

[REDACTED]

The Law Office of Jack Fitzgerald, PC

The Palm Canyon Building | 2870 Fourth Avenue, Suite 205 | San Diego, California 92103
Phone: (619) 692-3840 | Fax: (619) 362-9555

February 11, 2014

VIA CERTIFIED MAIL

Kamala D. Harris, Attorney General
Office of the Attorney General
Attn: Health & Safety Code § 25249.7(d)(1) (Proposition 65) Notice
1300 "I" Street
Sacramento, California 95814-2919

Indra K. Nooyi
Chairman & Chief Executive Officer
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, New York 10577

[District & City Attorneys Copied]

**Re: Notice Pursuant to Cal. Health & Safety Code §§ 25249.7(a) & (d)(1)
 Violation or Threatened Violation of Proposition 65 Warning by PepsiCo, Inc.**

Dear Ms. Harris, Ms. Nooyi, & to whomever else it may concern:

I represent California consumers Tamar Santestiban Cortina and Norman Meeder, and write on their behalves, pursuant to California Health & Safety Code §§ 25249.7(a) & (d)(1), to notify you as to PepsiCo, Inc.'s violation, or threatened violation, of § 25249.6, *i.e.*, Proposition 65.

Proposition 65 requires manufacturers to warn consumers about exposure to amounts of 4-methylimidazole (or 4-Mel) greater than 29 micrograms per day. Cal. Code of Regs. § 25705(b)(1). Testing by Consumers Union first reported on January 23, 2014¹ showed certain Pepsi beverages contained amounts of 4-Mel greater than 29 micrograms per 12-ounce can as follows. From April 2013 to September 2013, Diet Pepsi and Pepsi One sold in California contained, an average 30.5, and 43.5 micrograms respectively. In December 2013, regular Pepsi contained an average 29.1 micrograms of 4-Mel per can, and Pepsi One an average 39.5 micrograms.

Based on the allegations set forth in this Notice, Ms. Cortina and/or Mr. Meeder intend to file a citizen enforcement lawsuit against PepsiCo unless it enters into a binding written agreement to remedy the violations by recalling products already sold and in violation of Proposition 65; reformulating its products to bring the amount of 4-Mel per can to below 29 micrograms as required by Proposition 65 to be sold without a warning; and paying an appropriate civil penalty based on the factors enumerated in Cal. Health & Safety Code § 25249.7(b) (2). If PepsiCo wishes to attempt to resolve this dispute prior to litigation, it may contact me directly on behalf of Ms.

¹ <http://www.consumerreports.org/cro/caramelcolor0114.htm>

Cortina and Mr. Meeder, though it should be aware that they cannot finalize any settlement until after the 60-day notice period has expired, nor speak for the Attorney General or any District or City Attorney who received this Notice.

Sincerely,


Jack Fitzgerald

Attachment: Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1))
cc:

Mark A. Peterson, District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 lwixson@contracostada.org	Karyn Sinunu-Towery, Assistant District Attorney Santa Clara County 70 West Hedding Street, West Wing San Jose, CA 95110 epu@da.sccgov.org	Birgit Fladager District Attorney, Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354 Prop65@standa.org
Gary Lieberstein District Attorney Napa County 931 Parkway Mall P.O. Box 720 Napa, CA 94559 CEPD@countyofnapa.org	District Attorney, Monterey County 230 Church Street, Bldg. 2 Salinas, CA 93901 Prop65DA@co.monterey.ca.us	Jill Ravitch, District Attorney, Sonoma County 600 Administration Drive, Rm. 212J Santa Rosa, CA 95403 jrvitch@sonoma-county.org
Tim Ward District Attorney, Tulare County 221 S. Mooney Avenue, Rm. 224 Visalia, CA 93291 Prop65@co.tulare.ca.us	Gregory D. Totten District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org	Paul Zellerbach District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501 Prop65@rivcoda.org
District Attorney of Alameda County 1225 Fallon Street, Rm. 900 Oakland, CA 94612	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Amador County 708 Court Street, Ste. 202 Jackson, CA 95642
District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932
District Attorney of Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Fresno County 2220 Tulare Street, Ste. 1000 Fresno, CA 93721
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Humboldt County 825 5th Street, #4 Eureka, CA 95501	District Attorney of Imperial County 940 Main Street, Ste. 102 El Centro, CA 92243
District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Kern County 1115 Truxtun Ave, Bakersfield, CA 93301	District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Lassen County 220 S. Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney of Los Angeles County 210 W. Temple Street, Ste. 18000 Los Angeles, CA 90012-3210

