



Melvin B. Pearlston
Senior Counsel

Of Counsel
Robert B. Hancock

December 18, 2014

**60-DAY NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violator") are:

Health Matters America, Inc.

Amazon.com, Inc.

Vitacost.com, Inc.

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

Organic Traditions Cacao Nibs – Cadmium

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

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 18, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 2124 Lincoln Avenue, #B, Alameda, California, 94501. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Robert B. Hancock

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Violators only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

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 exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 18, 2014



Robert B. Hancock

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On December 18, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO, President, Manager or Managing Member
Health Matters America, Inc.
2501 Broadway Street, Unit 2
Buffalo, NY 14227

Current CEO, President, Manager or Managing Member
Health Matters America, Inc.
3215 Broadway, Ste. 101
Cheektowaga, NY 14227

Current CEO or President
Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210

Current CEO or President
Vitacost.com, Inc.
5400 Broken Sound Blvd.
Suite 500
Boca Raton, FL 33487

On December 18, 2014, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(I)** on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550
<https://oag.ca.gov/prop65/add-60-day-notice>


Notice of Violations of California Health & Safety Code §25249.5 *et. seq.*

August 12, 2014

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On December 18, 2014, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed under penalty of perjury pursuant to the laws of the State of California on December 18, 2014.



Robert B. Hancock

Service List

District Attorney,
Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney,
Alpine County
P.O. Box 248
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Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney,
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney,
Colusa County
547 Market Street
Colusa, CA 95932

District Attorney,
Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney,
Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

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El Dorado County
515 Main Street
Placerville, CA 95667

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2220 Tulare Street, #1000
Fresno, CA 93721

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Willows, CA 95988

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Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

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Hanford, CA 93230

District Attorney, Lake County
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Lakeport, CA 95453

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Susanville, CA 96130

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Los Angeles, CA 90012

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