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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

*Attorneys for Plaintiff Souzan Aourout**See Signature Line for Additional Counsel*

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SOUZAN AOROUT, on behalf of
 herself and all others similarly situated,

Plaintiff,

v.

PEPSICO, INC.,

Defendant.

CV14-1289 RSWL (FFMX)

CASE NO.:

CLASS ACTION COMPLAINT

**VIOLATIONS OF THE CALIFORNIA
 UNFAIR COMPETITION LAW, CAL.
 BUS. & PROF. CODE §§ 17200 ET
 SEQ.;**

**VIOLATIONS OF THE CALIFORNIA
 FALSE ADVERTISING LAW, CAL.
 BUS. & PROF. CODE §§ 17500 ET
 SEQ.;**

AND

**VIOLATIONS OF THE CALIFORNIA
 CONSUMER LEGAL REMEDIES
 ACT, CAL. CIV. CODE §§ 1750 ET
 SEQ.**

JURY TRIAL DEMANDED**CLASS ACTION COMPLAINT**

CLASS ACTION COMPLAINT

Plaintiff SOUZAN AOUREOUT, by and through undersigned counsel, on behalf of herself and all other persons and entities similarly situated, sues Defendant, PEPSICO, INC. ("Pepsi"), and for her Complaint alleges, upon information and belief and based on the investigation to date of her counsel, as follows:

INTRODUCTION

1. From at least January 7, 2012 through the present (also referred to as the "Class Period"), Pepsi has sold the soft drink Pepsi One (the "Product" or "Pepsi One") throughout the state of California. During all relevant times, the Product contained a significant amount of 4-methylimidazole (4-MEI).

2. Throughout the Class Period, Pepsi systematically failed to disclose to consumers that Pepsi One contains significant levels of 4-MEI.

3. 4-MEI is a chemical, designated by the State of California as a carcinogen. It is an impurity generated during the manufacture of caramel colors III and IV, which are used in some soft drinks including Pepsi One.

4. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is unlawful for businesses to knowingly and intentionally expose

1 individuals in California to chemicals known to the State to cause cancer without
2 providing clear and reasonable warnings to individuals prior to their exposure.

3 5. Proposition 65 enables Californians to make informed decisions in
4 their selection of food and beverage, among other, products.
5

6 6. Notwithstanding Proposition 65, Pepsi introduced the Product into the
7 State of California with significant quantities of 4-MEI, and did so without
8 disclosing the presence of the known carcinogen or the hazards associated with
9 exposure to the chemical, as statutorily required by Proposition 65. *See* Health &
10 Safety § 25249.6.
11

12 7. Pepsi's conduct harms consumers by inducing them to purchase and
13 consume a product without critical information and disclosures required by
14 California law.
15

16 8. Plaintiff brings this action on behalf of herself and a class of
17 California consumers to challenge Defendant's failure to disclose the presence of a
18 recognized carcinogen in the Product under California's Unfair Competition Law,
19 False Advertising Law, and Consumer Legal Remedies Act.
20

21 9. Plaintiff seeks an order compelling Defendant to (1) cease marketing
22 the Product using the misleading tactics complained of herein, (2) conduct a
23 corrective advertising campaign, (3) restore the amounts by which Defendant has
24 been unjustly enriched, and (4) destroy all misleading and deceptive materials.
25
26
27
28

JURISDICTION AND VENUE

10. This Court has jurisdiction over all causes of action asserted herein.

11. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332(d), because there are at least 100 class members in the proposed Class, the combined claims of proposed class members exceed \$5,000,000 exclusive of interest and costs, and at least one class member is a citizen of a state other than Defendant's state of citizenship.

12. Plaintiff will likely have full evidentiary support for the jurisdictional allegations after a reasonable opportunity for further investigation or discovery regarding Defendant's sales of Pepsi One during the Class Period.

13. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted herein occurred in this District.

~~Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendant conducts~~
substantial business in this District, has sufficient minimum contacts with this District, and otherwise purposely avails itself of the markets in this District, through the promotion, sale, and marketing of Pepsi One in this District.

14. Defendant and other out-of-state participants can be brought before this Court pursuant to state and federal law.

15. Plaintiff Souzan Aourout is a resident of Los Angeles County, California. Plaintiff regularly purchases and consumes Pepsi One. Throughout the Class Period, she purchased and consumed the Product at least twice a week, including in cans, 12-oz. bottles, and 2 liter bottles. She purchased the Product from Ralphs in Encino, California and from other locations throughout California.

16. Plaintiff would not have purchased the Product if she knew it contained a substance known to the State of California to be a carcinogen. Ms. Aourout was injured in fact and lost money as a result of Pepsi's omissions because she was induced to purchase Pepsi One without critical information concerning the Product.

