

October 29, 2014

Ms. Kathy Joseph Fiddlehead Cellars 1597 E. Chestnut Ave. Lompoc, CA 93436

Re: NOTICE OF VIOLATION AGAINST FIDDLEHEAD CELLARS, OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

To Whom It May Concern and to Public Prosecutors:

Jesse Garrett ("Garrett") is a citizen of the state of California acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. As described below, Mr. Garrett has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Act"), codified at Cal. Health & Safety Code §25249.5 *et seq.* by Fiddlehead Cellars, a California limited partnership (the "Violator"). This letter serves to provide Mr. Garrett's notification of these violations to the Violator and elected prosecutors. Pursuant to §25249.7(d) of the statute, Mr. Garrett intends to bring an enforcement action sixty (60) days or more after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

The products which are causing an exposure without a warning in violation of Proposition 65, are alcoholic beverages manufactured, distributed, offered for sale, and/or served to California consumers by Violator ("Products"). The location of the violations include Artisan Wine Depot, 2482 El Camino Real, Mountain View, CA 94040, where the Products were sold without a warning on or before October 16, 2014, and continuing thereafter.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Violator.

Because of this lack of a warning, consumers were exposed to the following chemicals without the proper required Proposition 65 warnings: 1) Alcoholic beverages, when associated with alcohol abuse;

2) Ethyl alcohol in alcoholic beverages; and 3) Ethanol in alcoholic beverages.

Pursuant to Title 27, CCR § 25603.3(e)(7): "For alcoholic beverages, the placement and maintenance of the warning shall be the responsibility of the manufacturer or its distributor at no cost to the retailer, and any consequence for failure to do the same shall rest solely with the manufacturer or its distributor, provided that the retailer does not remove, deface, or obscure the requisite signs or notices, or obstruct, interfere with, or otherwise frustrate the manufacturer's reasonable efforts to post, maintain, or periodically replace said materials."

Mr. Garrett intends to file a private enforcement action as provided for in the Act for the alleged violations by the Violator, unless California agrees in an enforceable written instrument to: (1) recall the listed products so as to eliminate further exposures to the identified chemicals; or (2) affix clear and reasonable Proposition 65 warning labels; and (3) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, Mr. Garrett is interested in seeking a constructive resolution to this matter, and invites violator, should it seek early resolution of this matter, to communicate directly with Garrett's attorneys. Such resolution will avoid further unwarned consumer exposures, as well as resource intensive litigation.

Please direct all questions concerning this notice to Mr. Garrett's attorneys, Vineet Dubey (dubey@cd-lawyers.com) or Miguel A. Custodio, Jr.(custodio@cd-lawyers.com), 766 E. Colorado Blvd., Ste 108, Pasadena, CA 91101, 213-785-2909.

Sincerely,

Vineet Dubey

Custodio & Dubey LLP

cc: see attached distribution list

Attachments:

Proposition 65 summary Certificate of Merit

Certificate of Service

## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

Re: Jesse Garrett's Notice of Proposition 65 Violations by Fiddlehead Cellars.

- I, Vineet Dubey, hereby declare:
- 1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
- 3. I have consulted with one or more persons with relevant and appropriate experience, extensively reviewed Title 22, CCR §12601(b)(1)(D)(2), and have assembled evidence attached to the copy for the California Attorney General as Exhibits 1 and 2 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
- 4. Based on the information obtained; Title 22, CCR §12601(b)(1)(D)(2); 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. 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 California Health & Safety Code §25249.7(h)(2).

Dated: October 29, 2014

Vineet Dubey, Attorney at Law

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 766 E. Colorado Blvd., Ste 108, Pasadena, CA 91101.

On the date shown below, I served the following:

- 1) 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6
- 2) Certificate of Merit; Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy); Factual information sufficient to establish the basis of the certificate of merit (only sent to Attorney General)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); A Summary

on the alleged violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Ms. Kathy Joseph Fiddlehead Cellars 1597 E. Chestnut Ave. Lompoc, CA 93436

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to the parties listed on the attached Distribution List.

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct.

October 29, 2014

Vineet Dubey

## **Distribution List**

708 Court, Suite 202 P.O. Box 730 Butte County District Attorney San Diegos. CA 93538 Butte County District Attorney San Diegos. CA 94103 San Rafael. CA 94903 San Branetsco. CA 94103 San Diegos. CA 91103 San Diegos. Caunty District Attorney San Diegos. Caunty District A	Alameda County District Attorney 1225 Fallon St. Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St. 18th Floor Los Angeles. CA 90012	Mono County District Attorney P0 Box 617 Bridgeport, CA 93517
Amador County District Attorney POR Court. Size 20?  Jackson. CA 95642  Mariposa. CA 95338  San Francisco. CA 94103  San District Attorney 25 County Center Dr. 350 (Civic Center Drive, #130  San Disea. CA 9403  San Disea. CA 9404  San Disea. CA 95249  Office of the Attorney Central PO. Box 7055  Oakland, CA 94612-0550  Calsus. County District Attorney 200 In Marin Si Ste 1800  Calsus. County District Attorney 200 Independence. CA 93526  Contra Costa County District Attorney PO. Drawer D  Contra Costa County District Attorney PO. Box 808  Santa Ana. CA 92702  Del Norte County District Attorney PO Box 808  Santa Ana. CA 92702  Del Norte County District Attorney Po Box 808  Santa Ana. CA 92702  Del Norte County District Attorney Po Box 808  Santa Ana. CA 94503  Del Norte County District Attorney Po Box 808  Santa Ana. CA 94504  Porce County District Attorney Po Box 808  Santa Ana. CA 94504  Porce County District Attorney Po Box 808  Santa Ana. CA 94504  Porce County District Attorney Po Box 808  Santa Ana. CA 94504  Porce County District Attorney Po Box 808  Santa Ana. CA 94504  Porce County District Attorney Po Box 808  Santa Barbara. Ca 95404  Norte County District Attorney Po Box 808  Santa Barbara. Ca 95404  Norte County District Attorney Po Box 808  Santa Barbara. Ca 95404  Norte County District Attorney Po Box 808  Santa Barbara. Ca 95404  Norte Ca 95404  Norte County District Attorney Po Box 808  Santa District Attorney Po Box 808  Santa District Attorney Solva Marines. Ca 95404  Norte Ca 9540	PO Box 248	209 W Yosemite Ave	PO Box 990
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Calaveras County District Attorney 8) Mountain Ranch Road San Andreas, CA 95249 Ukiah, CA 95482 San Bernardino, County District Attorney Courthouse, S47 Market 8t Colusa, CA 95602 County District Attorney Courthouse, S47 Market 8t Colusa, CA 95932 Independence, CA 93526 Contra Costa County District Attorney Courthouse, S47 Market 8t Colusa, CA 95833 Contra St., Room 402 Contra Costa County District Attorney Courthouse, S47 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t Contra Costa County District Attorney Courthouse, S49 Market 8t County District Attorney County Distri	Butte County District Attorney 25 County Center Dr.	Marin County District Attorney 3501 Civic Center Drive, #130	San Diego County District Attorney
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Ventura County District Attorney Tehama County District Attorney San Jose City Attorney	Tuolumne County District Attorney 2 S Green St	County Civic Center, Rm 224	310 Second St
Ventura. CA 93009 Red Bluff; CA 96080 16th Floor	Ventura County District Attorney 800 S Victoria Ave	Tehama County District Attorney P.O. Box 519	San Jose City Attorney 200 E. Santa Clara St