

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

RYAN ALLEYNE, ENID V. ALLEYNE,  
MICHAEL BICETTE,  
MARCO BLACKMAN, ANISTIA JOHN,  
GEORGE JOHN, SUSIE SANES and  
ALICIA SANES, on behalf of themselves  
and all others similarly situated,

*Plaintiffs,*

v.

DIAGEO USVI, INC. and CRUZAN  
VIRIL, LTD.

*Defendants.*

'13 JUL 29 A9:43

Case No.: SX 2013-CV- 143

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**DEFENDANTS DIAGEO USVI, INC. AND CRUZAN VIRIL, INC.'S MEMORANDUM IN  
SUPPORT OF THEIR MOTION TO STRIKE UNDER RULE 12(f) OR, IN THE  
ALTERNATIVE, FOR A MORE DEFINITE STATEMENT UNDER RULE 12(e)**

Defendants Diageo USVI, Inc. and Cruzan VIRIL, Inc. respectfully submit this memorandum in support of their Rule 12(f) motion to strike the class allegations in the Complaint or, in the alternative, for a more definite statement pursuant to Rule 12(e).

\* \* \* \* \*

Although Plaintiffs seek to bring this case as a class action, they have not attempted to plead a threshold element for class certification under Rule 23—the geographic scope of their purported classes. Accordingly, the facially deficient class allegations should be stricken, or, at the least, Plaintiffs should be ordered to define the scope of their purported classes.

In order to satisfy Rule 8(a), a complaint must contain facts demonstrating that the plaintiffs' claims are "plausible on [their] face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,

550 U.S. at 570). This standard applies equally to class allegations, just as it applies to the elements of a claim. See *Nicholas v. CMRE Fin. Servs.*, 08-4857JLL, 2009 WL 1652275, at \*4 (D.N.J. June 11, 2009) (“After *Twombly*, courts in [the Third Circuit] have found that class allegations must also comply with Rule 8(a) in order to proceed to class discovery.”) (citing *Hodczak v. Latrobe Specialty Steel Co.*, No. 08-649, 2009 WL 911311, at \*9 (W.D. Pa. Mar. 31, 2009); *Smith v. Lyons, Doughty & Velduius, P.C.*, No. 07-5139, 2008 WL 2885887, at \*5 (D.N.J. July 23, 2008)).

“[T]he definition of the class is an essential prerequisite to maintaining a class action.” *Adams v. Fed. Materials Co.*, 2006 WL 3772065, at \*3 (W.D. Ky. Dec. 19, 2006) (internal quotation marks and citation omitted); *Daigle v. Shell Oil Co.*, 133 F.R.D. 600, 602 (D. Colo. 1990) (“Although not expressly required by Rule 23, Fed.R.Civ.P., it is obvious that the party seeking certification must establish that an identifiable class exists.”). At a minimum, the description of the class must be “sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.” 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1760, at 140 (3d ed.2005). “[C]ourts have rejected proposed classes where plaintiffs failed to identify any logical reason . . . for drawing boundaries where they did.” *Brockman v. Barton Brands*, Civ. Action No. 3:06CV-332-H, at \*4-5 (W.D. Ky. Nov. 21, 2007); see also *Daigle*, 133 F.R.D. at 602 (“Plaintiffs have failed to identify any logical reason relating to the defendants’ activities at Basin F for drawing the boundaries where they did. Therefore, I find and conclude that the plaintiffs have failed to identify a class.”).

Here, Plaintiffs have not even attempted to define the geographic boundary of their purported classes, much less supported that boundary with factual allegations to make it plausible. Specifically, the Complaint identifies the following purported classes (emphasis added):

58. a. All citizens of the United States Virgin Islands who own real property on St. Croix in the vicinity, *the exact radius of which is to be determined*, of Defendants' alcoholic beverage production operations on St. Croix; and

b. All citizens of the United States Virgin Islands who rent or lease real property on St. Croix in the vicinity, *the exact radius of which is to be determined*, of Defendants' alcoholic beverage production operations on St. Croix and have an obligation to maintain the premises; and

c. All citizens of the United States Virgin Islands who own motorized vehicles in St. Croix that are regularly parked and/or stored in the vicinity, *the exact radius of which is to be determined*, of Defendants' alcoholic beverage production operations on St. Croix; and

d. All citizens of the United States Virgin Islands who own ornamental trees, shrubs and plants and/or fruit and vegetable-bearing trees on St. Croix in the vicinity, *the exact radius of which is to be determined*, of Defendants' alcoholic beverage production operations on St. Croix; and

e. All citizens of the United States Virgin Islands who harvest fruit and vegetables from rented or leased real property on St. Croix in the vicinity, *the exact radius of which is to be determined*, of Defendants' alcoholic beverage production operations on St. Croix.

Plaintiffs, however, cannot punt on a fundamental element of Rule 23 in their Complaint in the apparent hope that discovery will work it out. Plaintiffs' class allegations must comply with Rule 8(a)—and thus the *Twombly* pleading standard—before Plaintiffs are entitled to any discovery. See *Nicholas*, 2009 WL 1652275, at \*4 (“class allegations must also comply with Rule 8(a) in order to proceed to class discovery”); *Hodczak*, 2009 WL 911311, at \*9 (“While discovery may be appropriate in certain cases prior to the notice phase to assist the plaintiffs in identifying potential class

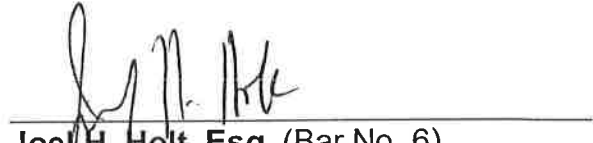
members, that does not relieve plaintiffs of their obligation of filing a properly pled complaint in the first instance demonstrating that they are entitled to that discovery.”). Indeed, the main purpose of the Complaint is to put Defendants on notice of Plaintiffs’ allegations—both with respect to the merits of their claims and the classes that they seek to represent—so that Defendants can know what and who they are defending against. See *Twombly*, 550 U.S. at 555 (complaint must provide “fair notice” and “grounds” of plaintiffs’ alleged “entitle[ment] to relief”) (internal quotation marks and citations omitted).

Because the class allegations are facially deficient, this Court should strike them under Rule 12(f). See, e.g., *Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009) (striking class allegations in the complaint); *Stubbs v. McDonald's Corp.*, 224 F.R.D. 668, 677 (D. Kan. 2004) (same). At the very least, Plaintiffs should be ordered to define the boundary of their purported classes pursuant to Rule 12(e). See, e.g., *U.S. Equal Employment Opportunity Comm. v. Pioneer Hotel, Inc.*, 2012 WL 1601658, at \*3 (D. Nev. May 4, 2012) (“The complaint is devoid of any allegations that define or explain the scope of the class, how many class members there are, or who subjected the class members to the alleged discrimination. Therefore, the court shall grant defendants’ request for a more definitive statement . . .”).

**Dated:** July 29, 2013



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### CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of July, 2013, I filed the foregoing with the Clerk of the Court, and delivered as indicated to the following:

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**JURY TRIAL DEMANDED**

**ORDER**

This matter is before the Court on Defendants' July 29, 2013, Rule 12(f) motion to strike the class allegations in the Complaint or, in the alternative, for a more definite statement pursuant to Rule 12(e).

The Court being fully informed in the premises, it is hereby

**ORDERED and ADJUDGED**

That the motion to strike is **GRANTED**.

\_\_\_\_\_  
HON. DOUGLAS BRADY

ATTEST: VENETIA VELASQUEZ  
Clerk of the Court

BY: \_\_\_\_\_  
Deputy Clerk

*Distribution:*

Joel H. Holt  
Carl J. Hartmann  
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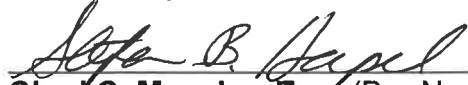
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**DEFENDANTS DIAGEO USVI, INC. AND CRUZAN VIRIL, LTD'S  
JOINT MOTION TO STRIKE UNDER RULE 12(f) OR, IN THE ALTERNATIVE,  
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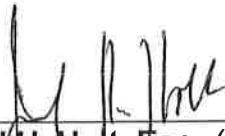
Defendants Cruzan VIRIL, Ltd. and Diageo USVI, Inc., hereby move to strike the class allegations in the Complaint pursuant to Rule 12(f) or, in the alternative, for a more definite statement pursuant to Rule 12(e). The basis for the motion is more fully set forth in the attached joint memorandum, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the motion should be granted. A proposed Order is also submitted.



Dated: July 29, 2013



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