

WUCETICH



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Jason M. Wucetich, Esq.  
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May 12, 2020

***VIA CERTIFIED MAIL***

CVS Pharmacy, Inc.  
Attn: General Counsel  
One CVS Drive  
Woonsocket, RI 02895

CVS Pharmacy, Inc.  
c/o CT Corporation System  
818 W. 7th St. #930  
Los Angeles, CA 90017  
(agent for service of process)

***VIA US MAIL***

District Attorney's Office for All Counties in  
California and Applicable City Attorneys  
(See attached Service List)

***VIA ELECTRONIC FILING***

State of California Department of Justice  
Office of the Attorney General  
Proposition 65 Enforcement Reporting  
Filing link: [oag.ca.gov/prop65](http://oag.ca.gov/prop65)

Re: 60 Day Notice of Intent to Sue for Violations of the Safe Drinking Water and Toxic  
Enforcement Act of 1986 - California Health & Safety Code § 25249.5 *et seq.*

Dear CVS Pharmacy, Inc. and Public Enforcement Agencies:

Our firm represents Nicholas Frank, a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items ("Noticing Party" or "Mr. Frank"). Mr. Frank has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (hereinafter "Proposition 65"), which is codified at Cal. Health & Safety Code § 25249.5, *et seq.* The violations concern the specific products, premises, and toxic substances referenced below.

The violations have occurred and continue to occur because the violators identified below have not provided clear and reasonable warnings with the identified products. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic exposures to such chemicals, citizens of California lack the information necessary to make an informed decision regarding whether and/or how to eliminate or reduce exposure to these toxic chemicals.

This letter serves as notice of these violations to the alleged violators identified below and to the appropriate public enforcement agencies. Pursuant to § 25249.7 of the statute, our firm intends to file a private enforcement action on behalf of Mr. Frank 60 days after effective service of this notice

unless the public enforcement agencies have commenced and are earnestly prosecuting an action to redress these violations.

Alleged Violator(s): The names of the companies covered by this notice are:

CVS Pharmacy, Inc.

Product/Category Type: The specific products or premises that are subject to this notice are:

- CVS enclosed parking facility located at 5985 W. Pico Blvd., Los Angeles, CA 90035

Consumers are exposed to the hazardous chemicals in the products or premises listed above through ingestion and/or inhalation, as a result of breathing in the chemicals while in enclosed parking garages.

Listed Chemicals: These violations involve exposure to the following chemicals:

- Carbon Monoxide, which the State of California listed as a hazardous substance causing reproductive toxicity on July 1, 1989;
- Diesel Engine Exhaust, which the State of California listed as a hazardous substance causing cancer on October 1, 1990; and
- Gasoline Engine Exhaust (Condensates/Extracts), which the State of California listed as a hazardous substance causing cancer on October 1, 1990.

Violations: The alleged violators knowingly and intentionally also have exposed and continue to knowingly expose consumers within the State of California to the listed chemicals at levels that, upon reasonable use of the product, exceed the maximum allowable dose level without providing clear and reasonable warning of that exposure. More specifically, the product or premises do not warn that it contains a chemical known to the State of California to cause cancer or reproductive toxicity. Additionally, the violators do not provide Proposition 65 warnings on, at or near the parking facility in their care, custody and/or control. Moreover, any warnings posted do not comply with amendments to Proposition 65 effective August 30, 2018.

With respect to the products or premises specified above, the violations commenced on the latter of the date that the parking garages subject to this notice were operated in California, or the date upon which California law codified the allowable level of the relevant chemical(s) surpassed by the specified garages at issue; have continued every day since the relevant date the violations started; and will continue every day until the listed chemicals are removed from the garages at issue, reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by the noticed parties in accordance with the law. Mr. Frank believes that the violations are current and ongoing and, on information and belief, believes that the violations have been occurring since at least May 2019.

