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Food & Consumer Packaged Goods Litigation

Court Dismisses Prop 65 Soft Drink Case

Riva v. PepsiCo, Inc., No. 14cv0340 (N.D. Cal.): A federal judge has dismissed with prejudice this suit, one of several putative class actions filed against Pepsi alleging that Pepsi One and Diet Pepsi beverages contained 4-methylimidazole ("4-MEI"), a carcinogen found on California Proposition 65's list of known carcinogens, which was not disclosed on the products' labelling. Judge Edward Chen agreed with Pepsi that plaintiffs lacked standing to sue, and that their causation and injury allegations were not sufficiently backed by scientific facts. Referring to plaintiffs' cited scientific studies, which were based on lab mice and rats, the judge found that the levels of 4-MEI consumed by the plaintiffs was not anywhere near the exposure of mice and rats in the studies, and that plaintiffs were required to show that the chemical was significantly likely to cause serious damage in order to obtain medical monitoring. The studies at issue were not persuasive in that regard and plaintiffs had admitted that they were not aware of other studies supporting their claims. Further, because plaintiffs had not established that their alleged risk of cancer was credible and substantial, the Court also held that they did not have standing to pursue their claims as the Ninth Circuit requires a credible threat of harm in order to constitute actual injury for standing purposes. Because plaintiffs could not say how they might modify their claims to address these problems, the Court dismissed with prejudice. [Order](#).

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