17. Pepsi is a North Carolina company with its principle place of business at 700 Anderson Hill Road, Purchase, New York 10577.

18. Pepsi is a person in the course of doing business within the meaning of Health & Safety Code § 252249.11. Pepsi manufactures, distributes, or sells the Product for sale or use in California.

CLASS ACTION COMPLAINT

1 19. The State of California (the "State" or "California") has declared that
 2 consumers have the right "[t]o be informed about exposures to chemicals that
 3 cause cancer, birth defects, or other reproductive harm." Proposition 65, § 1(b).
 4

5 20. To advance this goal, Proposition 65 prohibits exposing individuals
 6 to chemicals listed by the State as known to cause cancer, birth defects, or other
 7 reproductive harm without a "clear and reasonable warning" unless the business
 8 responsible for the exposure can prove that it fits within a statutory exemption.
 9
 10 Health & Safety Code § 25249.6 states in relevant part:
 11

12 No person in the course of doing business shall knowingly and intentionally
 13 expose any individual to a chemical known to the state to cause cancer or
 14 reproductive toxicity without first giving clear and reasonable warning to
 15 such individual . . .

16 21. On January 7, 2011, California officially listed 4-MEI as a chemical
 17 known to cause cancer. 27 Cal. Code Regs. ("C.C.R.") § 27001(b).
 18

19 22. In making this listing determination, the California Environmental
 20 Protection Agency's Office of Environmental Health Hazard Assessment credited
 21 the U.S. National Toxicology Program as an "authoritative body" under 27 C.C.R.
 22 § 25306, citing to that agency's 2007 findings regarding the carcinogenic
 23 properties of 4-MEI.¹
 24
 25
 26

27 ¹ There are four principal ways for a chemical to be added to the Proposition 65 list: (1) if either
 28 of the Carcinogen Identification Committee ("CIC") and the Development and Reproductive

1 23. On January 7, 2012, one year after it was listed as a chemical known
2 to cause cancer, 4-MEI became subject to a clear and reasonable warning
3 requirement regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b);
4 Health & Safety Code § 25249.10(b).
5

6 24. Specifically 4-MEI was added to the list of chemicals with specific
7 regulatory levels under section 25705(b)(1) of Title 27, Cal. Code Regs. This
8 section makes it mandatory for businesses to include a warning for exposures to 4-
9 MEI of more than 29 micrograms per day.
10
11

12 25. According to Urvashi Rangan, a toxicologist and Executive Director
13 of the Consumer Reports Food Safety & Sustainability Center, "There is no 'safe'
14 level of 4-MEI, but if you have to set a threshold, it should be well below the
15 Proposition 65 level (29 micrograms/day)—and more like 3 micrograms/day."
16
17

18 Rangan calls exposure to 4-MEI "an unnecessary risk."
19

20 26. According to testing performed by Consumer Reports, from April
21 2013 to September 2013, Pepsi One sold in California contained an average 43.5
22

23 Toxicant ("DART") of scientists and health professionals finds that the chemical has been
24 clearly shown to cause cancer or birth defects or other reproductive harm. In making their
25 decision, the committees base their decisions on the most current scientific information
26 available; (2) if an organization designated as an "authoritative body" by the CIC or DART
27 Identification Committee has identified it as causing cancer or birth defects or other reproductive
28 harm; (3) if an agency of the state or federal government requires that it be labeled or identified
as causing cancer or birth defects or other reproductive harm e.g., prescription drugs; and (4) if
chemicals meet certain scientific criteria and are identified in the California Labor Code as
causing cancer or birth defects or other reproductive harm.

1 micrograms of 4-MEI per 12 ounce can, and during December 2013, Pepsi One
2 sold in California contained an average of 39.5 micrograms of 4-MEI per can.
3 Pepsi labels its 12 ounce cans as containing a single serving.
4

5 27. No "clear and reasonable warnings" were provided by Defendant
6 with Pepsi One to alert consumers to the inclusion of 4-MEI in the Product.
7

8 **Pepsi's Unlawful Practices**

9

10 28. Pepsi deceptively promotes Pepsi One without the disclosure
11 required by Proposition 65 that it contains a known carcinogen.
12

13 29. Pepsi understands that consumer perception of foods and beverages
14 affects purchasing decisions and consumption.
15

16 ~~30. Pepsi realizes that consumers are increasingly aware of the~~
17 ~~relationship between their health and diet and that consumers demand products~~
18 ~~that do not expose them to known carcinogens.~~
19