District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Marin County 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903	District Attorney of Mariposa County 5101 Jones St. Mariposa, CA 95338
District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of Merced County 550 W. Main Street Merced, CA 95340	District Attorney of Modoc County 204 S. Court Street, Rm. 202 Alturas, CA 96101-4020
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93546	District Attorney of Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney of Orange County 401 Civic Center Drive West Santa Ana, CA 92701
District Attorney of Placer County 10810 Justice Center Drive, Ste. 240. Roseville, CA 95678	District Attorney of Plumas County 520 Main Street, Rm. 404 Quincy, CA 95971	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of San Benito County 419 Fourth Street, 2nd Fl. Hollister, CA 95023	District Attorney of San Bernardino County 303 West 3 rd Street, 6 th floor San Bernardino, CA 92415-0502	District Attorney of San Diego County 330 West Broadway, Ste. 1300 San Diego, CA 92101
District Attorney of San Francisco County 850 Bryant Street, Rm. 320 San Francisco, CA 94103	District Attorney of San Joaquin County 222 E. Weber Ave., Second floor, #202 Stockton, CA 95202	District Attorney of San Luis Obispo County 1050 Monterey Street, Rm. 450 San Luis Obispo, CA 93408
District Attorney of San Mateo County 400 County Center, 3rd Fl. Redwood City, CA 94063	District Attorney of Santa Cruz County 701 Ocean Street, Rm. 200 Santa Cruz, CA 95060	District Attorney of Santa Barbara County 312-D E. Cook Street
District Attorney of Shasta County 1355 West Street, Redding, CA 96001	District Attorney of Sierra County Courthouse 100 Courthouse Sq., 2nd Fl. P.O. Box 457 Downieville, CA 95936	District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097
District Attorney of Solano County 675 Texas Street, Ste. 4500 Fairfield, CA 94533	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	District Attorney of Tehama County 444 Oak Street – Room L Red Bluff, CA 96080
District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093	District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370	District Attorney of Yolo County 301 Second Street Woodland, CA 95695
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012	San Diego City Attorney's Office 1200 Third Avenue, Ste. 1620 San Diego, CA 92101

<p>San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102</p>	<p>San Jose City Attorney's Office 200 East Santa Clara Street San Jose, CA 95113</p>	<p>California Attorney General's Office Attention: Proposition 65 Coordinator and Robert Thomas 1515 Clay Street, Ste. 2000 P.O. Box 70550 Oakland, CA 94612-0550</p>
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February 11, 2014

CERTIFICATE OF MERIT PURSUANT TO CAL. HEALTH & SAFETY CODE § 25249.7(d)(1)

I, Jack Fitzgerald, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which California consumer Tamar Santisteban Cortina alleges that PepsiCo, Inc. has violated Cal. Health & Safety Code § 25249.6, by failing to provide clear and reasonable warnings that its beverages expose consumers to a level of 4-Mel known to be unsafe.

2. I am an attorney representing the noticing consumers, Ms. Santisteban Cortina, and Mr. Norman Meeder, in this matter.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure from the subject products' 4-Mel and, based on that information, and on other information in my possession, believe there is a reasonable and meritorious case for a private action.

4. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this Certificate, including the information identified in Cal. Health & Safety Code § 25249.7(h)(2), i.e., the identity of the persons consulted with and relied on by the Certifier, and the facts, studies or other data reviewed by those persons.

Dated: February 10, 2014

By:



Jack Fitzgerald
Attorney for Tamar Santisteban Cortina
& Norman Meeder

[Attachments for Attorney General Only]