



Melvin B. Pearlston  
Senior Counsel

Of Counsel  
Robert B. Hancock

April 14, 2015

**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:

**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:

**Vitacost Certified Organic Cocoa Powder – 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 April 14, 2014, 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: April 14, 2015

  
\_\_\_\_\_  
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 April 14, 2015, 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:

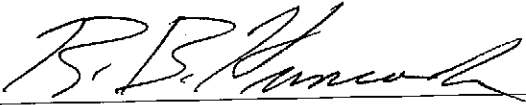
Current CEO or President  
Vitacost.com, Inc.  
5400 Broken Sound Blvd.  
Suite 500  
Boca Raton, FL 33487

On April 14, 2015, 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)(1)** 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>

On April 14, 2015, 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 April 14, 2015.

  
\_\_\_\_\_  
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  
Markleeville, CA 96120

District Attorney,  
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

District Attorney,  
El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney,  
Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney,  
Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney,  
Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney,  
Imperial County  
940 West Main Street, Ste 102  
El Centre, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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

District Attorney,  
Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney,  
Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney,  
Los Angeles County  
210 W. Temple St., Ste. 1800  
Los Angeles, CA 90012

District Attorney,  
Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney,  
Marin County  
3501 Civic Center Dr., Rm 130  
San Rafael, CA 94903

District Attorney,  
Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney,  
Merced County  
2222 M Street  
Merced, CA 95340

District Attorney,  
Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney,  
Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney,  
Monterey County  
Post Office Box 1131  
Salinas, CA 93902

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney,  
Nevada County  
201 Commercial St.  
Nevada City, CA 95959

District Attorney,  
Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney,  
Placer County  
10810 Justice Center Dr.,  
Ste. 240  
Roseville, CA 95678

District Attorney,  
Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney,  
Riverside County  
3960 Orange Street  
Riverside, CA 92502

District Attorney,  
Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney,  
San Benito County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

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San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

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San Diego County  
330 W. Broadway, Room 1300  
San Diego, CA 92101

District Attorney,  
San Francisco County  
850 Bryant Street, Room 322  
San Francisco, CA 94103

District Attorney,  
San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney,  
San Luis Obispo County  
1035 Palm St. Room 450  
San Luis Obispo, CA 93408

District Attorney,  
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400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney,  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney,  
Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney,  
Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney,  
Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney,  
Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney,  
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675 Texas Street, Ste 4500  
Fairfield, CA 94533

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Santa Rosa, CA 95403

District Attorney,  
Stanislaus County  
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Modesto, CA 95353

District Attorney,  
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446 Second Street  
Yuba City, CA 95991

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Red Bluff, CA 96080

District Attorney,  
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Weaverville, CA 96093

District Attorney,  
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221 S. Mooney Ave., Rm. 224  
Visalia, CA 93291

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Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2nd Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
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City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
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San Francisco City Attorney's  
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Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 E. Santa Clara St.,  
16th Floor  
San Jose, CA 95113