20
21 31. Pepsi is also aware that with ever growing interest and intensity,
22 consumers today seek out consumer products that are healthy and do not contain
23 carcinogenic chemicals. To do so, consumers carefully consult the labels of
24 consumable products for their informational content.
25

26
27 32. Thus, consumers depend on manufacturer labels to truthfully inform
28 them of the nature of the foods and beverages they purchase. Rather than

1 conveying a truthful message that Pepsi One contains a level of 4-MEI that the
2 State of California recognizes as known to cause cancer, Pepsi instead deceptively
3 markets Pepsi One by failing to provide the mandatory disclosure regarding the
4 presence of 4-MEI in the beverage.
5

6
7 33. As a result of Pepsi's deception, consumers are left with the false
8 belief that Pepsi One is a soft drink that does not contain a chemical that is known
9 to cause cancer. Due to their false belief about the nature of Pepsi One,
10 consumers are willing to purchase the beverage.
11

12
13 34. In advertising and selling Pepsi One, Pepsi has and continues to
14 deceptively omit that this soft drink contains 4-MEI.
15

16 CLASS ALLEGATIONS

17 35. Plaintiff brings this action on her own behalf and as a Class Action
18 Pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks
19 certification of the following Class:
20

21 **California Class: All Persons in the State of California who**
22 **purchased Pepsi One during the Class Period.**

23 36. The abundance of Class Members renders joinder of all Class
24 members individually, in one action or otherwise, impractical.
25

26 37. As to all Class members, there are common questions of law and fact,
27
28

1 the resolution of which will, in turn drive the resolution of the litigation. These
2 common questions predominate over questions affecting only individual Class
3 members including:
4

5 (a) whether the Product contains 4-MEI and the amount thereof;

6 (b) whether the Product labelling violates Proposition 65;

7 (c) whether information concerning the amount of 4-MEI in the Product is
8 material to a reasonable consumer;
9

10 (d) whether Pepsi had a duty to disclose the facts concerning 4-MEI in the
11 Product;
12

13 (e) whether Pepsi concealed from Plaintiff and other class members that the
14 Product contains levels of 4-MEI that warrant disclosure;
15

16 (f) whether Defendant's practices are unlawful;

17 (g) whether Defendant violated the California Civil Code Section 1750 *et*
18 *seq.*;

19 (h) whether Defendant violated the California Business & Professions Code
20 Section 17200 *et seq.*;

21 (i) whether Defendant violated the False Advertising Law, Cal. Bus. & Prof.
22 Code Section 17500 *et seq.*; and
23

24 (j) whether Plaintiff and class members sustained damages and, if so, the
25 proper measure of damages, restitution, equitable or other relief, and the
26 amount and nature of such relief.
27
28

1 Excluded from the Class is: (a) any Judge or Magistrate presiding over this action
2 and members of their families; (b) Defendant and any entity in which Defendant
3 has a controlling interest or which has a controlling interest in Defendant and its
4 legal representatives, assigns and successors of Defendant; and (c) all persons who
5 properly execute and file a timely request for exclusion from the Class.
6

7 38. The members in the proposed class are so numerous that individual
8 joinder of all members is impracticable, and the disposition of the claims of all
9 class members in a single action will provide substantial benefits to the parties and
10 Court.
11

12 39. Plaintiff's claims are typical of Class members' claims in that they
13 are based on the same underlying facts, events, and circumstances relating to
14 Pepsi's conduct.
15
16

17 40. Plaintiff will fairly and adequately represent and protect the interests
18 of the Class, has no interests incompatible with the interests of the Class, and has
19 retained counsel competent and experienced in consumer fraud class action
20 litigation. Hence there is no genuine reason to doubt that Plaintiff will vigorously
21 prosecute this litigation on behalf of absent Class members. Plaintiff and her
22 counsel will fairly and adequately protect the interests of the Class.
23
24

25 41. The class is sufficiently large for purposes of class litigation because
26 it contains at least hundreds of thousands of members who purchased the Product
27 in the state of California during the Class Period.
28

42. The class action mechanism is superior to other available means for the fair and efficient adjudication of the claims of all Class members. Besides the predominance of questions common to all Class members, individual Class members lack the resources to undertake the burden and expense of individual prosecution of these claims against a well-financed corporate Defendant such as Pepsi, especially in comparison with the maximum individual recovery to which each Class member would be entitled. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. It also presents a potential for inconsistent or contradictory judgments. In contrast, the Class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Pepsi's liability.

