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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 STACY SCIORTINO and ARIELLE
18 WEINSTOCK, Individually and on Behalf of All
Others Similarly Situated,

19 Plaintiffs,

20 vs.

21 PEPSICO, INC.,

22 Defendant.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Stacy Sciortino and Arielle Weinstock (“Plaintiffs”) allege the following based
2 upon personal knowledge as to themselves and their own acts, and upon information and belief
3 and the investigation by Plaintiffs’ counsel, which included, among other things, a review of
4 public documents, regulations and reports, and announcements made by PepsiCo, Inc. (“Pepsi”
5 or “Defendant”) as to all other matters. Plaintiffs believe that substantial additional evidentiary
6 support exists for the allegations set forth herein and will be available after a reasonable
7 opportunity for discovery.

8 **NATURE OF THE ACTION**

9 1. This action seeks to recover damages and remedy Pepsi’s continuing failure to
10 warn individuals in California of their exposure to the dangerous chemical 4-Methylimidazole
11 (“4-MEI”) when consuming Pepsi’s products: Pepsi, Diet Pepsi, and Pepsi One (the “Products”).

12 2. Indeed, 4-MEI is a chemical known to the State of California to cause cancer and
13 is contained in the Products in an amount sufficient to expose California consumers to substantial
14 health risks. Despite this fact, Pepsi provides no warnings whatsoever about the presence of 4-
15 MEI in the Products or the carcinogenic attributes of it.

16 3. As described more fully below, Plaintiffs are purchasers of the Products and have
17 been injured by Defendant’s acts and omissions concerning the use of 4-MEI. As such, Plaintiffs
18 seek relief in this action individually and as a class action on behalf of all purchasers in
19 California of Defendant’s Products that contained 4-MEI (the “Class”).

20 **JURISDICTION AND VENUE**

21 4. This Court has original jurisdiction over the claims asserted herein individually
22 and on behalf of the Class pursuant to 28 U.S.C. §1332, as amended in February 2005 by the
23 Class Action Fairness Act. Subject matter jurisdiction is proper because: (1) the amount in
24 controversy in this class action exceeds five million dollars, exclusive of interest and costs; and
25 (2) a substantial number of the members of the proposed class are citizens of a state different
26 from that of Defendant. Personal jurisdiction is proper as Defendant has sold the Products to
27 Plaintiffs and other consumers in this District and has purposefully availed itself of the privilege
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1 of conducting business activities within this District.

2 5. **Intradistrict Assignment (L.R. 3-2(b)):** This action arises in San Francisco
3 County, in that a substantial part of the events which gives rise to the claims asserted herein
4 occurred in San Francisco County.

5 6. Defendant Pepsi has distributed, marketed, advertised, labeled, and sold the
6 Products containing 4-MEI, which are the subject of the present complaint, in this District.
7 Thus, under 28 U.S.C. §§1391(c)(2) and (d), Defendant is deemed to reside in this District. As
8 such, venue is proper in this judicial district under 28 U.S.C. §1391(b)(1) because Defendant is
9 deemed to reside in this District and under 28 U.S.C. §1391(b)(2) because Defendant conducts
10 business in this District and a substantial part of the acts or omissions giving rise to the claims set
11 forth herein occurred in this District.

12 **PARTIES**

13 7. Plaintiff Stacy Sciortino is a citizen of California and an individual consumer.
14 During the Class Period, Plaintiff purchased the Products containing 4-MEI. Specifically,
15 Plaintiff purchased diet Pepsi on several occasions, including over the past four years and most
16 recently in January 2014 at the Safeway in San Francisco, California, where she made several of
17 the aforementioned purchases. Plaintiff would not have purchased the Products if she had
18 known they contained heightened levels of 4-MEI.

