

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH MEYERS,
on behalf of Plaintiff and the
class members described herein,

Plaintiff,

vs.

ARIZONA BEVERAGES USA LLC,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 1:20-cv-05543

Judge Andrea R. Wood
Magistrate Judge Jeffery Cummings

**DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S
CLASS ACTION COMPLAINT OR, ALTERNATIVELY, TO
TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

1. Defendant, Arizona Beverages USA LLC (“ABU”), pursuant to Federal Rule of Civil Procedure 12(b)(6), moves to dismiss the Class Action Complaint filed by Plaintiff (“Complaint”), Kenneth Meyers (“Plaintiff”), with prejudice, for the reasons more fully discussed in ABU’s Memorandum of Law filed contemporaneously herewith for reasons, including, but not limited to: (i) Plaintiff’s claims are preempted; (ii) the Complaint does not contain a plausible claim for relief; (iii) lack of pre-suit notice bars the warranty claims; (iv) no claim for implied warranty exists under the Magnuson-Moss Warranty Act; (v) the Safe Harbor provisions in the Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”) and the Indiana Deceptive Consumer Sales Act (“IDCSA”) apply so as to bar those causes of action; (vi) lack of pre-suit notice precludes claims under the IDCSA; (vii) failure to plead fraud with particularity as required by Rule 9(b); and (viii) for failure to state a claim for common law fraud.

2. Alternatively, pursuant to 28 U.S.C. § 1404(a), this action ought to be transferred to the United States District Court for the Eastern District of New York. Transfer of venue is warranted for the convenience of the parties, and witnesses, and to promote the interest of justice.

3. WHEREFORE, for the reasons set forth in its Memorandum of Law, ABU respectfully requests that this Court grant its Rule 12(b)(6) Motion to Dismiss, dismiss Plaintiff's Complaint with prejudice, or, alternatively, transfer venue of this action to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1404(a), or grant any such further relief this Court deems equitable and just.

Respectfully submitted,

ARIZONA BEVERAGES USA, LLC

By: /s/ Robert P. Donovan
Admitted Pro Hac Vice

Robert P. Donovan, Esq. (No. 037871988)
McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
570 Broad Street, Suite 1500
Newark, New Jersey 07102
Telephone No.: (973) 622-7711
rdonovan@mdmc-law.com

Casey Grabenstein, Esq. (No. 6289606)
SAUL EWING ARNSTEIN & LEHR LLP
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
Telephone No.: (312) 876-7810
casey.grabenstein@saul.com

Attorneys for Defendant, Arizona Beverages USA LLC

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on November 12, 2020, he caused the foregoing **Defendant's Rule 12(b)(6) Motion to Dismiss Plaintiff's Class Action Complaint or, Alternatively, to Transfer Venue Under 28 U.S.C. § 1404(a)**, to be filed electronically with the Clerk of the U.S. District Court, using the Court's CM/ECF system, which sent electronic notification to all parties who have appeared and are registered as CM/ECF participants in this matter.

/s/ Robert P. Donovan