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## PROP 65: ACRYLAMIDE IN YOUR COFFEE? COURT ISSUES TENTATIVE ORDER

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In a case that has been widely watched, a Central Los Angeles Superior Court has issued a tentative ruling in the Phase One portion of a case that was originally filed against coffee purveyors, alleging that the acrylamide levels in their coffee products exceed the Prop 65 levels that require warnings. Acrylamide is an interesting chemical as many times it is created when the product is cooked or prepared rather than contained in volume in the original product. One of the original Prop 65 cases involved whether potatoes and subsequent products were regulated under Prop 65 as the acrylamide was generated during cooking.

The case *CERT v. Starbucks* BC 435759 expanded to include a larger group of manufacturers and retailers. Phase I of the case was to address three issues. The first issue was whether the products created a significant risk of cancer, the second and third issues were whether there was first amendment right, or federal preemption issues that govern Prop 65 labels. The last two issues have been unsuccessfully argued in the past.

In this case the court has tentatively found that the defendants have not proven that the levels in their products are below the threshold and therefore do not present a significant risk of cancer. Defendants argued that the coffee as a whole, including a myriad of other chemical was not a cancer risk. The Court disagreed and defendants have until July 16 to finalize any objection to his conclusion. The phase II portion of the case then relates to whether any Proposition 65 labeling requirements were violated. The Court also found against defendants on the other two issues as well.

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