

1 AZRA Z. MEHDI (220406)  
THE MEHDI FIRM, PC  
2 One Market  
Spear Tower, Suite 3600  
3 San Francisco, CA 94105  
4 (415) 293-8039  
(415) 293-8001 (fax)  
5 azram@themehdifirm.com

6 Attorney for Plaintiff and the [Proposed] Class

7

8

UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

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REGINA LANGLEY, on Behalf of Herself and  
11 All Others Similarly Situated,

Case No.:

12

Plaintiff,

COMPLAINT

13

vs.

CLASS ACTION

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PEPSICO, INC.,

DEMAND FOR JURY TRIAL

15

Defendant.

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1 **NATURE OF THE ACTION**

2 1. Plaintiff Regina Langley, by and through her undersigned counsel, brings this class action  
3 against defendant PepsiCo, Inc. (“Pepsi” or the “Company”) on behalf of herself and all others similarly  
4 situated who purchased Pepsi One or Diet Pepsi drinks in the State of California during the Class Period  
5 (as defined *infra*, ¶21). On multiple occasions during the Class Period, plaintiff Langley purchased Pepsi  
6 One and Diet Pepsi drinks in California at convenience and grocery stores.

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8 2. California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly  
9 referred to as “Proposition 65”) in Section 25249.6 states: “No person in the course of doing business  
10 shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer  
11 or reproductive toxicity without first giving clear and reasonable warning to such individual.” Pepsi One  
12 and Diet Pepsi during the Class Period contained a known carcinogen, 4-methylimidazole (“4-MeI”), in  
13 quantities known by the State of California to risk cancer, birth defects or other reproductive harm, but  
14 Pepsi knowingly and intentionally failed to warn plaintiff and California consumers that its drinks would  
15 expose them to cancer or reproductive toxicity.  
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17 3. Plaintiff therefore brings this action to seek relief on behalf of herself and all others  
18 similarly situated who purchased Pepsi One and Diet Pepsi drinks in California during the Class Period.  
19 Plaintiff alleges violations of the California Unfair Competition Law (“UCL”), California’s Consumer  
20 Legal Remedies Act (“CLRA”), and False Advertising Law (“FAL”) and seeks declaratory, injunctive,  
21 and other equitable relief, as well as restitution.  
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23 **PARTIES**

24 4. Plaintiff Regina Langley is a resident of San Francisco, California. During the Class  
25 Period, Ms. Langley purchased and consumed bottled or canned Pepsi One and Diet Pepsi in San  
26 Francisco County on multiple occasions. The cans or bottles of Pepsi One or Diet Pepsi purchased by  
27 Ms. Langley bore no warning whatsoever that the products contained chemicals known by the State of  
28 California to cause cancer and birth defects or other reproductive harm. Had the cans or bottles

1 included such a warning, Ms. Langley would have factored in the health risks attendant to the purchase  
2 and consumption of the drinks. As a result, either she would not have purchased the drinks or she  
3 would not have paid as much as she did for the drinks.

4 5. Defendant PepsiCo, Inc. is a corporation organized under the laws of the State of North  
5 Carolina and having its principal place of business at 700 Anderson Hill Road in Purchase, New York  
6 10577.

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8 **JURISDICTION AND VENUE**

9 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d), the Class  
10 Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5 million and at  
11 least one member of the class is a citizen of a state different from defendant.

12 7. The Court has personal jurisdiction over defendant pursuant to Cal. Civ. Proc. Code  
13 §410.10 as a result of defendant's substantial, continuous and systematic contacts with the State and  
14 because defendant has purposely availed itself of the benefits and privileges of conducting business  
15 activities within the State.

16 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c) because  
17 defendant resides (i.e., is subject to personal jurisdiction) in this District and a substantial part of the  
18 events or omissions giving rise to the claims, including the offering for sale and purchase of the Pepsi  
19 One and Diet Pepsi drinks by plaintiff and the putative class members, occurred in this judicial district.

20  
21 **THE UNDISCLOSED CARCINOGEN FOUND IN DEFENDANT'S DRINKS**

22 9. 4-MeI is an impurity generated during the manufacture of caramel colors III and IV,  
23 which are used in Diet Pepsi and Pepsi One to turn them brown-MeI is an impurity generated during  
24 the manufacture of caramel colors III and IV used in some soft drinks.

25 10. While the listed ingredient, "Caramel Color," on cans and bottles of Diet Pepsi and  
26 Pepsi One may sound harmless or even appetizing, in reality, 4-MeI has been found by the National  
27 Toxicology Program to cause lung tumors in laboratory animals.  
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1           11.       According to Urvashi Rangan, a toxicologist and Executive Director of the Consumer  
2 Reports Food Safety & Sustainability Center, “There is no ‘safe’ level of 4-MeI, but if you have to set a  
3 threshold, it should be well below the Prop 65 level (29 micrograms/day) and more like 3  
4 micrograms/day.” Dr. Rangan calls exposure to 4-MeI “an unnecessary risk.”

5           12.       Indeed, since January 7, 2012, the State of California has required manufacturers to label  
6 a product sold within the State with a Proposition 65 warning if it exposes consumers to more than 29  
7 micrograms of 4-MeI per day, and particularly where the exposure comes from consumption.

8           13.       According to testing performed by Consumer Reports, from April to September 2013,  
9 Pepsi One sold in California contained an average 43.5 micrograms of 4-MeI per can, and during  
10 December 2013, Pepsi One sold in California contained an average of 39.5 micrograms of 4-MeI per  
11 can.  
12

13           14.       According to testing performed by Consumer Reports, from April to September 2013,  
14 Diet Pepsi sold in California contained an average 30.5 micrograms of 4-MeI per can.  
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16                           **PEPSI’S UNLAWFUL NON-DISCLOSURE OF THE CARCINOGEN**

17           15.       Pepsi had and continues to have exclusive knowledge of material facts concerning the  
18 amount of 4-MeI in Pepsi One and Diet Pepsi drinks that were sold in California. As the creator and  
19 manufacturer of Pepsi One and Diet Pepsi, the Company was aware of both the presence and quantity  
20 of 4-MeI in the subject drinks. Defendant nevertheless intentionally chose not to warn unsuspecting  
21 consumers like plaintiff and all others who purchased Pepsi One and Diet Pepsi drinks in California  
22 during the Class Period.  
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24           16.       In advertising and selling Diet Pepsi and Pepsi One, the Company has in the past and  
25 continues deceptively to omit any warning that the products contained chemicals known by the State of  
26 California to cause cancer and birth defects or other reproductive harm. The label for Pepsi One is  
27 illustrated below:  
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17. The label for Diet Pepsi similarly deceptively omits any warning that the products contained chemicals known by the State of California to cause cancer and birth defects or other reproductive harm:



1 18. Pepsi's omissions pose an unreasonable safety risk, as unsuspecting consumers have no  
2 reason to know that the drinks they are purchasing and consuming and that were actively marketed and  
3 promoted in California, contain chemicals known by the State of California to cause cancer and birth  
4 defects or other reproductive harm.

5 19. Because plaintiff and putative class members were not warned of the significant presence  
6 of this known carcinogen, they had no reason to take reasonable precautions, such as: (1) avoiding Pepsi  
7 One and Diet Pepsi altogether; (2) drinking alternative drinks, including other carbonated soda  
8 beverages that contain significantly less 4-MeI levels than Pepsi One or Diet Pepsi; (3) curtailing the  
9 amount of Pepsi One or Diet Pepsi consumed so as to limit exposure to the carcinogen; or (4) seeking  
10 medical advice as to the consequences of this exposure.

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12 **PLAINTIFF'S PURCHASES AND THE INJURIES PROXIMATELY CAUSED BY**  
13 **DEFENDANT'S ACTIONS AND OMISSIONS**

14 20. Plaintiff Langley is a repeat soft drink purchaser. During the Class Period, Ms. Langley  
15 purchased and consumed Pepsi One and Diet Pepsi drinks in canned and/or bottled form in San  
16 Francisco County in the State of California on multiple occasions. None of the Pepsi One or Diet Pepsi  
17 drink containers that Ms. Langley purchased in California and from which she consumed her drinks  
18 contained a warning to the effect that the drinks contained chemicals known by the State of California  
19 to cause cancer and birth defects or other reproductive harm. Had Ms. Langley been made aware of this  
20 significant fact, she either: (1) would not have purchased or consumed Pepsi One and Diet Pepsi; (2)  
21 would have purchased or consumed a lesser quantity of the drinks than she did; or (3) would have paid  
22 a reduced price for the drinks reflecting the health risks attendant to them.

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24 **CLASS ACTION ALLEGATIONS**

25 21. Pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent a class of all  
26 persons who purchased Diet Pepsi, or Pepsi One in California during the four years preceding the filing  
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1 of this Complaint (“the Class Period”) primarily for personal, family, or household use, and not for  
2 resale (the “Class”).

3           22.     The members in the proposed Class and subclass are so numerous that individual joinder  
4 of all members is impracticable, and the disposition of the claims of all Class members in a single action  
5 will provide substantial benefits to the parties and Court.

6           23.     Questions of law and fact common to plaintiff and the Class exist and predominate over  
7 any such questions affecting only individual Class members. Among these common, predominating  
8 questions are:  
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- 10           a.     Whether the Pepsi One and Diet Pepsi beverages contain 4-MeI;  
11           b.     The amount of 4-MeI that Pepsi One and Diet Pepsi contain;  
12           c.     Whether 4-MeI is a carcinogen known to the State of California that requires a  
13 warning pursuant to Proposition 65;  
14           d.     The amount of 4-MeI that triggers a warning pursuant to Proposition 65;  
15           e.     Whether a warning that Pepsi One and Diet Pepsi beverages contain chemicals  
16 known by the State of California to cause cancer and birth defects or other  
17 reproductive harm would be material to a reasonable consumer;  
18           f.     The proper equitable and injunctive relief; and  
19           g.     The proper amount of restitution.

20           24.     Plaintiff’s claims are typical of Class members’ claims in that they are based on the same  
21 underlying facts, events, and circumstances relating to Pepsi’s conduct; namely, the lack of a Proposition  
22 65 warning on Pepsi One and Diet Pepsi drinks sold within the State of California that the beverages  
23 contain chemicals known by the State of California to cause cancer and birth defects or other  
24 reproductive harm.

25           25.     Plaintiff will fairly and adequately represent and protect the interests of the Class, has no  
26 interests incompatible with the interests of the Class, and has retained counsel competent and  
27 experienced in class litigation.  
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1           26.     The Class is sufficiently large for purposes of class litigation because it contains at least  
2 hundreds of thousands of members who purchased Pepsi One or Diet Pepsi beverages in California  
3 during the Class Period.

4           27.     Class treatment is superior to other options for resolution of the controversy because the  
5 relief sought for each Class member is relatively small such that, absent representative litigation, it would  
6 be unfeasible for Class members to redress the wrongs done to them. Moreover, absent class-wide  
7 adjudication, there would be a risk of multiple lawsuits against defendant that could impose inconsistent  
8 and incompatible standards of conduct on Pepsi regarding, *inter alia*, its labeling and disclosure  
9 obligations.

10           28.     Pepsi has acted or refused to act on grounds generally applicable to the Class thereby  
11 making final injunctive relief and corresponding declaratory relief appropriate. Specifically Pepsi's failure  
12 to warn has been uniform with respect to all Pepsi One and Diet Pepsi drink containers sold in the State  
13 of California during the Class Period. Therefore, if plaintiff prevails on the merits of her claim, final  
14 injunctive relief mandating that Pepsi provide this disclosure to all Class members and to the consuming  
15 public at large would be proper.

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18                                 **COUNT I**  
19                                 **(Violation of the CLRA, Cal. Civ. Code Section 1750 *et seq.*)**

20           29.     Plaintiff incorporates by reference the allegations of this class action Complaint with the  
21 same force and effect as if those allegations had been fully restated here.

22           30.     The CLRA prohibits deceptive practices in connection with the conduct of a business  
23 that provides goods, property, or services primarily for personal, family, or household purposes.

24           31.     At all relevant times during the Class Period, plaintiff and the putative Class members  
25 were “consumers” within the meaning of the CLRA.

26           32.     Pepsi's policies, acts, and practices of manufacturing, distributing, marketing, promoting,  
27 selling, and advertising Pepsi One and Diet Pepsi beverages in the State of California without any  
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1 warning that the products contained chemicals known by the State of California to cause cancer and  
2 birth defects or other reproductive harm were designed to, and did, result in the purchase and use of the  
3 products primarily for personal, family, or household purposes, and violated and continue to violate the  
4 following sections of the CLRA. Specifically, Pepsi's conduct has violated at least the following statutory  
5 subsections of the CLRA, Cal. Civ. Code §:

- 6 a. 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
7 they do not have;
- 8 b. 1770(a)(7): representing that goods are of a particular standard, quality, or grade  
9 if they are of another; and
- 10 c. 1770(a)(9): advertising goods with intent not to sell them as advertised.

11 18. Pepsi had a legal duty to warn that Pepsi One and Diet Pepsi contained chemicals  
12 known by the State of California to cause cancer and birth defects or other reproductive harm. This  
13 legal duty arose under statute because it was required under §25249.6 of California's Safe Drinking  
14 Water and Toxic Enforcement Act of 1986. Pepsi's legal duty to warn also arose under California case  
15 law interpreting the CLRA because, including within the Pepsi One and Diet Pepsi drinks, 4-MeI in the  
16 quantities that were present in these drinks without informing consumers of the presence of such a  
17 known carcinogen, posed a real and significant safety risk to plaintiff and the putative Class members.

18 19. As a result, plaintiff and the putative Class members have suffered irreparable harm and  
19 are entitled to injunctive and equitable relief, as well as reasonable attorneys' fees and costs of suit. At  
20 this time, plaintiff does not currently seek monetary damages as part of her CLRA claim. Following the  
21 filing of this class action Complaint, plaintiff will mail to defendant in the manner required by the statute  
22 a CLRA demand letter. If defendant does not agree to and perform the relief requested within that  
23 demand letter within 30 days of its receipt, plaintiff reserves the right to then amend this class action  
24 Complaint to also then assert a claim for relief for money damages under the CLRA.

25 20. In compliance with Cal. Civ. Code §1780(d), plaintiff Langley's affidavit of venue is filed  
26 concurrently herewith.  
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**COUNT II**

**(Violation of California’s FAL, Cal. Bus. & Prof. Code Section 17500 *et seq.*)**

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3 21. Plaintiff incorporates by reference the allegations of this class action Complaint with the  
4 same force and effect as if those allegations had been fully restated here.

5 22. The FAL prohibits any statement in connection with the sale of goods “which is untrue  
6 or misleading,” Cal. Bus. & Prof. Code §17500, including deceptive omissions of material fact.

7 23. Pepsi promoted, marketed and advertised its Pepsi One and Diet Pepsi drinks during the  
8 Class Period by, *inter alia*, affixing a marketing label to the bottles of each of these two beverages or by  
9 imprinting marketing material on the can containers of these two beverages that touted the drink name  
10 and its supposed superior attributes. Plaintiff and the putative Class members were exposed to these  
11 labels or imprints every time they purchased their drinks, as the labels or container printing was either  
12 affixed to the bottle or imprinted on the can of the product being purchased. *See* samples of the label on  
13 the bottle and the imprinting on the can of Pepsi One and Diet Pepsi, ¶¶16–17, *supra*.

14  
15 24. As illustrated above, none of the bottle labels or can imprints for either of these two  
16 drinks warn that they contain chemicals known by the State of California to cause cancer and birth  
17 defects or other reproductive harm.

18 25. Pepsi’s deceptive omission of the warning was likely to deceive reasonable consumers  
19 and the public, particularly when California law required that such disclosure be made.

20 26. Pepsi knew, or reasonably should have known, that it was deceptively omitting material  
21 information.  
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23 27. Plaintiff and the putative Class members are entitled to injunctive and equitable relief  
24 (including, but not limited to, corrective advertising or other forms of disclosure) and restitution.  
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**COUNT III**  
**(Violation of California’s UCL, Cal. Bus. & Prof. Code Section 17200 *et seq.*)**

28. Plaintiff incorporates by reference the allegations of this class action Complaint with the same force and effect as if those allegations had been fully restated here.

29. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

30. Pepsi’s business practice of distributing, marketing and selling Pepsi One and Diet Pepsi drinks within the State of California without any warning that the products contained chemicals known by the State of California to cause cancer and birth defects or other reproductive harm, *inter alia*, violates the CLRA and the FAL, as is alleged in this class action Complaint.

31. Plaintiff sustained legal injury in making her purchases of Pepsi One and Diet Pepsi within the State of California at a time when defendant was violating the UCL because she made a purchase she would not have made at all, or not on the terms that she did, as a result of being unaware of the undisclosed carcinogen present in these drinks.

32. In making her purchases of Pepsi One and Diet Pepsi, plaintiff conveyed money and other intangible benefits onto Pepsi and, hence, is entitled to, *inter alia*, restitution or part or all of her moneys paid for these beverages. Plaintiff is also entitled to and does seek declaratory and injunctive relief including, but not limited to, a corrective advertising or other disclosure campaign to warn Class members and the public about the carcinogen present in the Diet Pepsi or Pepsi One drinks.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on behalf of herself and on behalf of the other members of the Class, requests award and relief as follows:

- A. An order certifying that this action is properly brought and may be maintained as a class action, that plaintiff be appointed Class Representative and plaintiff’s counsel be appointed Class Counsel.
- B. Restitution in such amount that plaintiff and all Class members paid for their Pepsi One or Diet Pepsi purchases in California.

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C. A declaration and order enjoining Pepsi from continuing to sell its Pepsi One and Diet Pepsi beverages in California without warning that the products contain chemicals known by the State of California to cause cancer and birth defects or other reproductive harm.

D. An Order requiring Pepsi to employ corrective disclosure or advertising about the sales of Diet Pepsi and Pepsi One it has made in California.

E. An order awarding plaintiff her costs of suit, reasonable attorney’s fees, and pre- and post-judgment interest.

F. Such other and further relief as may be deemed necessary or appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury with respect to any claims so triable.

Dated: February 14, 2014

THE MEHDI FIRM, PC

*s/ Azra Z. Mehdi*  
\_\_\_\_\_  
AZRA Z. MEHDI

One Market  
Spear Tower, Suite 3600  
San Francisco, CA 94105  
(415) 293-8039  
(415) 293-8001 (fax)

azram@themehdifirm.com

Attorney for Plaintiff and the [Proposed] Class