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ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**PAUL R. RIVA AND DANIELLE
ARDAGNA, On Behalf Of Themselves And
All Others Similarly Situated,**

Plaintiffs,

v.

PEPSICO, INC.,

Defendant.

CASE NO.: '14CV0340 BTM DHB

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 NATURE OF THE ACTION

2 1. Plaintiffs Paul R. Riva and Danielle Ardagna (collectively “Plaintiffs”) by and through
3 their attorneys, bring this class action against PepsiCo, Inc. (“Defendant” or “Pepsi”), on behalf
4 of themselves and on behalf of all others who, during the Class Period alleged herein, purchased
5 Pepsi One or Diet Pepsi drinks within the State of California. On multiple occasions during the
6 Class Period, Plaintiff Riva purchased Pepsi One and Plaintiff Ardagna purchased Diet Pepsi
7 drinks within California. Under Section 25249.6 of California’s Safe Drinking Water and Toxic
8 Enforcement Act of 1986 (commonly referred to as “Proposition 65”), “[n]o person in the course
9 of doing business shall knowingly and intentionally expose any individual to a chemical known
10 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
11 warning to such individual.” Unbeknownst to Plaintiffs and despite this statutory prohibition,
12 during the Class Period, Defendants’ Pepsi One and Diet Pepsi contained 4-methylimidazole (“4-
13 MeI”), a carcinogen found on the list of Proposition 65’s known carcinogens, in sufficient
14 quantities so as to require disclosure by Defendant. Pepsi, however, intentionally and knowingly
15 failed to label its drinks to alert Plaintiffs and California consumers or otherwise disclose the
16 presence of this known carcinogen.

17 2. Therefore, Plaintiffs now bring this action to seek relief on behalf of themselves and all
18 those similarly situated who have purchased the Pepsi One and Diet Pepsi drinks within
19 California during the Class Period. Plaintiffs allege claims for violations of the California Unfair
20 Competition Law (“UCL”), California’s Consumer Legal Remedies Act (“CLRA”), and False
21 Advertising Law (“FAL”), which, *inter alia*, seek declaratory, injunctive, and other equitable
22 relief, as well as restitution. Plaintiffs also bring a claim alleging Pepsi’s negligence in exposing
23 Plaintiffs and the class members to known carcinogens without adequate warning, and pray for a
24 Court-ordered medical monitoring order as redress for this violation.

25 PARTIES

26 3. Plaintiff Paul R. Riva is a resident of San Diego, California. During the Class Period,
27 Mr. Riva purchased and consumed bottled or canned Pepsi One in San Diego County on multiple
28 occasions. None of the cans or bottles of Pepsi One purchased by Mr. Riva contained any

1 labeling or other disclosure that the drinks contained 4-Mel or a carcinogen known to the State of
2 California. Had Mr. Riva been made aware of this fact, he would have either not purchased the
3 drink, or would not have paid as much as he did for the Pepsi One drinks, as he would have
4 factored in the attendant health risks that accompanied those purchases.

5 4. Plaintiff Danielle Ardagna is a resident of San Diego County in California. During the
6 Class Period, Ms. Ardagna purchased and consumed bottled or canned Diet Pepsi in San Diego
7 County on multiple occasions. None of the cans or bottles of Diet Pepsi purchased by Ms.
8 Ardagna contained any labeling or other disclosure that the drinks contained 4-Mel or a
9 carcinogen known to the State of California. Had Ms. Ardagna been made aware of this fact, she
10 would have either not purchased the drink, or would not have paid as much as she did for the
11 Diet Pepsi drinks, as she would have factored in the attendant health risks that accompanied
12 those purchases.

13 5. Defendant Pepsico Inc. is a corporation organized under the laws of the State of North
14 Carolina and having its principal place of business at 700 Anderson Hill Road in Purchase, New
15 York 10577. Pepsico Inc. manufactures Diet Pepsi and Pepsi One for distribution throughout the
16 United States.