California law provides that a “clear and reasonable” warning be provided prior to exposure to certain listed chemicals. The noticed parties are in violation of Proposition 65 because they have



failed to provide a warning to consumers that they are being exposed the subject chemical(s) listed above. In their course of business, the noticed parties are “knowingly and intentionally” exposing consumers to the listed chemicals specified above without first providing a “clear and reasonable” warning. See Cal. Health & Safety Code § 25249.6. The method of warning should comply with the content requirements of 27 C.C.R. § 25607.21, be provided on a 20 by 20 inch sign posted at each public entrance to the enclosed parking facility in no smaller than 72-point type, and be placed so that it is readable and conspicuous to individuals before they enter the facility.

27 C.C.R. § 25607.21 requires that the sign include the following elements:

- (1) the symbol required in § 25603(a)(1);
- (2) the word “WARNING:” in all capital letters and bold print; and
- (3) the words “Breathing the air in this parking garage can expose you to chemicals including carbon monoxide and gasoline or diesel engine exhaust, which are known to the State of California to cause cancer and birth defects and other reproductive harm. Do not stay in this area longer than necessary. For more information go to [www.P65Warnings.ca.gov/parking](http://www.P65Warnings.ca.gov/parking)”.

The noticed parties have not provided any such Proposition 65 warnings with respect to the enclosed parking facilities at issue.

As stated above, Proposition 65 requires that notice and intent to sue be provided to a violator 60 days before a suit is filed. With this notice, Mr. Frank provides written notice of the alleged violations to the noticed parties and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Frank from information available to him. Our investigation remains ongoing and continuing and may reveal further violations.

Pursuant to 27 C.C.R. § 25903(b), copies of (1) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary; and (2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): Special Compliance Procedure, are attached hereto as Exhibits A and B, for reference for the Noticed Parties. Pursuant to 11 C.C.R. § 3100, a “Certificate of Merit” is attached hereto.

Please direct all communications regarding this matter and notice to my attention at the address and telephone number listed on the letterhead. We are amenable to settlement discussions if you are interested in early resolution. Do not hesitate to contact me with questions or concerns.

Sincerely,

Jason M. Wucetich, Esq.

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

I, Jason M. Wucetich, hereby declare:

1. This Certificate of Merit accompanies the attached 60 day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience of expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through these consultations, and on all 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 private action” means that the information provides a credible basis that all elements of plaintiff’s case can be established and the information did not prove that the alleged violator(s) 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 Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code § 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relieved up on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: May 12, 2020

WUCETICH & KOROVILAS LLP



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By: Jason M. Wucetich, Esq.  
Attorney for Noticing Party

### Certificate of Service

I am a citizen of the United States and resident of the County of Los Angeles. I am over the age of eighteen years and not a party of the within entitled action or process. My business address is 222 N. PCH Ste. 2000, El Segundo, CA 90245.

On May 12, 2020, I served the following documents:

1. Notice of Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986; – California Health and Safety Code Section 25249.5, *et seq.*;
2. Certificate of Merit;
3. Appendix “A” – “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”, and Appendix “B” – “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): Special Compliance Procedure” (to the Noticed Party only); and
4. Certificate of Service;

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties below, and causing each envelope to be deposited at a United States Postal Service Office in El Segundo, California for delivery by Certified Mail:

CVS Pharmacy, Inc.  
Attn: General Counsel  
One CVS Drive  
Woonsocket, RI 02895

CVS Pharmacy, Inc.  
c/o CT Corporation System  
818 W. 7th St. #930  
Los Angeles, CA 90017  
(agent for service of process)

On May 12, 2020, I served the following documents:

1. Notice of Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986; – California Health and Safety Code Section 25249.5, *et seq.*;
2. Certificate of Merit;
3. Additional Information and Supporting Documentation Required by Title 11 C.C.R. Section 3102; and
4. Certificate of Service;

on the following party by electronically filing a true and correct copy thereof as permitted through the website of the California Attorney General via link at [oag.ca.gov/prop65](http://oag.ca.gov/prop65):

State of California Department of Justice

Office of the Attorney General

On May 12, 2020, I served the following documents:

1. Notice of Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986;  
– California Health and Safety Code Section 25249.5, *et seq.*;
2. Certificate of Merit; and
3. Certificate of Service;

on each of the individual parties listed on the attached Service List by placing a true and correct copy thereof in a separate sealed envelope addressed to each person on the Service List, and causing each envelope to be deposited at a United States Postal Service mail box in El Segundo, California for delivery via First Class Mail.

