



November 3, 2014

Thomas Fogarty Winery, LLC  
c/o Michael Martella  
3130 Alpine Rd., #288-603  
Portola Valley, CA 94028

Re: NOTICE OF VIOLATION AGAINST THOMAS FOGARTY WINERY, LLC, OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

To Whom It May Concern and to Public Prosecutors:

John Bonilla ("Bonilla") 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. Bonilla 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 Thomas Fogarty Winery, LLC, a California limited liability company (the "Violator"). This letter serves to provide Mr. Bonilla's notification of these violations to the Violator and elected prosecutors. Pursuant to §25249.7(d) of the statute, Mr. Bonilla 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 Robert's Market, 3015 Woodside Rd., Woodside, CA 94062, where the Products were sold without a warning on or before October 8, 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. Bonilla intends to file a private enforcement action as provided for in the Act for the alleged violations by the Violator, unless Violator 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. Bonilla 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 Bonilla’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. Bonilla’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: John Bonilla's Notice of Proposition 65 Violations by Thomas Fogarty Winery, LLC.**

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 Exhibit 1 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: November 3, 2014



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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:

Thomas Fogarty Winery, LLC  
c/o Michael Martella  
3130 Alpine Rd., #288-603  
Portola Valley, CA 94028

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.

November 3, 2014



\_\_\_\_\_  
Vineet Dubey

## Distribution List

|   |   |  |
|---|---|--|
| Alameda County District Attorney<br>1225 Fallon St. Room 900<br>Oakland, CA 94612           | Los Angeles County District Attorney<br>210 W Temple St. 18th Floor<br>Los Angeles, CA 90012              | Mono County District Attorney<br>PO Box 617<br>Bridgeport, CA 93517                                    |
| Alpine County District Attorney<br>PO Box 248<br>Markleeville, CA 96120                     | Madera County District Attorney<br>209 W Yosemite Ave<br>Madera, CA 93637                                 | San Joaquin County District Attorney<br>PO Box 990<br>Stockton, CA 95201 -0990                         |
| Amador County District Attorney<br>708 Court, Suite 202<br>Jackson, CA 95642                | Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338                                   | San Francisco County District Attorney<br>850 Bryant St, Rm 322<br>San Francisco, CA 94103             |
| Butte County District Attorney<br>25 County Center Dr.<br>Oroville, CA 95965-3385           | Marin County District Attorney<br>3501 Civic Center Drive, #130<br>San Rafael, CA 94903                   | San Diego County District Attorney<br>220 W Broadway, Ste 1200<br>San Diego, CA 92101-3803             |
| Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249      | Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 95482                                    | San Bernardino County District Attorney<br>316 N Mountain View Ave<br>San Bernardino, CA 92415-0004    |
| Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550                  | Los Angeles City Attorney<br>200 N Main St Ste 1800<br>Los Angeles CA 90012                               | San Francisco City Attorney<br># 1 Dr. Carlton B. Goodlett Place, Suite 234<br>San Francisco, CA 94102 |
| Colusa County District Attorney<br>Courthouse, 547 Market St<br>Colusa, CA 95932            | Inyo County District Attorney<br>P.O. Drawer D<br>Independence, CA 93526                                  | Placer County District Attorney<br>10810 Justice Center Drive<br>Suite 240<br>Roseville, CA 95678-6231 |
| Contra Costa County District Attorney<br>725 Court St., Room 402<br>Martinez, CA 94553      | Orange County District Attorney<br>PO Box 808<br>Santa Ana, CA 92702                                      | Merced County District Attorney<br>550 W. Main St.<br>Merced, CA 95340                                 |
| Del Norte County District Attorney<br>450 "H" St.<br>Crescent City, CA 95531                | Nevada County District Attorney<br>10075 Levon Ave.<br>Truckee, CA 96161                                  | Napa County District Attorney<br>PO Box 720<br>Napa, CA 94559-0720                                     |
| El Dorado County District Attorney<br>515 Main St.<br>Placerville, CA 95667-5697            | Plumas County District Attorney<br>520 Main Street, Rm 404<br>Quincy, CA 95971                            | Riverside County District Attorney<br>3960 Orange Street, Suite 6<br>Riverside, CA 92501               |
| Fresno County District Attorney<br>2220 Tulare St, Ste. 1000<br>Fresno, CA 93721            | Sacramento County District Attorney<br>901 G Street<br>Sacramento, CA 95814                               | San Benito County District Attorney<br>419 4th St<br>Hollister, CA 95023                               |
| Glenn County District Attorney<br>PO Box 430<br>Willows, CA 95988                           | San Luis Obispo County District Attorney<br>County Government Center, Rm 450<br>San Luis Obispo, CA 93408 | Siskiyou County District Attorney<br>PO Box 986<br>Yreka, CA 96097                                     |
| Humboldt County District Attorney<br>825 5th St., 4th Floor<br>Eureka, CA 95501             | San Mateo County District Attorney<br>400 County Center<br>Redwood City, CA 94063                         | Solano County District Attorney<br>600 Union Ave<br>Fairfield, CA 94533                                |
| Imperial County District Attorney<br>939 W. Main St., 2nd Floor<br>El Centro, CA 92243-2860 | Santa Barbara County District Attorney<br>1112 Santa Barbara St.<br>Santa Barbara, CA 93101               | Sonoma County District Attorney<br>600 Administration Dr.<br>Rm 212-J<br>Santa Rosa, CA 95403          |
| Kern County District Attorney<br>1215 Truxtun Ave.<br>Bakersfield, CA 93301                 | Santa Clara County District Attorney<br>70 W Hedding St.<br>San Jose, CA 95110                            | Shasta County District Attorney<br>1355 West St.<br>Redding, CA 96001-1632                             |
| Kings County District Attorney<br>Gov't Ctr. 1400 W Lacey Blvd<br>Hanford, CA 93230         | Santa Cruz County District Attorney<br>701 Ocean St., Room 200<br>Santa Cruz, CA 95060                    | Sierra County District Attorney<br>PO Box 457<br>Downieville, CA 95936-0457                            |
| Lake County District Attorney<br>255 N Forbes St<br>Lakeport, CA 95453-4790                 | Stanislaus County District Attorney<br>PO Box 442<br>Modesto, CA 95353                                    | Trinity County District Attorney<br>PO Box 310<br>Weaverville, CA 96093                                |
| Modoc County District Attorney<br>204 S. Court Street<br>Alturas, CA 96101-4020             | Sutter County District Attorney<br>446 Second Street<br>Yuba City, CA 95991                               | Yuba County District Attorney<br>215 5th St<br>Marysville, CA 95901                                    |
| San Diego City Attorney<br>City Center Plaza<br>1200 3rd Ave # 1100<br>San Diego, CA 92101  | Lassen County District Attorney<br>200 S Lassen St, Suite 8<br>Susanville, CA 96130                       | Monterey County District Attorney<br>PO Box 1131<br>Salinas, CA 93902                                  |
| