Class Representative Service Awards, as well as tendering any unclaimed funds to the Claimants' states;
- i. Providing a post-distribution accounting declaration and/or any other declarations regarding compliance with and effectuation of the terms of the Settlement; and
- j. Otherwise assisting with implementation and administration of the Settlement Agreement terms as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

## **VI. OBJECTIONS AND OPT-OUTS**

### **Objections**

106. Settlement Class Members and Injunctive Relief Class Members shall have the right to appear and present Objections as to any reason why the terms of this Agreement should

not be given Final Approval. Any Objection must be made within the Objection/Exclusion Deadline, and must be in writing and submitted to the Court in either of the following manners: (1) mailing the Objection to the Clerk of Court, United States District Court Western District of Missouri – Western Division, Charles Evans Whittaker U.S. Courthouse, 400 E. 9th St. Kansas City, MO 64106, or (2) filing the Objection in person at any location of the United States District Court for the Western District of Missouri or via the ECF electronic filing system.

107. The date of the postmark on the envelope, or the electronic date of submission or filing, shall be the exclusive means used to determine whether an Objection has been timely submitted by the Objection/Exclusion Deadline.
108. Any Objection must contain a caption or title that identifies it as “Objection to Class Settlement in *Browning, et. al., v. Anheuser-Busch, LLC* Case No. 20-cv-00889-SRB” and shall also contain:
  - a. Information sufficient to identify and contact the objecting Injunctive Relief Class Member or Settlement Class Member, including name, address, telephone number, and, if available, email address, and if represented by counsel, the foregoing information for his/her counsel;
  - b. Whether the Injunctive Relief Class Member or Settlement Class Member, or his or her counsel, intends to appear at the Final Approval Hearing;
  - c. Whether the Objection applies only to the Injunctive Relief Class Member or Settlement Class Member, to a specific subset of the Injunctive Relief Class or Settlement Class, or to the entire Injunctive Relief Class or Settlement Class;

- d. A clear and concise statement of the Injunctive Relief Class Member's or Settlement Class Member's Objection, including all bases and legal grounds for the Objection;
  - e. Documents sufficient to establish the person's standing as an Injunctive Relief Class Member or Settlement Class Member, *i.e.*, Proof of Purchase or verification under penalty of perjury as to the person's purchase of the Ritas™ Brand Products during the Class Period;
  - f. A list of any other objections submitted by the Injunctive Relief Class Member or Settlement Class member or his/her counsel to any class actions in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and
  - g. The Injunctive Relief Class Member or Settlement Class Member's signature, in addition to the signature of his/her attorney, if any.
109. Plaintiffs and A-B shall each have the right to respond to any Objection no later than seven (7) calendar days prior to the Final Approval Hearing.
110. Injunctive Relief Class Members or Settlement Class Members who fail to file written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement and shall be bound, to the extent allowed by law, by the terms of the Settlement Agreement.

**Requests for Exclusion/Opt-Outs**

111. Any individual who would qualify as a Settlement Class Member, but who does not wish to receive the Settlement Payment and participate in the monetary relief component of this Settlement must submit a Request for Exclusion to the Settlement Administrator by the

Objection/Exclusion Deadline, stating a clear intention to be “excluded” from or “opt out” of the Settlement Class. The Request for Exclusion must contain the individual’s name, current address, and telephone number. The Request for Exclusion must be signed by the individual who is seeking to opt-out, dated and sent to the Settlement Administrator by hard copy sent via U.S. Mail.

112. The postmarked date of a submission by mail shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted by the Objection/Exclusion Deadline. Any individual whose request to be excluded from the Settlement Class is approved by the Court will not be bound by this Settlement Agreement nor will he or she have any right to object, appeal, or comment thereon. Notwithstanding the forgoing, the Parties acknowledge and agree that no Injunctive Relief Class Member may opt-out of the injunctive relief agreed to in the Settlement Agreement and described in Paragraph 84.
113. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline shall be bound, to the extent allowed by law, by all terms of the Settlement Agreement and any Final Approval Order and Final Judgment entered by the Court, regardless of whether they have requested exclusion from the Class.
114. Settlement Class Members who submit a valid and timely Request for Exclusion may only object to the injunctive relief component of this Settlement. If a Settlement Class Member submits both a valid and timely Request for Exclusion and Objection related to anything aspect of this Agreement other than the injunctive relief component, the Request for Exclusion shall control.

115. If a Settlement Class Member submits both a valid Claim Form and a Request for Exclusion, the Claim Form shall take precedence and be considered valid and binding, and the Request for Exclusion shall be deemed submitted by mistake and rejected.

#### **No Solicitation of Objections or Exclusions**

116. The Parties and their counsel agree to use their best efforts to carry out this Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage any Person or entity to submit Objections or Requests for Exclusion or to appeal from the Court's Final Approval Order and Final Judgment.

### **VII. FEE AWARD AND CLASS REPRESENTATIVE SERVICE AWARDS**

#### **Fee Award**

117. Class Counsel may submit a Fee Application for an award of attorneys' fees and costs in an amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00). A-B shall have the option to oppose this request.
118. Any Fee Award ordered by the Court shall be the total obligation of A-B to pay for Plaintiffs' attorneys' fees, costs, and/or attorneys' expenses of any kind (including, but not limited to, travel, filing fees, court reporter and videographer expenses, expert fees and costs, notice of pendency costs and expenses, and document review and production costs) related to this Action, the *Cole* Action, and the *Cooper* Action.
119. A-B shall pay any Fee Award ordered by the Court via check or wire transfer to Class Counsel not later than thirty (30) calendar days following the later of the issuance of a Fee Award to Class Counsel or Final Approval. If the Fee Award or Final Approval is overturned on appeal, or the Fee Award is reduced on appeal, Class Counsel shall comply with the terms of the Acknowledgment and Guarantee in the form attached as Exhibit 10.



120. Payment by A-B of any Fee Award is separate from, and in addition to, the other relief afforded to the Settlement Class Members in this Agreement.
121. This Settlement is not contingent upon the Court awarding any particular amount in attorneys' fees and costs. The Agreement is valid and binding on the Parties regardless of whether the Court reduces or otherwise modifies Class Counsel's requested Fee Award.
122. Class Counsel, in their sole discretion, shall allocate and distribute the Fee Award.
123. A-B shall pay its own attorneys' fees and costs incurred in this Action.

**Class Representative Service Awards**

124. In recognition of, *inter alia*, the time and effort each Plaintiff has expended in pursuing this Action, the *Cole* Action, and/or the *Cooper* Action, and fulfilling his or her obligations and responsibilities as a Class Representative, Class Counsel may petition the Court for a service award in an amount up to Two Thousand Five Hundred Dollars (\$2,500.00) to be paid to each Class Representative.
125. The Court's award of any Class Representative Service Awards shall be separate from its determination of whether to approve the Settlement as set forth in this Agreement. In the event the Court approves the Settlement but declines to award a Class Representative Service Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on all Parties.
126. A-B shall pay any Class Representative Service Awards by check or wire transfer to the Settlement Administrator not later than thirty (30) calendar days after the Effective Date. The Settlement Administrator shall pay any Class Representative Service Awards to the Plaintiff within fourteen (14) calendar days of receiving the funds from A-B. Plaintiffs shall be solely and legally responsible to pay all applicable taxes on their Class

Representative Service Awards, and shall hold harmless A-B and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Awards. Plaintiffs shall also furnish to A-B any necessary forms related to this Class Representative Service Awards, including but not limited to a W-9 form.

127. Payment by A-B of any Class Representative Service Award is separate from, and in addition to, the other relief afforded to the Settlement Class Members in this Agreement.

## **VIII. PRELIMINARY APPROVAL**

### **Motion for Preliminary Approval**

128. Plaintiffs shall file their Unopposed Motion for Preliminary Approval of Class Settlement that seeks entry of the Preliminary Approval Order. In accordance with the terms of this Agreement, the Preliminary Approval Order would:
- a. Preliminarily approve this Settlement Agreement;
  - b. Provisionally certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(3) composed of the Settlement Class Members;
  - c. Provisionally certify the Injunctive Relief Class under Federal Rule of Civil Procedure 23(b)(2) composed of the Injunctive Relief Class Members;
  - d. Approve Epiq as the Settlement Administrator;
  - e. Approve and authorize the contents of the Notice Plan and distribution of the Notice;
  - f. Appoint Class Counsel as counsel for the Settlement Class and Injunctive Relief Class;

- g. Approve and authorize the procedures for submitting Objections and Requests for Exclusion and the binding nature thereof;
- h. Set deadlines for submitting papers in support of the Motion for Final Approval, the Fee Application, and any responses to timely and valid Objections;
- i. Schedule the Final Approval Hearing to determine whether Final Approval of the Settlement Agreement is warranted; and
- j. Stay all activity in the Action except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions.

**Certification of Settlement Class and Injunctive Relief Class for Settlement Purposes Only**

- 129. The Parties agree, for settlement purposes only, that the Settlement Class shall be certified and proceed as a class action under Fed. R. Civ. P. 23(b)(3), with a class consisting of all Settlement Class Members, and with Plaintiffs as Class Representatives, and with Class Counsel as counsel for the Settlement Class Members.
- 130. The Parties agree, for settlement purposes only, that the Injunctive Relief Class shall be certified and proceed as a class action under Fed. R. Civ. P. 23(b)(2), with a class consisting of all Injunctive Relief Class Members, and with Plaintiffs as Class Representatives, and with Class Counsel as counsel for the Injunctive Relief Class Members.

**IX. FINAL APPROVAL**

**Motion for Final Approval**

- 131. Thirty-five (35) calendar days before the Final Approval Hearing, Class Counsel shall petition the Court for Final Approval Order and Final Judgment that would:

- a. Hold that the proposed classes meet all of the requirements of Rule 23 for purposes of settlement;
- b. Hold that this Agreement is entered into in good faith, is reasonable, fair and adequate, is in the best interest of the Settlement Class Members, and meets all of the requirements of Rule 23(e);
- c. Dismiss this Action, with prejudice, upon the Effective Date;
- d. Release the Released Parties from the Released Claims of the Releasing Parties;
- e. Retain the Court's continuing and exclusive jurisdiction over the enforcement, interpretation, and applicability of the Settlement, and power to enjoin all actions in any jurisdiction against the Released Parties as necessary to preserve the Court's jurisdiction; and
- f. Make such orders as are necessary and appropriate to effectuate the terms and conditions of this Settlement Agreement.

### **Final Approval Hearing**

132. The Court shall conduct a Final Approval Hearing so that the Court may review any objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement and consider Plaintiffs' Motion for Final Approval and Fee Application. The date of the Final Approval Hearing shall be posted on the Settlement Website in advance of the hearing. If the date of the Final Approval Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members or Injunctive Relief Class Members, except that, the Parties will notify anyone who has filed a timely Objection in writing of any change to the date of the Final Approval Hearing.

**Dismissal of this Action**

133. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Final Settlement Approval Date.

**X. RELEASES**

**Settlement Class General Release from Liability**

134. Upon the Effective Date, each of the Plaintiffs, and each Settlement Class Member, on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, including their executors, administrators, heirs, assigns, privies, predecessors and successors, shall be deemed to fully, finally, and forever release, relinquish, acquit, discharge and hold harmless the Released Parties of and from liability of any kind or type whatsoever for any and all Released Claims, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or forum. This Agreement shall be the sole and exclusive remedy available to the Releasing Parties for any and all Released Claims against the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

135. Plaintiffs and the Settlement Class agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. Plaintiffs and the Settlement Class further agree that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect their decisions to enter into this Agreement, the releases herein given shall be and remain in effect as a full, final and complete general release of the Released Claims and the Plaintiffs and the Settlement Class shall not be entitled to modify or set aside this

Agreement, either in whole or in part, by reason thereof. Plaintiffs and the Settlement Class hereby waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute which might otherwise render unenforceable a release contained in this Agreement.

136. With respect to all Released Claims, the Plaintiffs and the Settlement Class agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY” and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

**Injunctive Relief Class Release and Class Action Wavier**

137. Upon the Effective Date, each of the Plaintiffs and each Injunctive Relief Class Member shall be deemed to release and forever discharge any and all Released Parties of and from liability of any kind or type whatsoever for declaratory or equitable relief arising out of or relating to the claims asserted, or that could have been asserted, in this Action regarding the Ritas Brand Products’ alleged failure to disclose that they do not contain distilled spirits and/or wine, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any such claims for declaratory or equitable relief against any Released Party

in any court or forum (the “Injunctive Relief Release”). This Agreement shall be the sole and exclusive remedy available to the Injunctive Relief Class for any and all claims included in the Injunctive Relief Release. No Released Party shall be subject to liability or expense of any kind to any Injunctive Relief Class Member with respect to any claims included in the Injunctive Relief Release.

138. Plaintiffs and the Injunctive Relief Class agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. Plaintiffs and the Injunctive Relief Class further agree that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect their decisions to enter into this Agreement, the releases herein given shall be and remain in effect as a full, final and complete general release of any claims included in the Injunctive Relief Release and the Plaintiffs and the Injunctive Relief Class shall not be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The Plaintiffs and the Injunctive Relief Class hereby waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute which might otherwise render unenforceable a release contained in this Agreement.

139. With respect to all claims included in the Injunctive Relief Release, the Plaintiffs and the Injunctive Relief Class agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD

HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY” and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

**XI. Termination and Effect of Termination**

140. Each Party shall have the right to terminate this Settlement Agreement if: (a) the Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to **Exhibit 5** hereto); (b) the Court denies final approval of this Settlement Agreement; or (c) the Final Approval Order or Final Judgment do not become final by reason of a higher court reversing Final Approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein. If a Party elects to terminate this Settlement Agreement under this paragraph, that Party must provide written notice to the other Parties’ counsel, by hand delivery, mail, or e-mail within fourteen (14) calendar days of the occurrence of the condition permitting termination.
141. If the Settlement is not approved, the Parties shall meet and confer in good faith, in an effort to effectuate the material terms of the Settlement and/or negotiate a different settlement, consistent with the Parties’ desire to resolve this Action. As part of this meet and confer process, the Parties shall contact Jack T. Bangert, or another mediator as mutually agreed by the Parties.
142. Nothing shall prevent Plaintiffs and/or A-B from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of Final Approval of the Settlement. In the event such appellate proceedings result, by order of the appellate



court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Action with prejudice, and otherwise meeting the substantive criteria of this Agreement for approval of the Settlement, such order shall be treated as the Final Approval Order as that term is defined in this Settlement Agreement.

143. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (a) this Settlement Agreement and all orders entered in connection therewith shall be rendered null and void; and (b) all Parties shall be deemed to have reverted to their respective status in the Action as of the date and time immediately preceding the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed, except that the Parties shall not seek to recover from one another any attorneys' fees, costs, and expenses incurred in connection with this Settlement, including any Settlement Notice and Administration costs already incurred by the Settlement Administrator.

## **XII. Non-Admission of Fault or Liability**

144. This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged, nor actions taken, pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an

admission of the validity of any claim asserted or fact alleged in this Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of A-B.

### **XIII. Miscellaneous**

#### **Non-Admissibility**

145. This Agreement and all negotiations, correspondence and communications leading up to its execution, including confirmatory discovery, shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, to enforce or assert a claim or defense of *res judicata*, *collateral estoppel*, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Plaintiffs, any Settlement Class Member, any Injunctive Relief Class member, or any third party, or in any proceeding involving A-B and any of its insurance carriers.

#### **Reservation of Rights**

146. This Settlement Agreement is made without prejudice to the right of A-B to take any position in its defense of the Action, should this Agreement not be approved or implemented.

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### **Dispute Resolution**

147. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Settlement or Injunctive Relief Class Member, or A-B's Counsel, on behalf of A-B, at any time believe that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation. The Parties shall meet and confer in good faith to resolve the dispute. If the Parties are unable to resolve their differences within twenty-one (21) calendar days, either Party shall first contact Jack T. Bangert to try to resolve the dispute. If that proves unsuccessful, the Party may file an appropriate motion for enforcement with the Court.

### **Non-Disparagement**

148. Class Counsel and Class Representatives agree not to disparage or otherwise take any action which could reasonably be expected to adversely affect the reputation of A-B regarding this matter. A-B and its attorneys agree not to disparage or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of Class Counsel and Class Representatives regarding this matter.

### **Authority to Execute**

149. The Parties warrant and represent that the Persons executing this Agreement are duly authorized to do so.

### **Signatures**

150. This Agreement may be executed in one or more counterparts, by facsimile, PDF, electronic mail, or original signature, each of which shall be deemed an original against the Party whose signature is provided, and all of which shall be considered an original and together shall constitute one agreement binding on all Parties. The Parties agree that a

facsimile, PDF, or electronic signatures shall be deemed to be as valid and enforceable as original ink signatures. The Parties further agree that they may use DocuSign, an electronic signature technology, to expedite the execution of this Agreement.

#### **Assignment of Claims**

151. The Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

#### **Reading and Understanding**

152. The Parties warrant and represent that they have carefully read this Agreement, have consulted their attorneys regarding this Agreement, and fully understand and voluntarily accept the terms and conditions of this Agreement.

#### **Reliance on Own Judgment**

153. The Parties warrant and represent that they have relied upon their own judgment and that of their legal counsel regarding the sufficient and agreed upon consideration for this Agreement and that no statement or representation by any of the other Parties or their agents, employees, officers, directors or legal representatives influenced or induced them to execute this Agreement.

#### **Governing Law**

154. This Agreement shall be construed under and governed by the laws of the State of Missouri, applied without regard to choice of law principles that may otherwise be applicable.

///

#### **Jurisdiction of the Court**

155. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the resolution embodied in this Agreement and all orders and judgments entered in connection therewith. In granting Final Approval, the Court shall enjoin all actions in any jurisdiction against the Released Parties as is necessary to preserve the Court's jurisdiction.

**Entire Agreement**

156. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject of this Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Agreement.

**Joint Preparation**

157. This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any of the Parties.

**Recitals**

158. The Recitals are a material part of this Agreement and are incorporated herein in their entirety.

**Captions**

159. The captions used in this Agreement are for convenience and identification purposes only, and are not part of this Agreement.

### **Amendment or Modification**

160. This Agreement may not be changed, modified, or amended except in writing signed by all Parties (or their successors-in-interest) and approved by the Court. Notwithstanding the foregoing, however, the claims process set forth above may be modified by mutual agreement of the Parties without Court approval and the Parties may agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement.

### **Cooperation**

161. The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of the Settlement embodied herein, carrying out the terms of this Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain Final Approval by the Court of the Settlement.

### **No Waiver**


162. The waiver of any term or condition or breach of this Agreement shall not be deemed to be a waiver of any other term or condition or breach of this Agreement and shall not be deemed to be a continuing waiver.

### **Parties' Waiver of Right to be Excluded and Object**

163. The Parties agree that by signing this Agreement they are bound to these terms. The Parties agree to not object to or appeal from this Agreement or the exhibits attached hereto. Plaintiffs further agree not to request to be excluded from the Class.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]**  
**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

APPROVED AND AGREED TO BY THE PLAINTIFFS

By:  \_\_\_\_\_  
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Megan Browning

Date: 7/18/2022 | 1:49 PM EDT  
\_\_\_\_\_

By: \_\_\_\_\_

Terri Cole

Date: \_\_\_\_\_

By: \_\_\_\_\_

Tanya Cooper

Date: \_\_\_\_\_

By: \_\_\_\_\_

Allen Kesselring

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joseph Rose

Date: \_\_\_\_\_

By: \_\_\_\_\_

Judy Scaturro

Date: \_\_\_\_\_

APPROVED AND AGREED TO BY ANHEUSER-BUSCH, LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



APPROVED AND AGREED TO BY THE PLAINTIFFS

By: \_\_\_\_\_

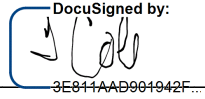
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Megan Browning

By: \_\_\_\_\_

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Terri Cole



7/15/2022 | 6:37 PM EDT

By: \_\_\_\_\_

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Tanya Cooper

By: \_\_\_\_\_

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Allen Kesselring

By: \_\_\_\_\_

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Joseph Rose

By: \_\_\_\_\_

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Judy Scaturro

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By: \_\_\_\_\_

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Megan Browning

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By: \_\_\_\_\_

Terri Cole

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By: \_\_\_\_\_

Tanya Cooper

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*Tanya Cooper*  
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Date: 7/15/2022 | 6:34 PM EDT

By: \_\_\_\_\_

Allen Kesselring

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Joseph Rose

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By: \_\_\_\_\_

Judy Scaturro

Date: \_\_\_\_\_

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By: \_\_\_\_\_

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By: \_\_\_\_\_

Megan Browning

Date: \_\_\_\_\_

By: \_\_\_\_\_

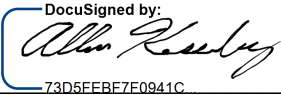
Terri Cole

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Tanya Cooper

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By:  \_\_\_\_\_  
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Allen Kesselring

Date: 7/16/2022 | 10:42 AM PDT

By: \_\_\_\_\_

Joseph Rose

Date: \_\_\_\_\_

By: \_\_\_\_\_

Judy Scaturro

Date: \_\_\_\_\_

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Date: \_\_\_\_\_

Title: \_\_\_\_\_

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Terri Cole

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Tanya Cooper

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Allen Kesselring

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By: \_\_\_\_\_

Joseph Rose

DocuSigned by:  
*Joseph Rose*  
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Date: 7/15/2022 | 6:55 PM EDT

By: \_\_\_\_\_

Judy Scaturro

Date: \_\_\_\_\_

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By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AND AGREED TO BY THE PLAINTIFFS

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Date: \_\_\_\_\_

Megan Browning

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Terri Cole

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Tanya Cooper

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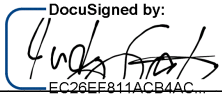
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Allen Kesselring

By: \_\_\_\_\_

Date: \_\_\_\_\_

Joseph Rose

By:  \_\_\_\_\_  
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Date: 7/18/2022 | 9:13 AM PDT

Judy Scaturro

APPROVED AND AGREED TO BY ANHEUSER-BUSCH, LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM BY CLASS COUNSEL

By: Tim Dollar  
Tim E. Dollar

Date: 7-18-22

Dollar Burns & Becker, L.C.

By: Timothy J. Peter  
Timothy J. Peter

Date: 7/18/22

Faruqi & Faruqi, LLP

APPROVED AS TO FORM BY COUNSEL FOR ANHEUSER-BUSCH, LLC

By: \_\_\_\_\_  
James F. Bennett

Date: \_\_\_\_\_

Dowd Bennett LLP

APPROVED AND AGREED TO BY THE PLAINTIFFS

By: \_\_\_\_\_  
Megan Browning

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Terri Cole

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Tanya Cooper

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Allen Kesselring

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph Rose

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Judy Scaturro

Date: \_\_\_\_\_

APPROVED AND AGREED TO BY ANHEUSER-BUSCH, LLC

By: *Seth Hawkins*  
Seth Hawkins (Jul 18, 2022 12:35 CDT)

Date: Jul 18, 2022

Title: Vice President & General Counsel

By: *Molly M. Jones*  
Molly M. Jones (Jul 18, 2022 15:00 CDT)

Date: Jul 18, 2022

Title: Sr. Associate General Counsel

APPROVED AS TO FORM BY CLASS COUNSEL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tim E. Dollar  
Dollar Burns & Becker, L.C.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Timothy J. Peter  
Faruqi & Faruqi, LLP

APPROVED AS TO FORM BY COUNSEL FOR ANHEUSER-BUSCH, LLC

By: James F. Bennett Date: 7/18/22  
James F. Bennett  
Dowd Bennett LLP