CAUSES OF ACTION

COUNT I

Violation of California Business and Professions Code § 17200 *et seq.* (On Behalf of Plaintiff and the Class Against Defendant)

43. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

44. Plaintiff asserts this claim individually and on behalf of the Class.

1 45. Defendant is subject to the California Unfair Competition Law
2 (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.* The UCL provides in pertinent
3 part: “Unfair Competition shall mean and include unlawful, unfair or fraudulent
4 business practices and unfair, deceptive, untrue or misleading advertising[.]” Cal.
5 Bus. & Prof. Code § 17200.
6

7 46. A business act or practice is “unlawful” if it violates any established
8 state or federal law.
9

10 47. Defendant engaged in unlawful conduct by violating California’s
11 Health & Safety Code § 25249.11.
12

13 48. 4-MEI is a chemical recognized by the State of California as known
14 to cause cancer.
15

16 49. As a result of Pepsi’s placement of Pepsi One in the stream of
17 commerce, Pepsi is a person in the course of doing business within the meaning of
18 Health & Safety Code § 25249.11.
19

20 50. Pepsi knows that the Product contains 4-MEI. Pepsi intends that the
21 Product be used in a manner that results in consumers consuming the Product first
22 by purchasing it, then by drinking it.
23

24 51. Pepsi has failed and continues to fail to provide clear and reasonable
25 disclosures to consumers regarding the presence in and use of 4-MEI in Pepsi
26 One.
27
28

1 52. By committing the acts alleged above, Pepsi has at all relevant times
2 violated Proposition 65 by knowingly and intentionally exposing California
3 consumers to 4-MEI without first giving “clear and reasonable warnings”
4 regarding the presence of 4-MEI, a known carcinogen.
5

6 53. Throughout the Class Period, Pepsi engaged in acts of unfair
7 competition, as defined by Cal. Bus. & Prof. Code § 17200, by failing to provide
8 disclosures in connection with the sale of the Product as described above.
9

10 54. Pepsi’s deceptive omission of the amount of 4-MEI in the Product is
11 a “fraudulent” practice within the meaning of the UCL in that the omission is
12 likely to deceive reasonable consumers and the public.
13

14 55. Plaintiff and the Class would not have purchased the Product had
15 they known about the deceptive omissions discussed above.
16

17 56. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks
18 an Order enjoining Pepsi from continuing to conduct business through fraudulent
19 acts and practices, and to commence a corrective advertising campaign.
20

21 57. On behalf of herself and the Class, Plaintiff also seeks an Order for
22 the restitution of all monies from the sales of the Product, which were unjustly
23 acquired through acts of fraudulent competition.
24

25 58. On behalf of herself and the Class, Plaintiff also seeks interest at the
26 highest rate allowed by law and the payment of Plaintiff’s attorneys’ fees and
27 costs pursuant to, *inter alia*, the California Code of Civil Procedure § 1021.5.
28

COUNT II

Violation of California Legal Remedies Act

Cal. Civ. Code § 1750 *et seq.*

(On Behalf of Plaintiff and the Class Against Defendant)

59. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

60. Plaintiff asserts this claim individually and on behalf of the Class.

61. This cause of action is brought pursuant to California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et. seq* (the "CLRA").

62. Plaintiff is a consumer as defined by the CLRA.

63. Pepsi is a supplier or seller as defined by the CLRA.

64. The Pepsi One that Plaintiff and other members of the Class purchased from Pepsi were "goods" within the meaning of Cal. Civ. Code § 1761(a).

65. Pepsi's conduct described herein involves consumer transactions as defined in CLRA.

66. Plaintiff is further given the rights to bring the suit herself under Civ. Code § 1780 and on behalf of the class under § 1781.

67. Pepsi has engaged in deceptive practices, unlawful methods of competition, and or unfair acts as defined by Civ. Code § 1750, *et seq.* to the detriment of the Plaintiff, members of the general public and the Class. Plaintiff,

1 the general public and members of the Class have suffered harm as a proximate
2 result of the wrongful conduct of Pepsi as alleged herein.

3 68. Pepsi intentionally, knowingly and unlawfully perpetrated a harm
4 upon Plaintiff by the above-described facts.

5
6 69. Cal. Civ. Code § 1770(a)(5) prohibits one who is involved in a
7 transaction from “[r]epresenting that goods or services have sponsorship, approval,
8 characteristics, ingredients, uses, benefits, or quantities which they do not have.”
9 Pepsi violated this provision by failing to make disclosures relating to the fact that
10 4-MEI is contained in Pepsi One at levels that require disclosure.
11

12
13 70. Cal. Civ. Code § 1770(a)(7) prohibits one who is involved in a
14 transaction from “[r]epresenting that goods or services are of a particular, standard,
15 quality, or grade or that goods are of a particular style or model, if they are
16

17 another.” Pepsi violated this provision by failing to make disclosures relating to
18 the fact that 4-MEI is contained in Pepsi One at levels that require disclosure.

19
20 71. Cal. Civ. Code § 1770(a)(9) prohibits one who is involved in a
21 transaction from “[a]dvertising goods or services with intent not to sell them as
22 advertised.” Pepsi violated this provision by failing to make disclosures relating to
23 the fact that 4-MEI is contained in Pepsi One at levels that require disclosure.
24

25 72. Accordingly, Pepsi violated the CLRA by engaging in the practices
26 proscribed by the California Consumer Legal Remedies Act, § 1770(a) and in
27 consumer transactions with the Plaintiff and the Class, which were intended to
28

1 result in, and did result in the sale of the Product to the Plaintiff and the Putative
2 Class.

3 73. Pepsi's policies and practices are unlawful, unethical, oppressive,
4 fraudulent and malicious. The gravity of the harm to all consumers and to the
5 general public from Pepsi's policies and practices far outweighs any purported
6 utility those policies and practices have.
7

8
9 74. Pursuant to CLRA §1780(a), Plaintiff seeks an order enjoining Pepsi
10 from engaging in the methods, acts, or practices alleged herein.

11 75. Pursuant to CLRA §1782, if Pepsi does not rectify its conduct within
12 30 days, Plaintiff intends to amend this Complaint to add claims for:
13

14 a) Actual damages;

15 b) Restitution of money to Plaintiff, the Class members and the general
16 public;
17

18 c) Punitive damages;

19 d) Attorneys' fees and costs; and
20

21 e) Other relief that this Court deems proper.
22

23 **COUNT III**

24 **Violation of the False Advertising Law, Business and Professions
Code Sections 17500 *et seq.***

25 **(On Behalf of Plaintiff and the Class Against Defendant)**

26 76. Plaintiff incorporates the foregoing paragraphs as if fully restated
27 herein.
28

1 77. Plaintiff asserts this claim individually and on behalf of the Class.

2 78. The California False Advertising Law, Cal. Bus. & Prof. Code §
3 17500 makes it “unlawful for any person to make or disseminate or cause to be
4 made or disseminated before the public in this state, . . . in any advertising device .
5 . . . or in any other manner or means whatever, . . . any statement concerning . . .
6 personal property or services, professional or otherwise, or performance or
7 disposition thereof, which is untrue or misleading and which is known, or which
8 by the exercise of reasonable care should be known, to be untrue or misleading.”
9
10

11 79. Throughout the Class Period, Pepsi committed acts of false
12 advertising as defined by Cal. Bus. & Prof. Code § 17500, by deceptively omitting
13 that the Product contains 4-MEI at levels that require disclosure.
14

15 80. Pepsi’s deceptive omissions were likely to deceive reasonable
16 consumers and the public as they deceptively represented the quality and nature of
17 the ingredients used in the Product.
18

19 81. Pepsi knew, or reasonably should have known, that it was
20 deceptively omitting material information.
21

22 82. Plaintiff and the Class are entitled to injunctive and equitable relief
23 and restitution.
24

25 83. Plaintiff and the Class would not have purchased Pepsi One had they
26 known about the deceptive omissions discussed above.
27

28 **PRAYER FOR RELIEF**

CLASS ACTION COMPLAINT

1 **WHEREFORE**, Plaintiff and the Class Members demand judgment in their
2 favor against the Defendant, as follows:

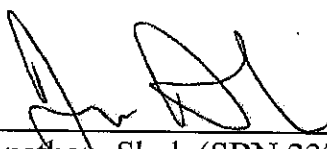
- 3 a. A determination that this action may proceed as a class action and that
4 Plaintiff adequately represents the Class;
5
6 b. An Order requiring Defendant to bear the cost of class notice;
7
8 c. A return of all amounts paid for Pepsi One sold by the Defendant to the
9 Plaintiff and the Class Members;
10
11 d. For interest thereon, in the maximum amount allowable under applicable
12 law;
13
14 e. For costs of suit, in the maximum amount allowable under applicable law;
15
16 f. For an award of attorneys' fees and costs, to the maximum amount permitted
17 under applicable law;
18
19 g. For injunctive relief, restraining and enjoining the Defendant from
20 continuing to use these deceptive sales tactics;
21
22 h. For an order of restitution and all other forms of equitable monetary relief;
23 and
24 i. For such other and further relief for the Plaintiff and Class as this Honorable
25 Court shall deem just.
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff and the Class demand trial by jury as to all matters and issues triable.