19 8. Plaintiff Arielle Weinstock is a citizen of California and an individual consumer.
20 During the Class Period, Plaintiff purchased the Products containing 4-MEI. Specifically,
21 Plaintiff purchased Pepsi and Pepsi One on several occasions, including her last purchase in
22 January 2014 at the Vons in Thousand Oaks, California, where she made several of the
23 aforementioned purchases. Plaintiff would not have purchased the Products if she had known
24 they contained heightened levels of 4-MEI.

25 9. Defendant PepsiCo, Inc. is a North Carolina corporation, headquartered at 700
26 Anderson Hill Road, Purchase, New York, 10577. Defendant manufacturers, distributes,
27 markets, advertises, and sells the Products in this District and throughout California and the rest
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1 of the United States.

2 **ALLEGATIONS OF FACT**

3 10. 4-methylimidazole (4-MEI) is a chemical compound that forms during the
4 manufacturing of certain types of caramel coloring (known as Class III and Class IV caramel
5 coloring) that are used to color cola-type beverages and other foods. On United States product
6 labels it appears simply as “caramel coloring.”

7 11. A two year study conducted on mice showed an increased incidence of lung
8 tumors when exposed to 4-MEI. As such, many organizations, including the World Health
9 Organization’s International Agency for Research on Cancer, say that 4-MEI may possibly cause
10 cancer.

11 12. According to Urvashi Rangan, toxicologist and executive director of Consumer
12 Reports’ Food Safety & Sustainability Center on ConsumerReports.org, “There’s no reason why
13 consumers should be exposed to an avoidable and unnecessary risk that can stem from coloring
14 food brown . . . Manufacturers have lower 4-MeI alternatives available to them. *Ideally, there*
15 *would be no 4-MeI in food.*”

16 [Emphasis added.]

17 13. On January 7, 2011, the State of California officially listed 4-MEI as a chemical
18 known to cause cancer. 27 Cal. Code Regs. Section 27001(b). The State of California set a limit
19 at 29 micrograms of 4-MEI. Effective January 7, 2012, any products containing more than the
20 29 micrograms of 4-MEI became subject to the clear and reasonable warning requirements of the
21 California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which
22 prohibits exposing people to chemicals listed by the State of California as known to cause
23 cancer, birth defects, or other reproductive harm without a “clear and reasonable warning.”

24 14. The Pepsi Products at issue here do not, and have never, contained such a
25 warning, despite the fact that they contain extremely high levels of 4-MEI.

26 15. A recent study conducted by Consumer Reports, in fact, found that Pepsi One
27 contains as much as **43.5 micrograms of 4-MEI**. As reference, competing products contained
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1 fewer than 5 micrograms of 4-MEI.

2 16. No reasonable consumer would know, or have reason to know, that the Products
3 contain heightened levels of 4-MEI, in violation of Proposition 65. This information is within
4 the exclusive knowledge of Defendant and is not known to ordinary consumers, including
5 Plaintiffs and members of the Class. Defendant actively concealed this material fact from
6 consumers, including Plaintiffs and members of the Class.

7 **DAMAGES TO PLAINTIFFS AND THE CLASS**

8 17. Plaintiffs purchased the Products based on Defendant's labeling, advertising, and
9 marketing of the Products.

10 18. Defendant created, manufactured, distributed, and sold products that contain 4-
11 MEI without any warning label and are, thus, misbranded. Misbranded products cannot be
12 legally manufactured, distributed, sold, or held, and have no economic value and are legally
13 worthless as a matter of law.

14 19. Moreover, Plaintiffs and the members of the Class would not have purchased the
15 Products over comparable products that do not contain 4-MEI at such high levels.

16 **TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT CONCEALMENT,**
17 **EQUITABLE TOLLING, AND CONTINUING VIOLATIONS**

18 20. Plaintiffs did not discover, and could not have discovered, through the exercise of
19 reasonable diligence, the existence of the claims sued upon herein until immediately prior to
20 commencing this civil action.

21 21. Any applicable statutes of limitation have been tolled by Defendant's affirmative
22 acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above
23 reveal.

