



Soteria Law

3540 Wilkinson Lane #8
Lafayette, CA 94549

Jacqueline E. Biner, Esq

Founder, Managing Partner
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July 21, 2025

**Re: Notice of Violation of California Health & Safety Code § 25249.5 to § 25249.14
("Proposition 65") and Notice of Intent to Sue**

Dear BSN Sports, Varsity Brands Holding Co. Inc., Kohlberg Kravis Roberts & Co. Inc. and PepsiCo, Inc., and the appropriate public enforcement agencies:

My firm represents WHEN Justice ("WHEN") in this matter, and I submit this Notice of Violation and Notice of Intent to Sue ("Notice") of Cal. Health & Safety Code § 25249.5 to 25249.14 (hereinafter "Proposition 65"), pursuant to Health & Safety Code § 25249.7, on its behalf. This letter serves as a notice to BSN Sports, Varsity Brands Holding Co. Inc., Kohlberg Kravis Roberts & Co. Inc., and PepsiCo, Inc. ("Alleged Violator(s)") and the appropriate public enforcement agencies.

Also enclosed please find the Certificate of Merit¹, Additional Supporting Information² thereto, and Proof of Service³ enclosed herein.

WHEN is a California nonprofit public benefit corporation dedicated to building a cleaner, safer, and more just world by advocating for stronger health, environmental, and safety laws, regulations, and policies. Through impact litigation, education, and advocacy, WHEN mobilizes a community of passionate supporters to drive meaningful, long-lasting change.

I. Notice of Intent to Sue Provided No Public Enforcement Actions against Alleged Violator(s)

If a public enforcement agency has not commenced a diligent prosecution within sixty (60) days of this Notice, in addition to time allotted for method of service, WHEN intends to file a private enforcement action against Alleged Violator(s) in the public interest, pursuant to Cal. Health & Safety Code § 25249.7(d).

II. Proposition 65 Legal Background

Under Cal. Health & Safety Code § 25249.6, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the

¹ The Certificate of Merit has been provided to the Alleged Violator(s) and Attorney General.

² The Additional Supporting Information for the Certificate of Merit as required by Cal. Code Regs. tit. 11, § 3102 has only been provided to the Attorney General.

³ The Proof of Service has been provided to all recipients of this Notice.

state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual,” subject to exceptions. Additionally, pursuant to Cal. Health & Safety Code § 25249.8, the State of California has published a list of chemicals known to the State to cause cancer or reproductive toxicity within the meaning of Proposition 65.⁴ Listed chemicals relevant to this Notice include: lead⁵, ⁶ and/or cadmium⁷.

For guidance, the Office of Environmental Health Hazard Assessment created a summary (“Summary”) of Proposition 65 which includes general information about Proposition 65. A true and correct copy of the Summary is appended hereto as Attachment D.⁸

III. Alleged Violator(s) and Consumer Products with Listed Proposition 65 Chemicals

The names of Alleged Violator(s) encompassed within this Notice for violations of Proposition 65 are: BSN Sports, Varsity Brands Holding Co. Inc., Kohlberg Kravis Roberts & Co. Inc., and PepsiCo, Inc.

WHEN has identified violations of Proposition 65 by Alleged Violator(s) in regard to the products (“Covered Product(s)”) identified below in Table 1. Alleged Violator(s) sell or otherwise provide consumer products directly to consumers by any means, including via the internet, in the State of California that contain listed chemicals without the required clear and reasonable warnings and/or in exceedance of allowable limits.

Table 1

Covered Product(s)	Listed Chemical(s)	Uniform Product Code (“UPC”)
BSN True Mass Protein Powder Chocolate Milk Shake (“Product 1”)	Lead, Cadmium	843266006557

These violations have occurred and are continuing every day since at least April 29, 2025. Upon information and belief, the Covered Product(s) identified in Table 1 have been in violation of Proposition 65 since the products were introduced into the State of California’s marketplace and will continue every day until clear and reasonable

⁴ See the Proposition 65 list here: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

⁵ On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity.

⁶ On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

⁷ On May 1, 1997, the State of California officially listed cadmium compounds as chemicals known to cause developmental toxicity and male reproductive toxicity.

⁸ Attachment A has only been provided to the Alleged Violator(s).

warnings are produced and until these chemicals are either removed from, or reduced to allowable levels, in the Covered Product(s).