DATED: February 19, 2014

By:


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Attorneys for Plaintiff

Souzan Aourout, and on Behalf

of All Others Similarly Situated

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**SOUZAN AOUROUT, on behalf of herself
and all others similarly situated,**

Plaintiff,

CASE NO.:

v.

**AFFIDAVIT OF PLAINTIFF
SOUZAN AOUROUT**

PEPSICO, INC.,

Defendant.

1 I, Souzan Aourout, submit this affidavit pursuant to § 1780(c) of the
2 Consumer Legal Remedies Act and declare the following:
3
4

5 1. I am a resident of Los Angeles County, California, and the named Plaintiff
6 and class representative in the above-titled action.
7

8
9 2. Los Angeles County, California is the county where the transaction at issue
10 in this action occurred, as I purchased the product Pepsi One from Defendant from
11 Ralph's located at 17480 Ventura Blvd. Encino, CA 91316.
12

13
14 3. Because both the transaction at issue and a substantial portion of events
15 giving rise to this cause of action occurred within Los Angeles County, California,
16 it is my understanding through my attorney that this action has been commenced in
17 the proper place for the trial of this action.
18

19
20 *Further affiant sayeth not.*
21
22
23
24
25
26
27
28

1 I declare under penalty of perjury that the above and foregoing
2 representations are true and correct to the best of my information, knowledge and
3 belief.

4
5 Dated: 2/12/14

Signed: 

Souzan Aourout

6
7
8
9
10 I, the undersigned Notary Public, do hereby affirm that Souzan Aourout personally
11 appeared before me on the ____ day of February, 2014, and signed the above
12 Affidavit as her free and voluntary act and deed.

13
14
15 *2/12/14 v AP*
16 See Attached *2/12/14*
California Jurat *v AP*

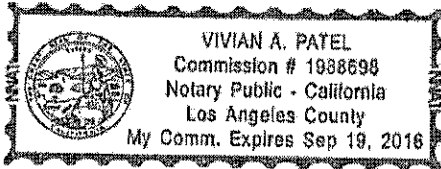
17
18
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27
28
Notary Public

CALIFORNIA JURAT

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 12th
day of February, 2014, by Souzan Hourout

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Vivian A. Patel

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit of Plaintiff
Souzan Hourout

Document Date: 2/12/2014 Number of Pages: 1

Signer(s) Other Than Named Above: None

| RIGHT THUMBPRINT OF SIGNER #1 |
|----------------------------------|
| Top of thumb here |

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.....17840.Ventura.Bld.
.....(818).345-6882
.....YOUR CASHIER WAS SELF CHECKOUT

.....PEPSI COLA.....4.99.B
.....CA.REDEM.VAL.....0.60.B
..RALPHS.rewards.CUSTOMER.....*****0706
.....TAX.....0.50
...****.BALANCE.....6.09

703.Ralphs.#6
17840.Ventura.Bld.
Encino.CA.91316
VISA.Purchase
*****3381
TOTAL: 6.09
REF#: 511163

.....VISA.....6.09
.....CHANGE.....0.00
TOTAL NUMBER OF ITEMS SOLD: 2
02/11/14.01:37pm.6.84.50.999

.....WOW.FUEL.POINTS!
.....Earn 50.BONUS.FUEL.POINTS.for
sharing.your.feedback.about.your.visit

...PLUS.enter.for.a.chance.to.win
..ONE.of.100.-.\$100.gift.cards.or.the
...\$5,000.gift.card.grand.prize!

.....Go.to.www.krogerfeedback.com
.....in.the.next.7.days.and
.....enter.the.information.below:

Date: 02/11/14

Time: 01:37pm

Entry.ID:703-464-50-6-84-134

..Limit.one.50.point.bonus.per.7.days.
...No.purchase.necessary.to.enter
sweepstakes.See.website.for.official
.....sweepstakes.rules.
.....



77 Water Street, New York, NY 10005 P 212.584.0700 F 212.584.0799 www.seegerweiss.com

February 19, 2014

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Pepsico, Inc.
700 Anderson Hill Road
Purchase, New York 10577

Re: Demand Letter Pursuant to California Civil Code § 1782

To whom it may concern:

This letter serves as a preliminary notice and demand for corrective action by Pepsico, Inc. ("Pepsi") pursuant to the provisions of California Civil Code § 1782, on behalf of our client, Souzan Aourout, and all other persons similarly situated.

Pepsi has sold and continues to sell the soft drink, Pepsi One ("Pepsi One" or the "Product"), without disclosing to consumers that the Product contains significant levels of 4-methylimidazole ("4-MEI"), as required by California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*

Pepsi has uniformly and deceptively promoted Pepsi One without the disclosure required by Proposition 65. Pepsi has and continues to deceive consumers to induce them to purchase Pepsi One, taking away market share from its competitors and increasing its own profits.