24 22. Because of the self-concealing nature of Defendant's actions and affirmative acts
25 of concealment, Plaintiffs and the Class assert the tolling of any applicable statutes of limitations
26 affecting the claims raised herein.

1 of a general or common interest of many persons and it is impractical to bring them all before the
2 Court. The disposition of the claims of the members of the Class in this class action will
3 substantially benefit both the parties and the Court.

4 29. There are questions of law and fact common to the Class for purposes of Rule
5 23(a)(2), including whether Defendant's labels and packaging include uniform omissions and/or
6 misrepresentations that misled Plaintiffs and the other members of the Class as to the amount of
7 4-MEI in the Products and the known carcinogenic effects of 4-MIE. The members of the Class
8 were and are similarly affected by having purchased the Products for their intended and
9 foreseeable purpose as promoted, marketed, advertised, packaged, and labeled by Defendant as
10 set forth in detail herein, and the relief sought herein is for the benefit of Plaintiffs and other
11 members of the Class. Thus, there is a well-defined community of interest in the questions of
12 law and fact involved in this action and affecting the parties.

13 30. Plaintiffs assert claims that are typical of the claims of the Class for purposes of
14 Rule 23(a)(3). Plaintiffs and all members of the Class have been subjected to the same wrongful
15 conduct because they have purchased the Products, which contain high amounts of 4-MEI.

16 31. Plaintiffs will fairly and adequately represent and protect the interests of the other
17 members of the Class for purposes of Rule 23(a)(4). Plaintiffs have no interests antagonistic to
18 those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this
19 action and have retained counsel experienced in litigation of this nature to represent them.
20 Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

21 32. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted
22 on grounds that apply generally to the Class, so that final injunctive relief or corresponding
23 declaratory relief is appropriate respecting the Class as a whole.

24 33. Class certification is appropriate under Rule 23(b)(3) because common questions
25 of law and fact substantially predominate over any questions that may affect only individual
26 members of the Class. Among these common questions of law and fact are:

- 27 a. whether the Products contain 4-MEI and in what amount;

- 1 b. whether 4-MEI is potentially dangerous in those amounts;
- 2 c. whether Defendant's conduct is unethical, oppressive, unscrupulous,
- 3 and/or substantially injurious to consumers;
- 4 d. whether information concerning the amount of 4-MEI in the Products is
- 5 material to a reasonable consumer;
- 6 e. whether a duty arose in Pepsi to disclose the facts concerning the 4-MEI in
- 7 the Products;
- 8 f. whether Plaintiffs and members of the Classes are entitled to injunctive
- 9 and other equitable relief; and
- 10 g. the amount of restitution to be paid by Defendant.

11 34. Defendant engaged in a common course of conduct giving rise to the legal rights
12 sought to be enforced by the members of the Class. Similar or identical statutory and common
13 law violations and deceptive business practices are involved. Individual questions, if any, pale
14 by comparison to the numerous common questions that predominate.

15 35. The injuries sustained by Plaintiffs and the members of the Class flow, in each
16 instance, from a common nucleus of operative facts – Defendant's misconduct.

17 36. Plaintiffs and the members of the Class have been damaged by Defendant's
18 misconduct. The members of the Class have paid for a product that they would not have
19 purchased in the absence of Defendant's deceptive scheme.

20 37. Proceeding as a class action provides substantial benefits to both the parties and
21 the Court because this is the most efficient method for the fair and efficient adjudication of the
22 controversy. Members of the Class have suffered, and will suffer, irreparable harm and damages
23 as a result of Defendant's wrongful conduct. Because of the nature of the individual claims of
24 the members of the Class, few, if any, could or would otherwise afford to seek legal redress
25 against Defendant for the wrongs complained of herein, and a representative class action is
26 therefore the appropriate, superior method of proceeding and essential to the interests of justice
27 insofar as the resolution of claims of the members of the Class is concerned. Absent a

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1 representative class action, members of the Class would continue to suffer losses for which they
2 would have no remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains.
3 Even if separate actions could be brought by individual members of the Class, the resulting
4 multiplicity of lawsuits would cause undue hardship, burden, and expense for the Court and the
5 litigants, as well as create a risk of inconsistent rulings, which might be dispositive of the
6 interests of the other members of the Class who are not parties to the adjudications and/or may
7 substantially impede their ability to protect their interests.