IV. Route of Exposure

Exposure is through ingestion by following the recommended use of the products.

V. Preservation of Relevant Evidence

Alleged Violator(s) are obliged to maintain and preserve all documents in their possession that relate in any way to the activities underlying the allegations in this Notice. Document and evidence preservation includes, but is not limited to, the suspension of any document deletion and/or destruction with respect to *all* documents in Alleged Violator(s)' possession, custody, or control. "Document" or "documents" includes, but is not limited to, all hard copy writings as defined in Cal. Evid. Code § 250 ("writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored") and all Electronically Stored Information ("ESI") as defined in Cal. Code Civ. Proc. § 2016.020 ("(d) 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities" and "(e) 'Electronically stored information' means information that is stored in an electronic medium"). *See also Cedars-Sinai Medical Center v. Superior Court*, 18 Cal. 4th 1, 8, 954 P.2d 511, 515 (1998).

WHEN may continue to investigate these Covered Product(s) and other products that may reveal additional violations and result in successive notices of violation.

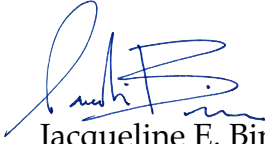
VI. Conclusion

Consistent with the public interest and community right to know goals of Proposition 65, and a desire to have these ongoing violations rectified, WHEN is interested in seeking a resolution of this matter that includes an enforceable written agreement by Alleged Violator(s) to: (1) reformulate the Covered Product(s) so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these Covered Product(s); (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65, and its applicable regulations, to all persons located in California who purchased the above products in the last three (3) years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation.

Please direct any inquiries or correspondence regarding this Notice to the below listed individual:

Jacqueline E. Biner, Esq.
Soteria Law
3540 Wilkinson Lane #8
Lafayette, CA 94549
jackie@soterialaw.com

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jackie Biner', with a stylized flourish at the end.

Jacqueline E. Biner, Esq.
Founder, Managing Partner
Soteria Law

Enclosures and/or Attachments:

- Certificate of Merit (to all recipients);
- Additional Supporting Information (to Attorney General only);
- Proof of Service (to all recipients); and
- Appendix A: OEHHA Summary (to Alleged Violator(s) only).

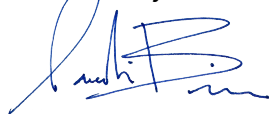
CERTIFICATE OF MERIT
Cal. Health & Safety Code § 25249.7(d)

Re: BSN Sports, Varsity Brands Holding Co. Inc., Kohlberg Kravis Roberts & Co. Inc., and PepsiCo, Inc.'s Notice of Proposition 65 violations

I, Jacqueline E. Biner, hereby declare and certify:

1. This Certificate of Merit accompanies the attached sixty (60) day Notice in which it is alleged that the party(ies) identified in the notice violated Cal. Health & Safety Code § 25249.6 by exposing individuals to chemical(s) known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning(s) to such individual(s).
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy of the notice for the California Attorney General as Exhibit 1 "Additional Supporting Information" to this Certificate of Merit regarding the lack of warnings for the listed chemical(s) that is/are the subject of the Notice.
4. Based on the information obtained and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the California 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 person(s) consulted with and relied on by the certifier and the facts, studies, and data reviewed by that person).

Dated: July 21, 2025



Jacqueline E. Biner, Esq.

PROOF OF SERVICE

Re: BSN Sports, Varsity Brands Holding Co. Inc., Kohlberg Kravis Roberts & Co. Inc., and PepsiCo, Inc.'s Notice of Proposition 65 violations

I, the undersigned, declare under penalty of perjury:

I am over the age of eighteen (18) years and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3540 Wilkinson Lane #8, Lafayette, CA 94549.

On July 21, 2025, I caused to be served the following:

1. **SIXTY (60) DAY AMENDED NOTICE OF VIOLATION SENT IN COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(d);**
2. **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 ("PROPOSITION 65"): A SUMMARY; AND**
3. **CERTIFICATE OF MERIT.**

by **Certified First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, individually addressed to each Alleged Violator listed below, and providing such envelope to a United States Postal Service representative:

BSN Sports 3500 Lacey Road Suite 1200 Downers Grove, IL 60515	Varsity Brands Holding Co. Inc. 14460 Varsity Brands Way Farmers Branch, TX 75244
Kohlberg Kravis Roberts & Co. Inc. 30 Hudson Yards New York, NY 10001	PepsiCo, Inc. 700 Anderson Hill Road Purchase, NY 10577

