

Melvin B. Pearlston  
Senior Counsel



Of Counsel  
Robert B. Hancock

November 16, 2016

**60-DAY 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 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 Violator 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 Violator 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 Violator identified below.

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

**Amazon.com, Inc.  
Lucky Vitamin Corporation  
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:

**Extreme Health USA 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 November 16, 2015, 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 Violator 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 Violator 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 1341 58<sup>th</sup> Ave. #11, Oakland, California, 94621. 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,



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Robert B. Hancock  
rbh@lawyer.com

**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 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: November 16, 2016

  
\_\_\_\_\_  
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 November 16, 2016, 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  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, WA 98109-5210

Current CEO or President  
LuckyVitamin Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222-2514

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

On November 16, 2016, 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, Ste. 2000  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On November 16, 2016, 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. As to those parties listed by mailing address only, I effected service 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. As to

Notice of Violations of California Health & Safety Code §25249.5 *et. seq.*  
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those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on November 16, 2016.

A handwritten signature in blue ink, appearing to read "R.B. Hancock", written over a horizontal line.

Robert B. Hancock

### Service List

District Attorney,  
Alameda County  
1225 Fallon St., Rm. 900  
Oakland, CA 94612

District Attorney,  
Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney,  
Amador County  
708 Court St., #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Dr.  
Oroville, CA 95965

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

District Attorney,  
Colusa County  
346 Fifth St. Ste. 101  
Colusa, CA 95932

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Crescent City, CA 95531

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515 Main St.  
Placerville, CA 95667

District Attorney,  
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2220 Tulare St., #1000  
Fresno, CA 93721

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P.O. Box 430  
Willows, CA 95988

District Attorney,  
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825 5th St.  
Eureka, CA 95501

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940 West Main St., Ste. 102  
El Centre, CA 92243

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

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1215 Truxtun Ave.  
Bakersfield, CA 93301

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

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

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Lassen County  
220 S. Lassen St., Ste. 8  
Susanville, CA 96130

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Los Angeles, CA 90012

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209 West Yosemite Ave.  
Madera, CA 93637

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3501 Civic Center Dr., Rm. 130  
San Rafael, CA 94903

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P.O. Box 730  
Mariposa, CA 95338

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Ukiah, CA 95482

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Merced, CA 95340

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204 S Court St., Rm. 202  
Alturas, CA 96101-4020

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Bridgeport, CA 93517

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[Prop65@ca.judicialbranch.ca.us](mailto:Prop65@ca.judicialbranch.ca.us)

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Sacramento, CA 95814

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San Bernardino, CA 92415

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San Diego, CA 92101

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San Luis Obispo, CA 93408

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Santa Barbara, CA 93101

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City of Sacramento  
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Sacramento, CA 95814

San Diego City Attorney's  
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San Diego, CA 92101

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San Francisco, CA 94102

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