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14 Anheuser-Busch, LLC

ELECTRONICALLY

F I L E D

*Superior Court of California,
County of San Francisco*

FEB 09 2015

Clerk of the Court

BY: ROMY RISK

Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 FOR THE COUNTY OF SAN FRANCISCO

15 YSIDRO LIMON, SR.,

16 Plaintiff,

17 vs.

18 AMCORD, INC., et al.,

19 Defendants.

20 **ASBESTOS**

21 Case No. CGC 15276378

22 **ANSWER OF DEFENDANT ANHEUSER-
23 BUSCH, LLC TO COMPLAINT FOR
24 PERSONAL INJURY—ASBESTOS**

25 Compl. Filed: January 2, 2015

Defendant Anheuser-Busch, LLC (“Anheuser-Busch”), for itself alone and no other persons or entities, hereby answers the unverified Complaint for Personal Injury–Asbestos (“Complaint”) of plaintiff Ysidro Limon, Sr. (“plaintiff”) as follows:

GENERAL DENIAL

1. Pursuant to Code of Civil Procedure Section 431.30(d), Anheuser-Busch denies, generally and specifically, each and every allegation contained in each and every paragraph of the Complaint, and specifically denies that plaintiff has been damaged in any sum, or sums, whatsoever.

FIRST AFFIRMATIVE DEFENSE

(Failure To State Facts)

2. The Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Anheuser-Busch.

SECOND AFFIRMATIVE DEFENSE

(Comparative Fault)

3. Anheuser-Busch alleges that plaintiff was careless, negligent, or otherwise at fault with respect to the matters alleged in the Complaint and that such carelessness, negligence or fault proximately contributed to the happening of the incidents and to the injuries, losses and damages complained of, if any, by plaintiff. Thus, such contributory negligence either bars or proportionately reduces any potential recovery by plaintiff.

THIRD AFFIRMATIVE DEFENSE

(Intervening Fault)

4. Anheuser-Busch alleges that other defendants and persons or entities not named in the Complaint were careless, negligent or otherwise at fault and that this carelessness, negligence or fault proximately caused or contributed to the happening of the alleged incidents referred to in plaintiff's Complaint.

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FOURTH AFFIRMATIVE DEFENSE

(Assumption Of Risk)

5. Anheuser-Busch alleges that plaintiff and others voluntarily assumed the risks, if any there were, at the time and place of the alleged incidents referred to in plaintiff's Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

6. Plaintiff failed and neglected to use reasonable care to protect himself and to minimize the losses and damages complained of, if any, by plaintiff.

SIXTH AFFIRMATIVE DEFENSE

(Several Liability)

7. The liability of Anheuser-Busch, if any, shall be limited to several liability with respect to all non-economic damages pursuant to California Civil Code Sections 1431.1 and 1431.

SEVENTH AFFIRMATIVE DEFENSE

(Failure To State A Claim For Punitive Damages)

8. The Complaint, and each purported cause of action therein, fails to state a claim for punitive or exemplary damages against Anheuser-Busch.

EIGHTH AFFIRMATIVE DEFENSE

(Set-Off)

9. Anheuser-Busch alleges that at the time of the injuries alleged in the Complaint, plaintiff was employed and acting in the course and scope of their employment and that they were entitled to and did receive workers' compensation benefits from their employers. Anheuser-Busch also alleges that if any of the conditions alleged in the Complaint are found to exist, plaintiff's employers, and their agents and employees, were themselves negligent or at fault in and about the matters referred to in the Complaint. Anheuser-Busch further alleges that such negligence caused or contributed to the damages, if any, complained of by plaintiff. It is further alleged that plaintiff's employers, or their agents or employees, assumed the risk of injury to plaintiff, if any there actually was, and that such assumption of risk proximately caused or contributed to the damages, if any, described in the Complaint. Therefore, Anheuser-Busch is entitled to set-off any compensation

1 benefits received by plaintiff against any judgment which may be rendered in favor of plaintiff in
2 this action.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Failure To State A Claim For Vicarious Liability)**