I, Jason M. Wucetich, declare under penalty of perjury that the foregoing is true and correct.  
Executed on May 12, 2020, in the City of El Segundo in the County of Los Angeles.



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Jason M. Wucetich

# SERVICE LIST

Page 1 of 3

DISTRICT ATTORNEY ALAMEDA COUNTY 1225 FALLON STREET, SUITE 900 OAKLAND, CA 94612 CEPDProp65@acgov.org	DISTRICT ATTORNEY KERN COUNTY 1215 TRUXTUN AVENUE BAKERSFIELD, CA 93301	DISTRICT ATTORNEY NEVADA COUNTY 201 COMMERCIAL STREET NEVADA CITY, CA 95959
DISTRICT ATTORNEY ALPINE COUNTY P.O. BOX 248 MARKLEEVILLE, CA 96120	DISTRICT ATTORNEY KINGS COUNTY 400 WEST LACEY BLVD. HANFORD, CA 93230	DISTRICT ATTORNEY ORANGE COUNTY 401 WEST CIVIC CENTER DR. SANTA ANA, CA 92701
DISTRICT ATTORNEY AMADOR COUNTY 708 COURT STREET, SUITE 202 JACKSON, CA 95642	DISTRICT ATTORNEY LAKE COUNTY 255 N. FORBES STREET LAKEPORT, CA 95453	DISTRICT ATTORNEY PLACER COUNTY 10810 JUSTICE CENTER DRIVE, STE. 240 ROSEVILLE, CA 95678
DISTRICT ATTORNEY BUTTE COUNTY 25 COUNTY CENTER DRIVE, STE 245 OROVILLE, CA 95965	DISTRICT ATTORNEY LASSEN COUNTY 220 SOUTH LASSEN STREET, SUITE 8 SUSANVILLE, CA 96130 mlatimer@co.lassen.ca.us	DISTRICT ATTORNEY PLUMAS COUNTY 520 MAIN STREET, ROOM 404 QUINCY, CA 95911
DISTRICT ATTORNEY CALAVERAS COUNTY 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249	DISTRICT ATTORNEY LOS ANGELES COUNTY 210 WEST TEMPLE STREET, STE 18000 LOS ANGELES, CA 90012	DISTRICT ATTORNEY RIVERSIDE COUNTY 3072 ORANGE STREET RIVERSIDE, CA 92501 Prop65@rivcoda.org
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DISTRICT ATTORNEY EL DORADO COUNTY 515 MAIN STREET PLACERVILLE, CA 95667	DISTRICT ATTORNEY MENDOCINO COUNTY P. O. BOX 1000 UKIAH, CA 95482	DISTRICT ATTORNEY SAN DIEGO COUNTY 330 WEST BROADWAY, SUITE 1300 SAN DIEGO, CA 92101
DISTRICT ATTORNEY FRESNO COUNTY 2220 TULARE STREET, SUITE 1000 FRESNO, CA 93721	DISTRICT ATTORNEY MERCED COUNTY 550 W. MAIN STREET MERCED, CA 95340	DISTRICT ATTORNEY SAN FRANCISCO COUNTY 732 BRANNAN STREET SAN FRANCISCO, CA 94103 Gregory.alker@sfgov.org

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Page 2 of 3

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DISTRICT ATTORNEY MODOC COUNTY 204 S. COURT STREET, ROOM 202 ALTURAS, CA 96101	DISTRICT ATTORNEY SHASTA COUNTY 1355 WEST STREET REDDING, CA 96001	DISTRICT ATTORNEY TUOLUMNE COUNTY 423 N. WASHINGTON ST. SONORA, CA 95370
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**SERVICE LIST**

Page 3 of 3

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WOODLAND, CA 95695  
cfepd@yolocounty.org

OAKLAND CITY ATTORNEY  
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1 FRANK OGAWA PLAZA  
OAKLAND, CA 94612