Ms. Aourout is a citizen of the State of California and a consumer as defined in California Civil Code § 1761(d) in that she purchased Pepsi One "for personal, family or household purposes." From at least January 7, 2012 to the present, Ms. Aourout purchased Pepsi One at least twice a week. The Pepsi One purchased by Ms. Aourout did not contain a clear and reasonable warning regarding the 4-MEI contained in the Product. Ms. Aourout purchased Pepsi One from Ralphs in Encino, California and other retail stores in the state of California.

Ms. Aourout suffered a loss of money as a result of Pepsi's omission in the amount of the purchase price of the Pepsi One that she purchased.

By failing to provide a clear and reasonable warning concerning the 4-MEI in Pepsi One, Pepsi violated numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5), (7), and (9), California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) and California's False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*)

New York

Newark

Philadelphia

Los Angeles

Pepsico, Inc.
February 19, 2014
Page -2-

We hereby demand that Pepsi immediately (1) cease and desist from further sales of Pepsi One in the state of California that do not contain a clear and reasonable warning regarding the 4-MEI in the Product, (2) conduct a corrective advertising campaign; (3) make full restitution to all purchasers of Pepsi One in the state of California of all money obtained from sales thereof; and (4) destroy all misleading and deceptive materials relating to Pepsi's failure to disclose the level of 4-MEI in the Product.

It is further demanded that Pepsi preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning product development and production of Pepsi One;
2. All communications with the Food and Drug Administration, and the U.S. Environmental Protection Agency concerning the level of 4-MEI in Pepsi One;
3. All documents concerning the advertisement, marketing or sale of Pepsi One; and
4. All communications with customers concerning the level of 4-MEI in Pepsi One.

Please comply with this demand within 30 days from receipt of this letter.

We are willing to negotiate with Pepsi to attempt to resolve the demands asserted in this letter. If Pepsi wishes to enter into such discussions, please contact me immediately.

Sincerely,

/s/ Jonathan Shub
Jonathan Shub

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

| | |
|---|---|
| I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SOUZAN AOUROUT, on behalf of herself and all others similarly situated | DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) PEPSICO, INC. |
| (b) County of Residence of First Listed Plaintiff <u>Los Angeles</u> (EXCEPT IN U.S. PLAINTIFF CASES) | County of Residence of First Listed Defendant <u>Westchester, NY</u> (IN U.S. PLAINTIFF CASES ONLY) |
| (c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. See Attached | |

| | | | | | | | | | | | | | | | | | | | |
|--|--|--------------------------------|---|--------------------------------|---|--------------------------------|--------------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | |

IV. 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. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 False Advertising; 28 U.S.C. § 1332

VII. NATURE OF SUIT (Place an X in one box only).

| OTHER STATUTES | CONTRACT | REAL PROPERTY CONT. | IMMIGRATION | PRISONER PETITIONS | PROPERTY RIGHTS |
|--|--|---|--|--|--|
| <input type="checkbox"/> 375 False Claims Act | <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 462 Naturalization Application | Habeas Corpus: | <input type="checkbox"/> 820 Copyrights |
| <input type="checkbox"/> 400 State Reapportionment | <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 830 Patent |
| <input type="checkbox"/> 410 Antitrust | <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 290 All Other Real Property | TORTS | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 840 Trademark |
| <input type="checkbox"/> 430 Banks and Banking | <input type="checkbox"/> 140 Negotiable Instrument | PERSONAL INJURY | PERSONAL PROPERTY | <input type="checkbox"/> 530 General | SOCIAL SECURITY |
| <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. | <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 861 HIA (1395f) |
| <input type="checkbox"/> 460 Deportation | <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 371 Truth in Lending | Other: | <input type="checkbox"/> 862 Black Lung (923) |
| <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. | <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 540 Mandamus/Other | <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) |
| <input type="checkbox"/> 480 Consumer Credit | <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits | <input type="checkbox"/> 330 Fed. Employers' Liability | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 864 SSID Title XVI |
| <input type="checkbox"/> 490 Cable/Sat TV | <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 340 Marine | BANKRUPTCY | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 865 RSI (405 (g)) |
| <input type="checkbox"/> 850 Securities/Commodities/Exchange | <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement | FEDERAL TAX SUITS |
| <input checked="" type="checkbox"/> 890 Other Statutory Actions | <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | FORFEITURE/PENALTY | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |
| <input type="checkbox"/> 891 Agricultural Acts | <input type="checkbox"/> 196 Franchise | <input type="checkbox"/> 355 Motor Vehicle Product Liability | CIVIL RIGHTS | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
| <input type="checkbox"/> 893 Environmental Matters | REAL PROPERTY | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 690 Other | |
| <input type="checkbox"/> 895 Freedom of Info. Act | <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 362 Personal Injury-Med Malpractice | <input type="checkbox"/> 441 Voting | LABOR | |
| <input type="checkbox"/> 896 Arbitration | <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 365 Personal Injury-Product Liability | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 710 Fair Labor Standards Act | |
| <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision | <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 720 Labor/Mgmt. Relations | |
| <input type="checkbox"/> 950 Constitutionality of State Statutes | | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 445 American with Disabilities-Employment | <input type="checkbox"/> 740 Railway Labor Act | |
| | | | <input type="checkbox"/> 446 American with Disabilities-Other | <input type="checkbox"/> 751 Family and Medical Leave Act | |
| | | | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 790 Other Labor Litigation | |
| | | | | <input type="checkbox"/> 791 Employee Ret. Inc. Security Act | |

