

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANHEUSER-BUSCH INBEV SA/NV,
ANHEUSER-BUSCH COMPANIES,
LLC,

and

CRAFT BREW ALLIANCE, INC.,

Defendants.

Civil Action No.: 4:20-cv-01282

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Acquirer” means PV Brewing or any other entity to which Defendants divest the Divestiture Assets.

B. “ABI” means Defendant Anheuser-Busch InBev SA/NV, a Belgian corporation with its headquarters in Leuven, Belgium, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “AB Companies” means Defendant Anheuser-Busch Companies, LLC, a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries (including the Hawaii WOD), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “CBA” means Defendant Craft Brew Alliance, Inc., a Washington corporation with its headquarters in Portland, Oregon, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “PV Brewing” means PV Brewing Partners, LLC, a Delaware limited liability company with its headquarters in Overland Park, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Kona Hawaii” means Kona Brewery LLC, a Hawaii limited liability company with its headquarters in Kailua-Kona, Hawaii, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, related to or used or held for use in connection with Kona Hawaii, including, but not limited to:

1. the following facilities (the “Divestiture Facilities”):
 - a. the restaurant located at 7192 Kalaniana’ole Highway, Honolulu, Hawaii 96825 (“Koko Marina Pub”);
 - b. the brewery and brewpub located at 74-5612 Pawai Place, Kailua-Kona, Hawaii, 96740 (the “Kona Pub and Brewery”); and
 - c. the New Kona Brewery;
2. all rights of the Acquirer under the Kona IP License;
3. all tangible personal property, including, but not limited to, machinery and manufacturing equipment, tooling and fixed assets, vehicles, inventory, merchandise, office equipment and furniture, materials, computer hardware and supplies;
4. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings, including, but not limited to, teaming arrangements, leases, certifications, and supply agreements;
5. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;
6. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information CBA provides to its own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including, but not limited, to designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

7. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, service names, trade names, and trademark applications; and

8. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs I.G.1.-8., do not include (a) ownership of the Kona IP; (b) intellectual property associated with the sale of Kona Products outside the State of Hawaii; (c) Defendants' facilities located outside Hawaii that are used to brew, develop, package, import, distribute, market, promote, or sell Kona Products; or (d) AB Companies' wholly-owned distributor located in the State of Hawaii.

H. "Beer" is defined for purposes herein as any fermented beverage, brewed or produced from malt, wholly or in part, or from rice, grain of any kind, bran, glucose, sugar, and molasses when such items are used as a substitute for malt, or from honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials. For the avoidance of doubt, Beer, as defined herein, does not include any distilled alcoholic beverages (as defined as of September 1, 2020 in 27 C.F.R. Section 5.11) or wine (as defined as of September 1, 2020 in 27 C.F.R. 410, except

that irrespective of the foregoing definition, hard cider shall be included within the definition of Beer herein).

I. “Distributor” means a wholesaler in the State of Hawaii who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

J. “Hawaii WOD” means Anheuser-Busch Sales of Hawaii, Inc., which is AB Companies’ wholly-owned distributor in the State of Hawaii.

K. “Kona Products” means (1) all products produced by Defendants using the “Kona” brand name at any time after November 11, 2019, and (2) all products produced by Acquirer using the “Kona” brand name.

L. “Kona IP” means all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in Hawaii. This includes intellectual property connected to the “Kona” brand name (and all associated trademarks, service marks, and services names) used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii.

M. “Kona IP License” means an exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to the Kona IP for use in the State of Hawaii.

N. “New Brewery Completion” means the achievement by Defendants of an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks at the New Kona Brewery.

O. “New Kona Brewery” means the brewery located at Lot 16 in Kailua-Kona, Hawaii.

P. “Relevant Personnel” means all full-time, part-time, or contract employees of Kona Hawaii, wherever located, whose job responsibilities relate in any way to the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii, at any time between November 11, 2019, and the date on which the Divestiture Assets are divested to Acquirer.

Q. “Transaction” means AB Companies’ proposed acquisition of the remaining shares of CBA that AB Companies does not already own.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets to PV Brewing, or to another Acquirer acceptable to the United States in its sole discretion, for the purpose of establishing a viable competitor in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii in order to remedy the effects that the United States alleges would otherwise result from AB Companies’ acquisition of the remaining shares of CBA that AB Companies does not already own. Under the proposed Final Judgment, PV Brewing would acquire the Divestiture Assets from Defendants. The United States has determined, for the purposes of this settlement, that PV Brewing is an acceptable purchaser of the Divestiture Assets. This Stipulation and Order ensures, prior to divestiture, that the Defendants will preserve and maintain the Divestiture Assets, that the Divestiture Assets will remain independent and ongoing business concerns that will remain uninfluenced by Defendants, and that the level of competition for the brewing, developing, packaging, importing, distributing, marketing, promoting, and

selling of Beer in the State of Hawaii that existed between Defendants prior to the Transaction is maintained during the pendency of the ordered divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of Missouri. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) ("APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the proposed Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper or newspapers within which the publication must be made. Defendants must

promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

C. From the date of the signing of this Stipulation and Order by Defendants and the United States until the proposed Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment. From the date on which the Court enters the Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment just as if the proposed Final Judgment were in full force and effect as the final order of the Court.

D. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.

E. Defendants represent that the divestiture ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION AND HOLD SEPARATE PROVISIONS

From the date of the signing of this Stipulation and Order by the United States and Defendants until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, and competitive business, with management, sales and operations of such assets held entirely separate, distinct, and apart from those of Defendants'

other operations. Defendants must not coordinate their production, marketing, or terms of sale of any products with those produced by or sold by the Divestiture Assets, except that Defendants may allow Acquirer to voluntarily adopt or participate in Defendants' Kona-related marketing efforts, or to acquire Kona-related marketing materials or media from Defendants, for Acquirer's employment only in the State of Hawaii. For the avoidance of doubt, the Hawaii WOD may continue, in the ordinary course of its business, its sales, marketing, and distribution activities related to Kona Products.

B. Defendants must take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, and active competitor in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants must maintain at 2020 or previously approved levels for 2021, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants must provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as a competitive, ongoing business, consistent with the requirements of Paragraphs VI.A. and VI.B.

E. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and must maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants must take all steps necessary to achieve New Brewery Completion in a manner consistent with terms of the proposed Final Judgment to PV Brewing or to another Acquirer acceptable to the United States, in its sole discretion.

G. Defendants must not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

H. Defendants must maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income for the Divestiture Assets.

I. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel must not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by the United States and Defendants; however, financial incentives may not be structured so as to disincentivize individuals from accepting employment with an Acquirer.

J. Defendants must appoint, subject to approval of the United States in its sole discretion, a person to oversee the Divestiture Assets and who will be responsible for

Defendants' compliance with this Section VI. This person will have complete managerial responsibility for the Divestiture Assets for the duration of this Stipulation and Order, subject to the provisions of the proposed Final Judgment. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets, including by any trustee appointed to complete the divestiture pursuant to the proposed Final Judgment.

L. Within twenty (20) days after the entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF ASSET PRESERVATION AND HOLD SEPARATE OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A.; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order

and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: September 18, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANTS
ANHEUSER-BUSCH INBEV SA/NV AND
ANHEUSER-BUSCH COMPANIES, LLC

/s/

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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, _____.

United States District Judge