On July 21, 2025, I caused to be served true and correct copies of the following documents:

1. **SIXTY (60) DAY AMENDED NOTICE OF VIOLATION SENT IN COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(d); and**
2. **CERTIFICATE OF MERIT.**

via **Electronic Mail**, by sending true and correct copies of the above documents, addressed individually, to the recipients listed on the “Electronic Mail Service List” as contained on the Office of the Attorney General Website located at <https://oag.ca.gov/prop65/electronic-service> and listed below:

Pamela Y. Price, District Attorney Alameda County 7677 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org	Barbara Yook, District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us	Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org
James Clinchard, Assistant District Attorney El Dorado County 778 Pacific Street Placerville, CA 95667 EDCDAPROP65@edcda.us	Lisa A. Smittcamp, District Attorney Fresno County 2100 Tulare Street Fresno, CA 93721 consumerprotection@fresnocountyca.gov	Thomas L. Hardy, District Attorney Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us
Devin Chandler, Program Coordinator Lassen County 2950 Riverside Drive Susanville, CA 96130 dchandler@co.lassen.ca.us	Lori E. Frugoli, District Attorney Marin County 3501 Civic Center Drive Room 145 San Rafael, CA 94903 consumer@marincounty.gov	Walter W. Wall, District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338 mcda@mariposacounty.org
Kimberly Lewis, District Attorney Merced County 550 West Main Street Merced, CA 95340 Prop65@countyofmerced.com	Jeannine M. Pacioni, District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us	Allison Haley, District Attorney Napa County 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org
Clifford H. Newell, District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959 DA.Prop65@co.nevada.ca.us	Todd Spitzer, District Attorney Orange County 300 N. Flower Street Santa Ana, CA 92703 Prop65notice@ocdapa.org	Morgan Briggs Gire, District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678 Prop65@placer.ca.gov
David Hollister, District Attorney Plumas County 520 Main Street Quincy, CA 95971 davidhollister@countyofplumas.com	Paul E. Zellerbach, District Attorney Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org	Anne Marie Schubert, District Attorney Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org
Summer Stephan, District Attorney San Diego County 330 West Broadway San Diego, CA 92101 SanDiegoDAProp65@sdca.org	Mark Ankorn, Deputy City Attorney San Diego City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov	Alexandra Grayner, Assistant District Attorney San Francisco County 350 Rhode Island Street San Francisco, CA 94103 alexandra.grayner@sfgov.org
Henry Lifton, Deputy City Attorney	Tori Verber Salazar, District Attorney	Eric J. Dobroth, Deputy District Attorney

San Francisco City Attorney 1390 Market Street, 7 th Floor San Francisco, CA 94102 Prop65@sfcityatty.org	San Juaoquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org	San Luis Obispo County County Government Center Annex, 4 th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Bud Porter, Supervising Deputy District Attorney Santa Clara County 70 W. Hedding Street San Jose, CA 95110 EPU@da.sccgov.org	Nora V. Frimann, City Attorney Santa Clara City Attorney 200 E. Santa Clara Street 16 th Floor San Jose, CA 96113 Proposition65notices@sanjoseca.gov
Jeffrey S. Rosell, District Attorney Santa Cruz County 701 Ocean Street Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us	Carla Rodriguez, District Attorney Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403 ECLD@sonoma-county.org	Phillip J. Cline, District Attorney Tulare County 221 S. Mooney Boulevard Visalia, CA 95370 Prop65@co.tulare.ca.us
Gregory D. Totten, District Attorney Ventura County 800 S. Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org	Jeff W. Reisig, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org	


On July 21, 2025, I caused to be served true and correct copies of the following documents:

1. **SIXTY (60) DAY AMENDED NOTICE OF VIOLATION SENT IN COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(d);**
2. **CERTIFICATE OF MERIT; AND**
3. **CERTIFICATE OF MERIT ATTACHMENTS.**

by **Electronic Upload**, by uploading true and correct copies of the documents, addressed to the California Attorney General at their website address, listed under the “Electronic Upload Service List,” located at <https://oag.ca.gov/prop65/add-60-day-notice>, the office of which is physically located at:

Office of the California Attorney General Prop 65 Enforcement Reporting 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
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Executed on July 21, 2025 at Lafayette, California.



Jacqueline E. Biner, Esq.