FOR OFFICE USE ONLY:

Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

CV14-1289 Page 1 of 3

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This Initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

| | | | |
|---|---|--|-------------------------------------|
| Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX. | STATE CASE WAS PENDING IN THE COUNTY OF: | | INITIAL DIVISION IN CACD IS: |
| | <input type="checkbox"/> Los Angeles | | Western |
| | <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo | | Western |
| | <input type="checkbox"/> Orange | | Southern |
| | <input type="checkbox"/> Riverside or San Bernardino | | Eastern |

| | | | |
|--|--|--|-------------------------------------|
| Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX. | If the United States, or one of its agencies or employees, is a party, is it: | | INITIAL DIVISION IN CACD IS: |
| | A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside. | A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside. | |
| | <input type="checkbox"/> Los Angeles | <input type="checkbox"/> Los Angeles | Western |
| | <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo | <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo | Western |
| | <input type="checkbox"/> Orange | <input type="checkbox"/> Orange | Southern |
| | <input type="checkbox"/> Riverside or San Bernardino | <input type="checkbox"/> Riverside or San Bernardino | Eastern |
| | <input type="checkbox"/> Other | <input type="checkbox"/> Other | Western |

| Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row) | A. Los Angeles County | B. Ventura, Santa Barbara, or San Luis Obispo Counties | C. Orange County | D. Riverside or San Bernardino Counties | E. Outside the Central District of California | F. Other |
|---|-------------------------------------|---|--------------------------|--|--|-------------------------------------|
| Indicate the location in which a majority of plaintiffs reside: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Indicate the location in which a majority of defendants reside: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Indicate the location in which a majority of claims arose: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the
WESTERN DIVISION.
Enter "Western" in response to Question D below.

| | |
|---|---------------------------------|
| Question D: Initial Division? | INITIAL DIVISION IN CACD |
| Enter the Initial division determined by Question A, B, or C above: → | Western |

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Jonathan Shub

DATE: 2/19/2014

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g)) |

Jonathan N. Shub (SBN 237708)
Scott Alan George (Pro Hac Vice Application Forthcoming)
Parvin K. Aminolroaya (Pro Hac Vice Application Forthcoming)
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zebiblaw@gmail.com

Attorneys for Plaintiff
Souzan Aourout

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Souzan Aourout

CASE NUMBER

CV14-1289-RSWL(FFMx)

PLAINTIFF(S)

Pepsico, Inc

v.

**NOTICE TO PARTIES OF
COURT-DIRECTED ADR PROGRAM**

DEFENDANT(S)

NOTICE TO PARTIES:

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. *See* Civil L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. *See* Civil L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. *See* General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, www.cacd.uscourts.gov, under "ADR."

Pursuant to Civil L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties *before* the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. *See* Civil L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U. S. District Court

February 20, 2014

Date

By C. Sawyer
Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)**
Counsel are required to furnish and discuss this Notice with their clients.

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years of legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come prepared to discuss the parties' choice of ADR option (settlement conference before a magistrate judge; Court Mediation Panel; private mediation) at the initial scheduling conference. Counsel are also required to indicate the client's choice of ADR option in advance of that conference. *See* Civil L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

With more than 15,000 civil cases filed in the District in 2012, less than 1 percent actually went to trial. Most cases are settled between the parties; voluntarily dismissed; resolved through Court-directed or other forms of ADR; or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, www.cacd.uscourts.gov, under "ADR."

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Ronald S.W. Lew and the assigned Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV14-1289-RSWL(FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

February 20, 2014

Date

By C. Sawyer

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:



Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012



Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701



Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.