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9 **CAUSES OF ACTION**

10 **FIRST CLAIM FOR RELIEF**

11 **(Violations of California Business & Professions Code §17200 *et seq.*
Based on Fraudulent Acts and Practices)**

12 38. Plaintiffs reallege each and every allegation contained above as if fully set forth
13 herein and, to the extent necessary, plead this cause of action in the alternative.

14 39. Plaintiffs bring this claim individually and on behalf of members of the Class
15 under California law.

16 40. Under California Business & Professions Code §17200, any business act or
17 practice that is likely to deceive members of the public constitutes a fraudulent business act or
18 practice.

19 41. Defendant has engaged, and continues to engage, in conduct that is likely to
20 deceive members of the public. This conduct includes, but is not limited to, failing to disclose
21 that the Products contain levels of 4-MEI, a known carcinogenic, in violation of Proposition 65.

22 42. After reviewing the packaging for the Products, Plaintiffs purchased the Products
23 in reliance on Defendant's omissions and/or representations. Plaintiffs would not have
24 purchased the Products at all, but for Defendant's false promotion of the Products. Plaintiffs and
25 the Class have all paid money for the Products. However, Plaintiffs and the Class did not obtain
26 the full value or any value of the advertised products due to Defendant's misrepresentations
27 and/or omissions regarding 4-MEI. Accordingly, Plaintiffs and the Class have suffered injury in
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1 fact and lost money or property as a direct result of Defendant's misrepresentations and material
2 omissions.

3 43. By committing the acts alleged above, Defendant has engaged in fraudulent
4 business acts and practices, which constitute unfair competition within the meaning of California
5 Business & Professions Code §17200.

6 44. In accordance with California Business & Professions Code §17203, Plaintiffs
7 seek an order: (1) enjoining Defendant from continuing to conduct business through its
8 fraudulent conduct; and (2) requiring Defendant to conduct a corrective advertising campaign.

9 45. As a result of Defendant's conduct, Plaintiffs seek injunctive and restitutionary
10 relief under California Business & Professions Code §17203.

11 **SECOND CLAIM FOR RELIEF**

12 **(Violations of California Business & Professions Code §17200, et seq.,**
13 **Based on Commission of Unlawful Acts)**

14 46. Plaintiffs reallege each and every allegation contained above as if fully set forth
15 herein and, to the extent necessary, plead this cause of action in the alternative.

16 47. Plaintiffs bring this claim individually and on behalf of members of the Class
17 under California law.

18 48. The violation of any law constitutes an unlawful business practice under
19 California Business & Professions Code §17200.

20 49. Defendant has violated §17200's prohibition against engaging in unlawful acts
21 and practices by, *inter alia*, making the representations and omissions of material facts, as set
22 forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711,
23 1770, California Business & Professions Code §17200 *et seq.*, California Health & Safety Code
24 §110660, 21 U.S.C. §321, by violating Proposition 65, and by violating the common law.

25 50. By violating these laws, Defendant has engaged in unlawful business acts and
26 practices, which constitute unfair competition within the meaning of Business & Professions
27 Code §17200.

1 against committing fraud and deceit; (2) California Civil Code §1770 against committing acts
2 and practices intended to deceive consumers regarding the representation of goods in certain
3 particulars; (3) California Health & Safety Code §110660 and 21 U.S.C. §321 against
4 misbranding food; and (4) Proposition 65. Defendant gains an unfair advantage over its
5 competitors, whose labeling, advertising, and marketing for other similar products must comply
6 with these laws.

