

**VOORHEES & BAILEY, LLP**  
**535 Ramona Street; Suite 1**  
**Palo Alto, CA 94301**  
**650-815-6022**

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**60-Day Notice of Violation - California Health & Safety Code § 25249.7(d)**

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December 9, 2020

<b>Notice Recipient:</b>	CVS Pharmacy, Inc.
<b>Noticing Party:</b>	Dennis Johnson
<b>Covered Products:</b>	Binoculars With PVC Components
<b>Listed Chemical:</b>	Lead
<b>Routes of Exposure:</b>	Ingestion; Dermal
<b>Potential Harm:</b>	Birth Defects and Other Reproductive Harm

**I. INTRODUCTION**

This Sixty-Day Notice of Violation (“Notice”) is provided by Dennis Johnson. Mr. Johnson is a private enforcer acting in the public interest pursuant to California Health & Safety Code section 25249.7(d). Mr. Johnson seeks to promote awareness of exposures to toxic chemicals in products sold and used in California and, if possible, to eliminate such exposures.

This Notice is provided to the alleged violator, CVS Pharmacy, Inc. (the “Notice Recipient”), as well as the California Attorney General’s Office, the District Attorney’s Office for 58 Counties, and the City Attorneys for San Francisco, San Diego, San Jose and Los Angeles.

The Notice Recipient is hereby given notice that it has violated and continues to violate provisions of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code section 25249.5 et seq. (“Proposition 65”). Specifically, the Notice Recipient has violated and continues to violate the warning requirement of section 25249.6 of the California Health & Safety Code, which provides, “No 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 giving clear and reasonable warning to such individual....” The alleged violations that are the subject of this Notice are provided below.

## II. ALLEGED VIOLATIONS

Product Types/Categories: The specific types or categories of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are Binoculars With PVC Components (“Covered Products”).

Identified below is a specific example of Covered Products recently purchased and witnessed as being available for purchase or use in California (the “Exemplar Product”). Based on publicly available information, the retailers, distributors, and/or manufacturers of the Exemplar Product is also provided.

The Exemplar Product is identified for the Notice Recipient’s benefit to assist in its investigation of the allegations set forth in this Notice. The Exemplar Product is not meant to be an exhaustive or comprehensive identification of each specific offending product falling within the specific types or categories of Covered Products at issue in this Notice. It is the private enforcer’s position that the Notice Recipient is obligated to conduct a good-faith investigation into other specific products falling within the type or category of Covered Products that have been manufactured, imported, distributed, sold, shipped, stored, or are otherwise within the Notice Recipient’s custody or control, so as to ensure the requisite toxic warnings were and are provided to California citizens prior to purchase.

<i>Covered Products</i>	<i>Exemplar Product Information</i>
Binoculars With PVC Components	CVS 7 X 50 Magnification Binoculars UPC: 6 38688 54212 5 Retailer: CVS Pharmacy, Inc. (Palo Alto, CA) Manufacturer/Distributor: CVS Pharmacy, Inc.

Listed Chemical: The alleged violations involve exposures to the Proposition 65-listed chemical lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Lead is hereinafter referred to as the “Listed Chemical”.

Statement of Violations: The Notice Recipient knowingly and intentionally exposed, and continues to knowingly and intentionally expose, consumers within the State of California to lead, a chemical known to the State of California to cause birth defects and other reproductive harm, without first giving clear and reasonable warning of this exposure to such individuals. In particular, the Notice Recipient failed to provide a clear and reasonable warning to consumers that the Binoculars With PVC Components expose consumers to lead.

Route of Exposure: California citizens, through the act of buying, acquiring or utilizing the Covered Products, are exposed to the Listed Chemical. Consumers ingest the Listed Chemical when they touch and handle the Covered Products, transfer the Listed Chemical from the Covered Products onto their fingers and hands, and transfer the Listed Chemical from their fingers and hands to their mouths through hand-to-mouth activities that may continue to occur

for a significant period after contact with the Covered Products. Consumers are exposed to the Listed Chemical through direct dermal contact when they, among other activities, handle or touch the Covered Products.

Number and Duration of Violations: Each and every sale of a Covered Product to a consumer in California without a clear and reasonable warning is a violation, including transactions made over-the-counter, through the internet, and/or via catalogue by the Notice Recipient and any other sellers of the Covered Products. These violations have been occurring since at least December 9, 2019, as well as every day since the Covered Products were first introduced and sold in the State of California, as far back as December 9, 2017. The violations are ongoing.

### **III. CERTIFICATE OF MERIT**

Pursuant to Health & Safety Code § 25249.7(d) and Title 11, California Code of Regulations, section 3100, a Certificate of Merit is attached hereto. A second copy of the entire notice and Certificate of Merit is served on the Attorney General with all supporting documentation required by Section 3102 attached thereto.

### **IV. PROPOSITION 65 INFORMATION – A SUMMARY**

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed with the copy of the Notice served on the Notice Recipient.

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, Mr. Johnson intends to file a citizen enforcement lawsuit against the Notice Recipient upon the expiration of the sixty-day notice period, provided no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

If the Notice Recipient is interested in resolving this dispute without resorting to time-consuming and expensive litigation, it should feel free to contact counsel at the address provided below. It should be noted that no settlement may be finalized before the sixty-day notice period has expired and only if no public prosecutor has commenced and is diligently prosecuting the alleged violation.

**VI. PRESERVATION OF EVIDENCE**

This Notice also serves as a demand that the Notice Recipient preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of the Listed Chemical in the Covered Products; purchase and sales information for Covered Products; efforts to comply with Proposition 65 with respect to the Covered Products; communications with any person relating to the presence or potential presence of the Listed Chemical in Covered Products; and representative exemplars of each specific model falling within the Covered Products. This demand applies to all relevant evidence for Covered Products sold in the State of California, as far back as December 9, 2017, through the date of any trial of the claims alleged in this Notice.

**VII. CONTACT INFORMATION**

Mr. Johnson has retained me as legal counsel in this matter. Please direct all communications related to this Notice of Violation to the following:

Troy Bailey, Esq.  
Voorhees & Bailey, LLP  
535 Ramona Street; Suite 1  
Palo Alto, CA 94301  
troy@voorheesbailey.com

Sincerely,

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Josh Voorhees  
Voorhees & Bailey, LLP  
Attorneys for Dennis Johnson

cc: California Attorney General’s Office; District Attorney’s Office for 58 Counties; and City Attorneys for San Francisco, San Diego, San Jose and Los Angeles

Attachments: Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*CVS Pharmacy, Inc. only*); and Confidential Information in Support of Certificate of Merit (*Attorney General Only*)

## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Josh Voorhees, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and 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 or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action.
4. Based on the information obtained through those 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 the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and 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. 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 and Safety Code § 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) certain facts, studies, or other data reviewed by those persons.

Dated: December 9, 2020

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Josh Voorhees