



## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

July 24, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this 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 attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**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:

**Bonk Breaker LLC Bonk Breaker Espresso Chip- Lead**  
**Bonk Breaker LLC Bonk Breaker Blueberry Oat - Lead**  
**Bonk Breaker LLC Bonk Breaker Peanut Butter Chocolate Chip - Lead**  
**Bonk Breaker LLC Bonk Breaker Protein Almond Cherry Chunk - Lead**  
**Bonk Breaker LLC Bonk Breaker Peanut Butter & Jelly - Lead**  
**Bonk Breaker LLC Bonk Breaker Apple Pie with Chia Seed - Lead**

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

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It should be noted that ERC 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, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 24, 2012, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Vitacost.com, Inc. and its Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vitacost.com, Inc.**

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 exposure to the listed chemical that is the subject of the notice.

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 Violator 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: July 24, 2015

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Chris Heptinstall

**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 entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On July 24, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

Corporation Service Company  
(Vitacost.com, Inc.'s Registered  
Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

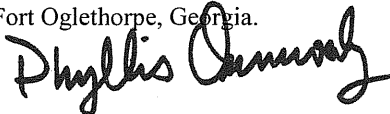
Corporation Service Company  
(Vitacost.com, Inc.'s Registered  
Agent for Service of Process)  
1201 Hays Street  
Tallahassee, FL 32301

On July 24, 2015, I verified the following documents **NOTICE OF VIOLATIONS, 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)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On July 24, 2015, I served the following documents: **NOTICE OF VIOLATIONS, 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 on July 24, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

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**Service List**

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|--|--|---|---|
| District Attorney, Alameda County<br>1225 Fallon Street, Suite 900<br>Oakland, CA 94612        | District Attorney, Los Angeles County<br>210 West Temple Street, Suite 18000<br>Los Angeles, CA 90012    | District Attorney, San Diego County<br>330 West Broadway, Suite 1300<br>San Diego, CA 92101             | District Attorney, Tuolumne County<br>423 N. Washington Street<br>Sonora, CA 95370                              |
| District Attorney, Alpine County<br>P.O. Box 248<br>Markleeville, CA 96120                     | District Attorney, Madera County<br>209 West Yosemite Avenue<br>Madera, CA 93637                         | District Attorney, San Francisco County<br>850 Bryant Street, Suite 322<br>San Francisco, CA 94103      | District Attorney, Ventura County<br>800 South Victoria Ave, Suite 314<br>Ventura, CA 93009                     |
| District Attorney, Amador County<br>708 Court Street<br>Jackson, CA 95642                      | District Attorney, Marin County<br>3501 Civic Center Drive, Room 130<br>San Rafael, CA 94903             | District Attorney, San Joaquin County<br>222 E. Weber Ave. Rm. 202<br>Stockton, CA 95202                | District Attorney, Yolo County<br>301 2 <sup>nd</sup> Street<br>Woodland, CA 95695                              |
| District Attorney, Butte County<br>25 County Center Drive, Suite 245<br>Oroville, CA 95965     | District Attorney, Mariposa County<br>Post Office Box 730<br>Mariposa, CA 95338                          | District Attorney, San Luis Obispo County<br>1035 Palm St, Room 450<br>San Luis Obispo, CA 93408        | District Attorney, Yuba County<br>215 Fifth Street, Suite 152<br>Marysville, CA 95901                           |
| District Attorney, Calaveras County<br>891 Mountain Ranch Road<br>San Andreas, CA 95249        | District Attorney, Mendocino County<br>Post Office Box 1000<br>Ukiah, CA 95482                           | District Attorney, San Mateo County<br>400 County Ctr., 3 <sup>rd</sup> Floor<br>Redwood City, CA 94063 | Los Angeles City Attorney's Office<br>City Hall East<br>200 N. Main Street, Suite 800<br>Los Angeles, CA 90012  |
| District Attorney, Colusa County<br>346 Fifth Street Suite 101<br>Colusa, CA 95932             | District Attorney, Merced County<br>550 W. Main Street<br>Merced, CA 95340                               | District Attorney, Santa Barbara County<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101         | San Diego City Attorney's Office<br>1200 3rd Avenue, Ste 1620<br>San Diego, CA 92101                            |
| District Attorney, Contra Costa County<br>900 Ward Street<br>Martinez, CA 94553                | District Attorney, Modoc County<br>204 S Court Street, Room 202<br>Alturas, CA 96101-4020                | District Attorney, Santa Clara County<br>70 West Hedding Street<br>San Jose, CA 95110                   | San Francisco, City Attorney<br>City Hall, Room 234<br>1 Dr Carlton B Goodlett PL<br>San Francisco, CA 94102    |
| District Attorney, Del Norte County<br>450 H Street, Room 171<br>Crescent City, CA 95531       | District Attorney, Mono County<br>Post Office Box 617<br>Bridgeport, CA 93517                            | District Attorney, Santa Cruz County<br>701 Ocean Street, Room 200<br>Santa Cruz, CA 95060              | San Jose City Attorney's Office<br>200 East Santa Clara Street,<br>16 <sup>th</sup> Floor<br>San Jose, CA 95113 |
| District Attorney, El Dorado County<br>515 Main Street<br>Placerville, CA 95667                | District Attorney, Monterey County<br>Post Office Box 1131<br>Salinas, CA 93902                          | District Attorney, Shasta County<br>1355 West Street<br>Redding, CA 96001                               |   |
| District Attorney, Fresno County<br>2220 Tulare Street, Suite 1000<br>Fresno, CA 93721         | District Attorney, Napa County<br>931 Parkway Mall<br>Napa, CA 94559                                     | District Attorney, Sierra County<br>PO Box 457<br>Downieville, CA 95936                                 |   |
| District Attorney, Glenn County<br>Post Office Box 430<br>Willows, CA 95988                    | District Attorney, Nevada County<br>201 Commercial Street<br>Nevada City, CA 95959                       | District Attorney, Siskiyou County<br>Post Office Box 986<br>Yreka, CA 96097                            |   |
| District Attorney, Humboldt County<br>825 5th Street 4 <sup>th</sup> Floor<br>Eureka, CA 95501 | District Attorney, Orange County<br>401 West Civic Center Drive<br>Santa Ana, CA 92701                   | District Attorney, Solano County<br>675 Texas Street, Ste 4500<br>Fairfield, CA 94533                   |   |
| District Attorney, Imperial County<br>940 West Main Street, Ste 102<br>El Centro, CA 92243     | District Attorney, Placer County<br>10810 Justice Center Drive, Ste 240<br>Roseville, CA 95678           | District Attorney, Sonoma County<br>600 Administration Drive,<br>Room 212J<br>Santa Rosa, CA 95403      |   |
| District Attorney, Inyo County<br>230 W. Line Street<br>Bishop, CA 93514                       | District Attorney, Plumas County<br>520 Main Street, Room 404<br>Quincy, CA 95971                        | District Attorney, Stanislaus County<br>832 12 <sup>th</sup> Street, Ste 300<br>Modesto, CA 95354       |   |
| District Attorney, Kern County<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301                 | District Attorney, Riverside County<br>3960 Orange Street<br>Riverside, CA 92501                         | District Attorney, Sutter County<br>446 Second Street<br>Yuba City, CA 95991                            |   |
| District Attorney, Kings County<br>1400 West Lacey Boulevard<br>Hanford, CA 93230              | District Attorney, Sacramento County<br>901 "G" Street<br>Sacramento, CA 95814                           | District Attorney, Tehama County<br>Post Office Box 519<br>Red Bluff, CA 96080                          |   |
| District Attorney, Lake County<br>255 N. Forbes Street<br>Lakeport, CA 95453                   | District Attorney, San Benito County<br>419 Fourth Street, 2 <sup>nd</sup> Floor<br>Hollister, CA 95023  | District Attorney, Trinity County<br>Post Office Box 310<br>Weaverville, CA 96093                       |   |
| District Attorney, Lassen County<br>220 South Lassen Street, Ste. 8<br>Susanville, CA 96130    | District Attorney, San Bernardino County<br>316 N. Mountain View Avenue<br>San Bernardino, CA 92415-0004 | District Attorney, Tulare County<br>221 S. Mooney Blvd., Room 224<br>Visalia, CA 93291                  |   |