7 58. Defendant's conduct is substantially injurious to consumers. Such conduct has
8 caused, and continues to cause, substantial injury to consumers because consumers would not
9 have purchased the Products at all but for Defendant's omissions regarding the levels of 4-MEI
10 contained in the Products. Such injury is not outweighed by any countervailing benefits to
11 consumers or competition. Indeed, no benefit to consumers or competition results from
12 Defendant's conduct. Since consumers reasonably rely on Defendant's representations and
13 injury results from ordinary use of the Products, consumers could not have reasonably avoided
14 such injury. *Davis v. Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also*
15 *Drum v. San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third
16 test based on the definition of "unfair" in Section 5 of the FTC Act).

17 59. By committing the acts alleged above, Defendant has engaged in unfair business
18 acts and practices which constitute unfair competition within the meaning of Business &
19 Professions Code §17200.

20 60. Plaintiffs purchased the Products as fit for consumption and its omissions
21 regarding the elevated levels of 4-MEI in the Products. Plaintiffs would not have purchased the
22 Products at all but for Defendant failing to disclose that they contained 4-MEI in high quantities.
23 Plaintiffs and the Class have all paid money for the Products. However, Plaintiffs and the Class
24 did not obtain the full value of the advertised products due to Defendant's omissions and
25 misrepresentations regarding the nature of said Products. Accordingly, Plaintiffs and the Class
26 have suffered injury in fact and lost money or property as a direct result of Defendant's
27 misrepresentations and material omissions.

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1 68. Plaintiffs and Class members suffered injuries caused by Defendant's
2 misrepresentations and/or omissions because they were induced to purchase the Products they
3 would not have otherwise purchased if they had known that they contained heightened levels of
4 4-MEI.

5 69. In compliance with the provisions of California Civil Code §1782, Plaintiff
6 Weinstock sent written notice to Defendant on January 29, 2014 informing Defendant of her
7 intention to seek damages under California Civil Code §1750, *et seq.*, unless Defendant offers
8 appropriate consideration or other remedy to all affected consumers. Plaintiffs intend to amend
9 this Complaint to seek damages pursuant to California Civil Code §1781(a) should Defendant
10 fail to adequately and fully compensate Plaintiffs and the Class.

11 70. Plaintiffs and the Class members are entitled to, pursuant to California Civil Code
12 §1780, an order enjoining the above-described wrongful acts and practices of Defendant, the
13 payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the
14 Court under California Civil Code §1780.

15 **FIFTH CLAIM FOR RELIEF**

16 **(Breach of Implied Warranty)**

17 71. Plaintiffs reallege each and every allegation contained above as if fully set forth
18 herein and, to the extent necessary, plead this cause of action in the alternative.

19 72. The Uniform Commercial Code §2-314 provides that unless excluded or
20 modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if
21 the seller is a merchant with respect to goods of that kind.

22 73. Defendant manufactured, marketed, and sold the Products and represented that the
23 Products were fit for consumption by consumers. Contrary to such representations, Defendant
24 failed to disclose that the Products were not fit for consumption as they contain an elevated level
25 of 4-MEI, a chemical known to the State of California to cause cancer.

