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## COURT PROPERLY DISMISSES ANTI-ALCOHOL CLASS ACTION SUIT

by

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Standing is the bedrock of our legal system. As explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), in order to have standing, a plaintiff must claim to have suffered an injury-in-fact, that was caused by the defendant, for which there is legal redress by court action. *Id.* at 560-61. The injury must be concrete and particularized, and actual or imminent, not conjectural or hypothetical. The injury must be fairly traceable to the challenged action of the defendant. If intangible and contingent injuries are considered concrete injuries-in-fact sufficient to confer standing, then courts will become flooded with even more cases, and the judiciary will further infringe upon other branches of the government through its decisions.

In *Kreft v. Zima Beverage Co.*, Case No. 04CV1827 (Co. Dist. Ct., Jefferson County, Sept. 16, 2005), a Colorado District Court rightly recognized that notwithstanding the existence of a “controversy,” a case will not always lie. In *Kreft*, the plaintiffs brought suit against defendant manufacturers of alcoholic beverages on behalf of a purported class of parents and guardians to recoup money that their children allegedly spent purchasing alcoholic beverages as underage minors. The plaintiffs alleged that their underage children purchased and consumed those alcoholic beverages because of the defendants’ advertising, which plaintiffs claimed was designed to appeal to underage drinkers. As is typical of a complaint of this nature, the plaintiffs’ theories of liability included consumer fraud, deceptive trade practices, and unjust enrichment.

The *Kreft* plaintiffs did not allege that they were the parents of underage children during the applicable time period, that any advertisement of any of the manufacturer defendants actually caused an underage person to purchase or consume an alcoholic beverage, or that the parents themselves suffered any injury as the result of any underage purchase or consumption of alcohol by their children. Recognizing these critical deficiencies in the plaintiffs’ complaint, the Colorado court ruled that the complaint failed to state a claim upon which relief could be granted and dismissed the case. In so ruling, the court held that “[p]laintiffs cannot prove facts in support of their claims that would give them standing to obtain the relief they seek in court.”

Under Colorado law, as in all jurisdictions, an injury-in-fact to the plaintiff is an essential element of any cause of action. And, the injury alleged must be a direct one, not remote or uncertain. *See, e.g., Olson v. City of Golden*, 53 P.3d 747, 752 (Colo. Ct. App. 2002); *Colo. Dep’t of Pers. v. Colo. State Pers. Bd.*, 722 P.2d 1012, 1017 (Colo. 1986). This fundamental principle holds equally true in class actions, as the purported class representative(s) must have standing in order to seek relief on either his own behalf or on behalf of the putative class. *See Lynch v. Bagley*, 744 F.2d 1452, 1456

(11<sup>th</sup> Cir. 1984). Simply put, the Colorado district court did the right thing and acted in accordance with the law in dismissing the *Kreft* suit. A California Superior Court addressing similar facts reached the identical conclusion, finding that no named plaintiff in the action met the standing requirements to sue manufacturers of alcoholic beverages for allegedly targeting teenagers through advertising. *Goodwin v. Anheuser-Busch Cos., Inc.*, No. BC310105, 2004 WL 3143579 (Cal. Sup. Ct. Dec. 13, 2004).

The growing trend in class actions to expand the definition of injury-in-fact is a troublesome one. Through the class action vehicle, courts are routinely overstepping their role of compensating litigants for concrete injuries by usurping the role of other branches of the government. Regulation of industry, interstate commerce, speech, and so-called social ills via judicial decisions is increasingly commonplace. The *Kreft* court reaffirms (a) the fundamental legal principle that any plaintiff, including a putative class representative, must satisfy the threshold requirements of standing and injury-in-fact to sue and (b) the limited power of courts to monitor and police issues, which are more appropriately addressed by other branches of government.

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