5 10. Anheuser-Busch alleges that at the time of the alleged incident, plaintiff was working
6 for an independent contractor and that his independent contractor employer retained control over the
7 operative details of his work. Anheuser-Busch further alleges that at no time did it ever retain
8 control over either the methods, means and/or the operative details of either plaintiff's work or the
9 work of his independent contractor employer or the work of any other contractors who were present
10 or working in close proximity to his. As a result, plaintiff's tort claims based upon either direct or
11 vicarious liability against Anheuser-Busch are not cognizable and are barred pursuant to the
12 California Supreme Court decisions of *Privette v. Superior Court (Contreras)*, 5 Cal. 4th 689 (1993)
13 and *Toland v. Sunland Housing Group, Inc.*, 18 Cal. 4th 253 (1998), as well as the First and Second
14 District Court of Appeal decisions of *Zumudio v. City and County of San Francisco*, 70 Cal. App.
15 4th 445 (1999) and *Lopez v. C.G.G. Development, Inc.*, 101 Cal. App. 4th 430 (2002). To the extent
16 that plaintiff alleges liability against Anheuser-Busch on a theory of "retained control;" "negligent
17 exercise of retained control of safety conditions;" and/or "negligent supervision of work" at the work
18 premises, their claims fail under the California Supreme Court decisions in *Hooker v. Department of*
19 *Transportation*, 27 Cal. 4th 198, (2002); *McKown v. Wal-Mart Stores, Inc.*, 27 Cal. 4th 219 (2002),
20 as well as the First District Court of Appeal decision of *Kinney v. CSB Construction, Inc.*, 87 Cal.
21 App. 4th 28 (2001), because Anheuser-Busch did not affirmatively contribute to the alleged safety
22 hazards of the work premises by expressly assuming responsibility for such conditions on the work
23 premises. *See also Ruiz v. Herman Weissker, Inc.*, 130 Cal. App. 4th 52 (2005). To the extent that
24 plaintiff alleges liability against Anheuser-Busch on a theory of negligence in the use, maintenance
25 or management of the areas where plaintiff allegedly worked, plaintiff's claims fail because
26 Anheuser-Busch did not retain control of the work premises, and it did not affirmatively contribute
27 to plaintiff's alleged injuries. Moreover, *Hooker*, *McKown*, *Kinney* and *Lopez* bar any claim by
28 plaintiff against Anheuser-Busch based on a mere failure by Anheuser-Busch to compel plaintiff's

1 employer to enact appropriate safety measures regarding the work premises. *Accord Camargo v.*
2 *Tjaarda Dairy*, 25 Cal. 4th 1235 (2001); *Ruiz*, 130 Cal. App. 4th at 52. Thus, plaintiff's claims fail
3 as a matter of law.

4 **TENTH AFFIRMATIVE DEFENSE**

5 **(Failure To State A Claim For Negligent Hiring)**

6 11. Anheuser-Busch alleges that at the time of the alleged incident, plaintiff was working
7 for an independent contractor employer and that this employer was competent and well-qualified to
8 perform the operative details of the required work at the site in question. Anheuser-Busch further
9 alleges that at all relevant times, plaintiff and his independent contractor employer performed the
10 contracted-for work in a safe, acceptable, and workman-like manner which did not create an
11 unreasonable risk of injury to him, or to others. Consequently, plaintiff's allegations fail to support a
12 cause of action for "negligent hiring" against Anheuser-Busch. *Camargo v. Tjaarda Dairy*, 25 Cal.
13 4th 1235 (2001); *see also Hooker v. Department of Transportation*, 27 Cal. 4th 198 (2002); *McKown*
14 *v. Wal-Mart Stores, Inc.*, 27 Cal. 4th 219 (2002); *accord Lopez v. C.G.G. Development, Inc.*, 101
15 Cal. App. 4th 430 (2002).

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Statutes of Limitations)**

18 12. The Complaint, and each cause of action set forth therein, is barred by applicable
19 statutes of limitations stated in Part 2, Article II, Chapter 3 of the Code of Civil Procedure beginning
20 with Section 335 and continuing through Section 349, including, but not limited to, Sections 335.1,
21 338.1, 340 and 340.2.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Statutory Invalidity)**

24 13. California Civil Code Section 3294, under which plaintiff's claims for punitive
25 damages are apparently made, is invalid on its face or as applied to Anheuser-Busch pursuant to
26 Article 1, Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Eighth and Fourteenth
27 Amendments to the Constitution of the United States, and Article 1, Sections 7, 9, 15 and 17 and
28 Article IV, Section 16 of the California Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

(Equal Protection)

14. The provisions of California law limiting the amount of punitive damages which may
be awarded in specified types of cases, while allowing unlimited punitive damages for other tortious
conduct, constitutes impermissible discrimination against those defendants subject to unlimited
punitive damage awards, such as Anheuser-Busch, and in favor of those defendants not subject to
unlimited punitive damage awards. Such discrimination violates Article IV, Section 2 and the Fifth
and Fourteenth Amendments of the United States Constitution, and Article I, Section 16 of the
California Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

(Due Process)

15. The application of California law regarding punitive damages or exemplary damages
to Anheuser-Busch in this case is impermissibly vague, imprecise and inconsistent in violation of the
rights of Anheuser-Busch, guaranteed under the Fifth and Fourteenth Amendments of the United
States Constitution, and Article I, Section 7 of the California Constitution.

FIFTEENTH AFFIRMATIVE DEFENSE

(Due Process)

16. The imposition of punitive or exemplary damages against Anheuser-Busch upon, in
effect, a vicarious liability basis, violates the rights of Anheuser-Busch guaranteed under the Fifth
and Fourteenth Amendments of the United States Constitution, and Article I, Section 7 of the
California Constitution.

OTHER AFFIRMATIVE DEFENSES

17. Anheuser-Busch presently has insufficient knowledge or information upon which to
form a belief as to whether additional affirmative defenses are available. Accordingly, Anheuser-
Busch hereby expressly reserves the right to assert additional affirmative defenses in the event that
discovery indicates that such defenses are appropriate.

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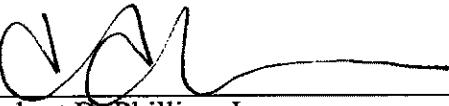
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1 WHEREFORE, defendant Anheuser-Busch, LLC prays for judgment as follows:

- 2 1. That plaintiff take nothing by reason of his Complaint on file herein;
- 3 2. For costs of suit incurred herein; and
- 4 3. For such other and further relief as the Court may deem just and proper.

5 DATED: February 9, 2015

6 REED SMITH LLP

7 By 

8 Robert D. Phillips, Jr.
9 Ashley L. Shively
10 Cristyn N. Chadwick
11 Attorneys for Defendant
12 Anheuser-Busch, LLC

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YSIDRO LIMON, SR. v. AMCORD, INC., et al.
San Francisco Superior Court – Case No. CGC 15 276378

PROOF OF SERVICE

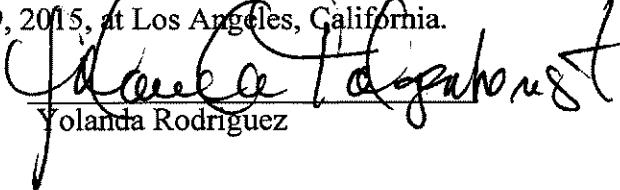
I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071-1514. On February 9, 2015, I served the following document(s) by the method indicated below:

• ANSWER OF DEFENDANT ANHEUSER-BUSCH, LLC TO COMPLAINT FOR PERSONAL INJURY – ASBESTOS

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration. |
| <input type="checkbox"/> | by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly. |
| <input type="checkbox"/> | by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below VIA MESSENGER. |
| <input type="checkbox"/> | by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. (VIA UPS) |
| <input type="checkbox"/> | by transmitting via email to the parties at the email addresses listed below: |
| <input checked="" type="checkbox"/> | via electronic service via File & ServExpress through electronic transmission to all parties appearing on the electronic service list. Upon completion of said transmission of said document, a certified receipt is issued to the filing party acknowledging receipt by File & Serve system. Once File & Serve has served all designated recipients, proof of electronic service/confirmation will be maintained with the original document in this office. (VIA FILE & SERVEXPRESS) |

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 9, 2015, at Los Angeles, California.


Yolanda Rodriguez

YSIDRO LIMON, SR. v. AMCORD, INC., et al.
San Francisco Superior Court – Case No. CGC 15 276378

SERVICE LIST

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