26 74. At all times, California and the following 48 states listed below, including the
27 District of Columbia, have codified and adopted the provisions of the Uniform Commercial Code
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1 governing the implied warranty of merchantability: Ala. Code §7-2-314; Alaska Stat.
2 §45.02.314; Ariz. Rev. Stat. Ann. §47-2314; Ark. Code Ann. §4-2-314; Cal. Com. Code §2314;
3 Colo. Rev. St. §4-2-314; Conn. Gen. Stat. Ann. §42a-2-314; 6 Del. C. §2-314; D.C. Code §28:2-
4 314; Fla. Stat. Ann. §672.314; Ga. Code Ann. §11-2-314; Haw. Rev. Stat. §490:2-314; Idaho
5 Code §28-2-314; 810 Ill. Comp. Stat. Ann. 5/2-314; Ind. Code Ann. §26-1-2-314; Iowa Code
6 Ann. §554.2314; Kan. Stat. Ann. §84-2-314; Ky. Rev. Stat. Ann. §355.2-314; La. Civ. Code
7 Ann. art. §2520; 11 Me. Rev. Stat. Ann. §2-314; Md. Code Ann. §2-314; Mass. Gen. Laws Ch.
8 106 §2-314; Mich. Comp. Laws Ann. §440.2314; Minn. Stat. Ann. §336.2-314; Miss. Code Ann.
9 §75-2-314; Mo. Rev. Stat. §400.2-314; Mont. Code Ann. §30-2-314; Nev. Rev. Stat. U.C.C
10 §104.2314; N.H. Rev. Ann. §382-A:2-314; N.J. Stat. Ann. §12A:2-314; N.M. Stat. Ann. §55-2-
11 314; N.Y. U.C.C. Law §2-314; N.C. Gen. Stat. Ann. § 25-2-314; N.D. Stat § 41-02-314; Ohio
12 Rev. Code Ann. §1302.27; Okla. Stat. tit. 12A §2-314; Or. Rev. Stat. §72.3140; 13 Pa. Stat. Ann.
13 §2314; R.I. Gen. Laws §6A-2-314; S.C. Code Ann. §36-2-314; S.D. Stat. §57A-2-314; Tenn.
14 Code Ann. §47-2-314; Tex. Bus. & Com. Code Ann. §2-314; Utah Code Ann. §70A-2-314; Va.
15 Code §8.2-314; Vt. Stat. Ann. 9A §2-314; W. Va. Code §46-2-314; Wash. Rev. Code §62A 2-
16 314; Wis. Stat. Ann. §402.314 and Wyo. Stat. §34.1-2-314.

17 75. As a manufacturer and marketer of the Products, Defendant is a “merchant”
18 within the meaning of the various states’ commercial codes governing the implied warranty of
19 merchantability.

20 76. Further, Defendant designed, manufactured, distributed, marketed, and/or sold the
21 Products. The Products are “goods,” as defined in the various states’ commercial codes
22 governing the implied warranty of merchantability.

23 77. Defendant knew that Plaintiffs and other consumers relied upon it to manufacture
24 and sell the Products as reasonably safe and would not endanger their health.

25 78. At the time that Defendant manufactured, sold, and/or distributed the Products,
26 Defendant knew the purpose for which the Products were intended and impliedly warranted that
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1 the Products were of merchantable quality; were free of chemicals known to the State of
2 California to cause cancer; and were safe and fit for consumption.

3 79. Defendant breached its implied warranties in connection with its sale of the
4 Products to Plaintiffs and members of the Class. The Products were not safe and fit for
5 consumption, as they contained an improper amount of 4-MEI, a chemical known to the State of
6 California to cause cancer.

7 80. Because Pepsi has publicly acknowledged the amount of 4-MEI in its Products
8 exceeds 29 micrograms per can, Defendant has actual knowledge that the Products exceeded the
9 amount of 4-MEI allowed under Proposition 65. Therefore, the Products are not fit for
10 consumption and Plaintiffs were, therefore, not required to notify Defendant of its breach. If
11 notice is required, Plaintiffs and the Class have adequately provided Defendant of such notice
12 through the filing of this lawsuit.

13 **SIXTH CLAIM FOR RELIEF**

14 **(Strict Liability- Failure to Warn)**

15 81. Plaintiffs reallege each and every allegation contained above as if fully set forth
16 herein and, to the extent necessary, plead this cause of action in the alternative herein.

17 82. Defendant manufactured, marketed, sold, and/or distributed the Products to
18 consumers.