17 **JURISDICTION AND VENUE**

18 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), the Class
19 Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000
20 exclusive of interest and costs, at least one member of the class of plaintiffs is a citizen of a State
21 different from Defendant.

22 7. The Court has personal jurisdiction over Defendant pursuant to Cal. Code Civ. P. §
23 410.10, as a result of Defendant's substantial, continuous and systematic contacts with the State,
24 and because Defendant has purposely availed itself of the benefits and privileges of conducting
25 business activities within the State.

26 8. Venue is proper in this Southern District of California pursuant to 28 U.S.C. § 1391(b)
27 and (c), because Defendant resides (i.e., is subject to personal jurisdiction) in this district, and a
28 substantial part of the events or omissions giving rise to the claims, including the offering for

1 sale and purchase of the Pepsi One and Diet Pepsi drinks by Plaintiffs and the putative class
2 members, occurred in this judicial district.

3 **THE UNDISCLOSED CARCINOGEN FOUND IN DEFENDANT'S DRINKS**

4 9. MeI is an impurity generated during the manufacture of caramel colors III and IV used in
5 some soft drinks.

6 10. MeI has been found by the National Toxicology Program to cause lung tumors in
7 laboratory animals.

8 11. According to Urvashi Rangan, a toxicologist and Executive Director of the Consumer
9 Reports Food Safety & Sustainability Center, "There is no 'safe' level of 4-MeI, but if you have
10 to set a threshold, it should be well below the Prop 65 level (29 micrograms/day) and more like 3
11 micrograms/day." Rangan calls exposure to 4-MeI "an unnecessary risk."

12 12. According to testing performed by Consumer reports, in December 2013, Pepsi sold in
13 California contained an average 29.1 micrograms of 4-MeI per can.

14 13. According to testing performed by Consumer reports, from April to September 2013,
15 Diet Pepsi sold in California contained an average 30.5 micrograms of 4-MeI per can.

16 14. According to testing performed by Consumer reports, from April to September 2013,
17 Pepsi One sold in California contained an average 43.5 micrograms of 4-MeI per can, and during
18 December 2013, Pepsi One sold in California contained an average of 39.5 micrograms of 4-MeI
19 per can.

20 **PEPSICO'S UNLAWFUL NONDISCLOSURE OF THE CARCINOGEN**

21 15. Pepsi has had and continues to have exclusive knowledge of material facts concerning the
22 amount of 4-MeI in Pepsi One and Diet Pepsi drinks sold in California. As the outfit that
23 manufactured the drink, Pepsi was aware both of the presence and quantity of 4-MeI in the
24 subject drinks, yet intentionally chose not to disclose these facts to unsuspecting consumers like
25 Plaintiffs and the putative class members.

26 16. In advertising and selling Diet Pepsi and Pepsi One, Pepsi has and continues to
27 deceptively omit that these soft drinks contain dangerous levels of 4-MeI that unreasonably expose
28 consumers to cancer.

1 17. Pepsi's omission poses an unreasonable safety risk as unsuspecting consumers had no
2 reason to know that they were ingesting 4-Mel, a known carcinogen, when the presence of the
3 substance in the drinks was not disclosed to consumers as required by California law.

4 18. 4-Mel. Because Plaintiffs and the putative class members were not made aware of the
5 significant presence of this known carcinogen, they had no reason to take reasonable precautions,
6 such as drinking alternative drinks (even other carbonated soda beverages contain significantly
7 less 4-Mel levels than Pepsi One or Diet Pepsi), curtailing the amount of Pepsi One or Diet Pepsi
8 that they ingested so as to limit their exposure to the known carcinogen, or seeking medical
9 advice as to the consequences of this exposure.

10 **PLAINTIFFS' PURCHASES AND THE INJURIES PROXIMATELY CAUSED BY**
11 **DEFENDANT'S ACTIONS AND OMISSIONS**

12 19. Plaintiff Riva is a repeat soft drink purchaser. During the Class Period, Riva purchased
13 and consumed Pepsi One drinks in canned and/or bottled form in San Diego County in the State
14 of California on multiple occasions. At no time, did any of the Pepsi One drink containers that
15 Riva purchased in California and from which he consumed his drinks contain a label or other
16 disclosure to the effect that the drink contained 4-Mel or a carcinogen known to the State of
17 California. Had Riva been made aware of this significant fact, he would have either not
18 purchased or not consumed Pepsi One, not have done so in the quantities he did, or paid a
19 reduced price for the product to account for this inordinate health risk associated with the
20 product.

21 20. Plaintiff Ardagna is a repeat soft drink purchaser, and a regular buyer and drinker of Diet
22 Pepsi. During the Class Period, Ardagna purchased and consumed Diet Pepsi drinks in canned
23 and/or bottled form in San Diego County in the State of California on multiple occasions. At no
24 time, did any of the Diet Pepsi drink containers that Ardagna purchased in California and from
25 which she consumed her drinks contain a label or other disclosure to the effect that the drink
26 contained 4-Mel or a carcinogen known to the State of California. Had Ardagna been made
27 aware of this significant fact, she would have either not purchased or not consumed Diet Pepsi,
28

1 not have done so in the quantities she did, or paid a reduced price for the product to account for
2 this inordinate health risk associated with the product.

3 **CLASS ACTION ALLEGATIONS**

4 21. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek to represent a class of all
5 persons who purchased in California during the four years preceding the filing of this Complaint
6 (“the Class Period”), Diet Pepsi, or Pepsi One primarily for personal, family, or household use,
7 and not for resale.

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

11 23. Questions of law and fact common to Plaintiffs and the class exist and predominate over
12 any such questions affecting only individual class members. Among these common,
13 predominating questions are:

- 14 a. Whether the Pepsi beverages contain 4-Mel and the amount;
- 15 b. Whether 4-Mel is a carcinogen know to the State of California, such Proposition
16 65 required that its presence in the Pepsi One and Diet Pepsi beverages be
17 disclosed
- 18 c. Whether exposure to 4-Mel through consumption of Pepsi One and/or Diet Pepsi
19 poses and unreasonable safety risk that triggers Pepsi’s duty to disclose the
20 presence of 4-Mel in these drinks;
- 21 d. Whether information concerning the amount of 4-Mel in the Pepsi One and Diet
22 Pepsi beverages is material to a reasonable consumer;
- 23 e. The proper equitable and injunctive relief;
- 24 f. The proper amount of restitution;
- 25 g. The proper scope of any medical monitoring relief.

26 24. Plaintiffs’ claims are typical of class members’ claims in that they are based on the same
27 underlying facts, events, and circumstances relating to Pepsi’s conduct; namely, the lack of
28

1 disclosure as to the presence and extent of 4-MeI in Pepsi One and Diet Pepsi drinks sold within
2 the State of California.

3 25. Plaintiffs will fairly and adequately represent and protect the interests of the classes, have
4 no interests incompatible with the interests of the classes, and have retained counsel competent
5 and experienced in class litigation.

6 26. The class is sufficiently large for purposes of class litigation because it contains at least
7 hundreds of thousands of members who purchased Pepsi One or Diet Pepsi beverages in
8 California during the past 4 years.

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

15 28. Pepsi has acted or refused to act on grounds generally applicable to the class, thereby
16 making final injunctive relief and corresponding declaratory relief appropriate. Specifically,
17 Pepsi's non-disclosure with respect to the presence of 4-MeI or of a carcinogen known to the
18 State of California has been uniform with respect to all Pepsi One and Diet Pepsi drink
19 containers sold within the State of California during the Class Period. If Plaintiffs prevail on the
20 merits of their claim, then final injunctive relief mandating that Pepsi provide this disclosure to
21 all class members and to the consuming public at large would be proper.

