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OF COUNSEL
PHILIP NEUMARK
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March 23, 2004

Ms. Peggy O'Kelly
President
ST. HELENA OLIVE OIL COMPANY
P.O. Box 389
Rutherford, California 94573

Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Consumers to Lead in Vinegar Without Warning

Dear Ms. O'Kelly:

This office represents the Environmental Law Foundation ("ELF"), a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals.

This letter constitutes notice that the entity listed below has violated and continues to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5, *et seq.* Specifically, this entity has violated and continues to violate the warning requirement at § 25249.6 of the California Health and 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 . . ."

Alleged Violator: St. Helena Olive Oil Company

Wine vinegar, including, but not limited to Cask 85 Cabernet Vinegar, produced, distributed and/or sold by this entity contains lead, a chemical known to the state to cause cancer and reproductive toxicity. Since on or after February 1, 1999 and continuing to the

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present time, this entity has exposed and continues to expose consumers within the State of California to high levels of lead, a toxic chemical contained in vinegar. The amount of lead contained in one serving of the vinegar at issue herein is more than .5 micrograms/liter per day or .5 ppb. Exposure has occurred by ingestion of the vinegar.

Because lead is a chemical listed in Proposition 65 as a reproductive toxin, pursuant to Health & Safety Code § 25249.6 this entity was, and is, required to provide clear and reasonable warnings to purchasers of its vinegar before exposing the purchasers to lead contained in the vinegar. The warnings must state that the vinegar contains a chemical known by the State of California to cause reproductive toxicity. Pursuant to Health & Safety Code § 25249.7(d), ELF intends to bring suit in the public interest against each of the above-named entity sixty days hereafter to correct the violation occasioned by the failure to warn consumers of exposure to lead, unless the entity fully and completely remedies and ceases and desists from violating Proposition 65 within the sixty-day period.

Pursuant to 22 California Code of Regulations § 12903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. Pursuant to Health & Safety Code § 25249.7(d)(1), attached is a Certificate of Merit pertaining to the allegations set forth in this Notice.

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President
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ELF is located at: 1736 Franklin Street, Ninth Floor, Oakland, California 94612, telephone: (510) 208-4555. ELF is represented in this matter by the law firms of Bushnell, Caplan & Fielding, LLP and Altshuler, Berzon, Nussbaum, Rubin & Demain. All communications concerning this matter should be direct to:

Alan M. Caplan, Esq.
Bushnell, Caplan & Fielding, LLP
221 Pine Street, Suite 600
San Francisco, California 94104-2715
Telephone: (415) 217-3800
Facsimile: (415) 217-3820

Very truly yours,

BUSHNELL, CAPLAN & FIELDING, LLP

AMC: ams
Enclosures

CERTIFICATE OF MERIT
for Environmental Law Foundation's Notice of
Proposition 65 Violation on St. Helena Olive Oil, Co.
Health & Safety Code § 25249.7(d)

I, Alan M. Caplan, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
 2. I am an attorney for the Noticing party Environmental Law Foundation.
 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 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 plaintiffs' 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.
1. 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 the information identified in Health and Safety Code section 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.

Date: 3/23/04 _____

PROOF OF SERVICE
(Code of Civil Procedure §§ 1013a, 2015)

1
2 I am employed in the City and County of San Francisco, State of California. I am
3 over the age of 18 and not a party to the within action. My business address is 221 Pine
4 Street, Suite 600, San Francisco, California 94104.

5 On the below-stated date, I served the foregoing document entitled:

6 **NOTICE OF VIOLATION OF ST HELENA OLIVE OIL COMPANY OF THE SAFE**
7 **DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION**
8 **65), SECTION 25249.6 OF THE CALIFORNIA HEALTH AND SAFETY CODE,**
9 **FOR EXPOSING CONSUMERS TO LEAD IN VINEGAR WITHOUT WARNING**

10 on the other parties in this action by placing the true copies thereof enclosed in sealed
11 envelopes addressed as stated below:

12 **Ms. Peggy O'Kelly**
13 **President**
14 **ST. HELENA OLIVE OIL COMPANY**
15 **P.O. Box 389**
16 **Rutherford, California 94573**

17 **and**

18 **SERVICE LIST ATTACHED**

19 **BY FIRST-CLASS MAIL:** I am readily familiar with the firm's practice of collection
20 and processing of correspondence for mailing. Under that practice, it is deposited
21 with the U.S. Postal Service on that same day with postage thereon fully prepaid at
22 San Francisco, California, in the ordinary course of business. I am aware that on
23 motion of the party served, service is presumed invalid if the postal cancellation date
24 or the postage meter date is more than one day after date of deposit for mailing in
25 affidavit.

26 **BY OVERNIGHT COURIER SERVICE:** I caused each envelope with postage fully
27 prepaid to be sent by Federal Express.

28 **BY FACSIMILE:** I caused each document to be delivered by facsimile transmission
to the offices of the addressee, Fax Number _____.

Executed on March 24, 2004 at San Francisco, California. I declare under penalty
of perjury under the laws of the State of California, that the above is true and correct.

The Honorable Thomas J. Orloff
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Alan Turner
Alpine County District Attorney
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Markleeville, CA 96120

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