19 83. The Products that Defendant manufactured, marketed, sold, and/or distributed
20 were defective in design and manufacturing. Further, the Products were defective when they left
21 the control of the Defendant such that: (1) the Products exceeded the amount of 4-MEI allowed
22 under Proposition 65; and (2) they were unreasonably dangerous, more dangerous than an
23 ordinary consumer would expect, as they contain a known carcinogenic.

24 84. Defendant knew or should have known that the Products contained a non-obvious
25 danger in 4-MEI. Defendant knew that Plaintiffs and the Class would consume the products
26 without first testing them for carcinogens. However, Defendant failed to warn Plaintiffs and
27 members of the Class as to the adverse health effects that the Products could have on them.

1 85. The Products were expected to, and did reach, Plaintiffs and other members of the
2 Class without substantial change in condition. The Products Defendant manufactured, marketed,
3 sold, and/or distributed were defective due to their levels of 4-MEI and their inadequate
4 warnings of the presence of a known carcinogen.

5 86. Had Plaintiffs and members of the Class been warned about the adverse health
6 effects that the Products posed to them, or were warned that the Products contained 4-MEI, a
7 known carcinogen, they would not have purchased the Products.

8 87. As a direct and proximate result of the defective condition of the Products as
9 manufactured, marketed, sold, and/or distributed by Defendant, Plaintiffs and other members of
10 the Class have been injured, including an increased risk of exposure to 4-MEI, a toxic chemical
11 which is a known carcinogen and which violates Proposition 65.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows:

14 A. That the Court certify the Class under Rule 23 of the Federal Rules of Civil
15 Procedure and appoint Plaintiffs as Class Representative and their attorneys as Class Counsel to
16 represent the members of the Class;

17 B. That the Court declare that Defendant's conduct violates the statutes referenced
18 herein;

19 C. That the Court preliminarily and permanently enjoin Defendant from conducting
20 business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and
21 misleading labeling and marketing and other violations of law described in this Complaint;

22 D. That the Court order Defendant to conduct a corrective advertising and
23 information campaign advising consumers that the Products contain 4-MEI in excess of
24 California's Proposition 65;

25 E. That the Court order Defendant to implement whatever measures are necessary to
26 remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading
27 advertising, and other violations of law described in this Complaint;

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1 F. That the Court order Defendant to notify each and every individual and/or
2 business who purchased the Products of the pendency of the claims in this action in order to give
3 such individuals and businesses an opportunity to obtain restitution from Defendant;

4 G. That the Court order Defendant to pay restitution to restore to all affected persons
5 from all funds acquired by means of any act or practice declared by this Court to be an unlawful,
6 unfair, or a fraudulent business act or practice, untrue or misleading labeling, advertising, and
7 marketing, plus pre- and post-judgment interest thereon;

8 H. That the Court order Defendant to disgorge all monies wrongfully obtained and
9 all revenues and profits derived by Defendant as a result of its acts or practices as alleged in this
10 Complaint;

11 I. That the Court award damages to Plaintiffs and the Class;

12 J. That the Court grant Plaintiffs reasonable attorneys' fees and costs of suit
13 pursuant to California Code of Civil Procedure §1021.5, California Civil Code §1780(d), the
14 common fund doctrine, and/or any other appropriate legal theory; and

15 K. That the Court grant such other and further relief as may be just and proper.

16 **JURY DEMAND**

17 Plaintiffs demand a trial by jury on all causes of action so triable.

18 DATED: January 31, 2014

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Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

STACY SCIORTINO and ARIELLE WEINSTOCK

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Christopher M. Burke, Scott+Scott, Attorneys at Law, LLP, 707 Broadway, Suite 1000, San Diego, CA 92101 619-233-4565

DEFENDANTS

PEPSICO, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332
Brief description of cause: Unlawful, unfair and deceptive marketing of Pepsi Cola products.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/31/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher M. Burke

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.