22 **COUNT I**

23 **(VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CALIF.**
24 **CIV. CODE §1750 ET. SEQ.)**

25 29. Plaintiffs incorporate by reference the allegations of this Class Action Complaint with the
26 same force and effect as if those allegations had been fully restated here.

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

1 31. At all relevant times during the Class Period, Plaintiffs and the putative class members
2 were “consumers” within the meaning of the CLRA.

3 32. Pepsi’s policies, acts, and practices of manufacturing, distributing, marketing, promoting,
4 selling, and advertising Diet Pepsi and Pepsi One beverages within the State of California
5 without disclosure that the drinks contained 4-MeI, a carcinogen known to the State of California,
6 in the quantities contained in these drinks, were designed to, and did, result in the purchase and
7 use of the products primarily for personal, family, or household purposes, and violated and
8 continue to violate the following sections of the CLRA. Specifically, Pepsi’s conduct has
9 violated at least the following statutory subsections of the CLRA:

- 10 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits
11 which they do not have
12 b. § 1770(a)(7): representing that goods are of a particular standard, quality,
13 or grade if they are of another;
14 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
15

16 33. Pepsi had a legal duty to disclose the presence of 4-MeI or a carcinogen known to
17 the State of California, within the Pepsi One and Diet Pepsi drinks sold in California. This legal
18 duty arose under statute because it was required under Section 25249.6 of California’s Safe
19 Drinking Water and Toxic Enforcement Act of 1986 (commonly referred to as “Proposition 65”).
20 Pepsi’s legal duty to disclose also arose under California case law interpreting the CLRA
21 because the inclusion of the alleged quantities of 4-MeI in Pepsi One and Diet Pepsi drinks,
22 without informing consumers of the presence, posed a real and significant safety risk to Plaintiffs
23 and the putative class members.

24 34. As a result, Plaintiffs and the putative class members have suffered irreparable harm and
25 are entitled to injunctive and equitable relief, as well as reasonable attorneys’ fees and costs of
26 suit. At this time, Plaintiffs do not currently seek monetary damages as part of their CLRA
27 claim. Following the filing of this Class Action Complaint, Plaintiffs will mail Defendant a
28 CLRA demand letter in the manner required by statute. If the Defendant does not agree and

1 perform the relief requested in the demand letter within 30-days of its receipt, Plaintiffs reserve
2 the right to amend this Class Action Complaint to also then assert a claim for relief for money
3 damages under the CLRA.

4 35. In compliance with Cal. Civ. Code § 1782(d), Plaintiffs' affidavits of venue are filed
5 concurrently herewith, and area attached hereto as Exhibits 1 and 2, respectively.

6 **COUNT II**

7 **(VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. AND**
8 **PROF. CODE, §§ 17500 ET. SEQ.)**

9 36. Plaintiffs incorporate by reference the allegations of this Class Action Complaint with the
10 same force and effect as if those allegations had been fully restated here.

11 37. The FAL prohibits any statement in connection with the sale of goods "which is untrue or
12 misleading," including deceptive omissions of material fact (Cal. Bus. & Prof. Code § 17500).

13 38. Pepsi promoted, marketed and advertised its Pepsi One and Diet Pepsi drinks during the
14 Class Period by, *inter alia*, affixing a marketing label to the bottles of each of these two
15 beverages or by imprinting marketing material on the can containers of these two beverages that
16 touted the drink name and its supposed superior attributes. Plaintiffs and the putative class
17 members were exposed to these labels or imprints every time they purchased their drinks, as the
18 labels or container printing was either affixed to the bottle or imprinted on the can of the product
19 being purchased. A sample of the label on the bottle and the imprinting on the can of Pepsi One
20 is attached hereto as Exhibit 3.

21 39. None of the bottle labels or can imprints for either of these two drinks disclosed that they
22 contained 4-MeI or a carcinogen known to the State of California.

23 40. Pepsi's deceptive omission of the amount and health harms of the 4-MeI in the Pepsi One
24 and Diet Pepsi beverages was likely to deceive reasonable consumers and the public, particularly
25 when California law required that such disclosure be made.

26 41. Pepsi knew, or reasonably should have known, that it was deceptively omitting material
27 information.

28

1 42. Plaintiffs and the putative class members are entitled to injunctive and equitable relief
2 (including, but not limited to, corrective advertising or other forms of disclosure) and restitution.

3 **COUNT III**

4 **(VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW, CALIF. BUS. AND**
5 **PROF. CODE, § 17200 ET. SEQ.).**

6 43. Plaintiffs incorporate by reference the allegations of this Class Action Complaint with the
7 same force and effect as if those allegations had been fully restated here.

8 44. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” (Cal.
9 Bus. & Prof. Code § 17200).

10 45. Pepsi’s business practice of distributing, marketing, and selling Pepsi One and Diet Pepsi
11 drinks within the State of California without disclosing the presence therein or extent of 4-Mel
12 contained in the drinks is unlawful because it, *inter alia*, violates the CLRA and the FAL, as is
13 alleged in this Class Action Complaint.

14 46. Plaintiffs sustained legal injury in making their purchases of Pepsi One and Diet Pepsi
15 within the State of California at a time when Defendant was violating the UCL because they
16 made a purchase they would not have made at all, or not on the terms that they did, as a result of
17 being unaware of the undisclosed carcinogen present in these drinks.

18 47. In making their purchases of Pepsi One and/or Diet Pepsi, Plaintiffs conveyed money and
19 other intangible benefits onto Pepsi and, hence, are entitled to, *inter alia*, restitution or part or all
20 of their moneys paid for these beverages. Plaintiffs are also entitled to and do seek declaratory
21 and injunctive relief including, but not limited to, a corrective advertising or other disclosure
22 campaign to warn class members and the public about the carcinogen present in the Diet Pepsi
23 and/or Pepsi One drinks.

24 **COUNT IV**

25 **(NEGLIGENCE—MEDICAL MONITORING COSTS SOUGHT AS RELIEF)**

26 48. Plaintiffs incorporate by reference the allegations of this Class Action Complaint with the
27 same force and effect as if those allegations had been fully restated here.

28

1 49. Pepsi owed Plaintiffs, the putative class members, and the consuming public, a duty of
2 reasonable care when manufacturing, promoting, offering for sale, and selling its Pepsi One and
3 Diet Pepsi products. Such a duty of reasonable care required Pepsi either to manufacture these
4 beverages without any carcinogens known to the State of California or, barring that, to
5 conspicuously disclose the presence and extent of such a carcinogen in these drinks.

6 50. Pepsi breached its legal duty by failing to disclose that the Pepsi One and Diet Pepsi
7 beverages sold within the State of California contained 4-MeI or a carcinogen known to the State
8 of California in the amounts present in these drinks.

9 51. 4-MeI is a toxic chemical and a carcinogen. Its cancer-causing proclivity is such that,
10 since January 2011, it has been labeled by the State of California as known carcinogen whose
11 presence above preset threshold levels (that are exceeded in Pepsi One and Diet Pepsi beverages)
12 must be disclosed according to California's Safe Drinking Water and Toxic Enforcement Act of
13 1986.

14 52. The State of California has concluded that levels of 4-MeI exposure above 16
15 micrograms per day pose a significant cancer-related health risk. As testing done from April to
16 September 2013 and in December 2013 showed, a typical 12-ounce of Pepsi One or Diet Pepsi
17 canned beverage was found to contain at least twice the level of 4-MeI per can than the 16-
18 microgram daily threshold level set by California. *See* Paragraphs 11 and 12 *supra*.

19 53. The National Toxicology Program ("NTP"), a division of the National Institute of
20 Environmental Health Sciences, conducted a 106-week, long-term study of the effects of 4-MeI
21 on laboratory animals. It observed that:

22 [I]n males, the high-dose group had a significant increase in the
23 combined incidences of alveolar/bronchiolar adenoma or carcinoma ($p < 0.01$). In females, the combined incidences of alveolar/bronchiolar
24 adenoma or carcinoma were significantly increased in the mid- ($p < 0.001$) and high-dose ($p < 0.01$) groups. In addition, the incidence of
25 alveolar epithelial hyperplasia was significantly increased in high-dose
26 females.

1 54. The NTP concluded, *inter alia*, that:

2 There was clear evidence of carcinogenic activity of 4-
3 methylimidazole in male and female B6C3F1 mice based on increased
incidences of alveolar/bronchiolar neoplasms.

4 NTP Toxicology and Carcinogenesis Studies of 4-Methylimidazole (CAS No. 822-36-6) in
5 F344/N Rats and B6C3F1 Mice (Feed Studies). Natl. Toxicology Program Tech. Rep. Ser. 2007
6 Jan;(535):1-274 available at <http://ntp.niehs.nih.gov/index.cfm?objectid=9B956B07-F1F6-975E-79BBCDCCD57001C8> (last visited Feb. 4, 2014).

7 55. The specific types of cancer documented by the NTP long-term study of 4-MeI exposure
8 are particularly serious, yet are types for which early evaluation, detection, and diagnosis are of
9 considerable clinical significance.

10 56. Plaintiffs and putative class members have been injured by Pepsi's breach of its legal
11 duty and its selling of Pepsi One and Diet Pepsi drinks containing 4-MeI in the quantities present
12 in these drinks. To safeguard their health and mitigate any damages for future medical
13 treatment, medical monitoring for Plaintiffs and the putative class members is reasonable. Such
14 monitoring, however, is expensive and, because its need arises as a result of Defendant's legal
15 wrongdoing, its cost should be borne by Pepsi as part of a Court-ordered and awarded medical
16 monitoring program.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of
19 the Class, request award and relief as follows:

20 A. An order certifying that this action is properly brought and may be maintained as
21 a class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be
22 appointed Class Counsel.

23 B. Restitution in such amount that Plaintiff and all Class members paid for their
24 Pepsi One or Diet Pepsi purchases in California.

25 C. A Declaration and Order enjoining Pepsi from continuing to sell its Pepsi One and
26 Diet Pepsi beverages in California without adequate disclosure of the 4-MeI contained therein
27 and its status as a carcinogen known to the State of California;
28

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

3 E. An Order requiring Pepsi to set up, fund, and implement a medical monitoring
4 campaign to monitor the health effects of those consumers who purchased Pepsi One or Diet
5 Pepsi in California during the Class Period;

6 F. An order awarding Plaintiffs their costs of suit, reasonable attorneys' fees, and pre
7 and post-judgment interest.

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

9

10

JURY DEMAND

11

Plaintiffs hereby demand a jury trial for all issues so triable.

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Dated: February 13 , 2014

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/s/ Roy A. Katriel (SBN 265463)

Roy A. Katriel, Esq. (SBN 265463)

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*Counsel for Plaintiffs and the Putative
Class*

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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.)

<p>I. (a) PLAINTIFFS PAUL R. RIVA AND DANIELLE ARDAGNA, On Behalf Of Themselves And All Others Similarly Situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) The Katriel Law Firm, 4225 Executive Square Suite 600, La Jolla, CA 92037; Telephone: (858) 242-5642</p>	<p>DEFENDANTS PEPSICO, INC.</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p style="text-align: right; font-size: 1.2em;">'14CV0340 BTM DHB</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> </tr> </table> <p>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3											

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>OTHER STATUTES</p> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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 (specify) 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 USC 1332(d) ("Class Action Fairness Act")

Brief description of cause:
 Class action on behalf of purchasers of certain Pepsi beverages for alleged failure to disclose carcinogen

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Hon. Marilyn Huff DOCKET NUMBER 3:14-cv-00168

DATE 02/13/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Roy A. Katriel

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE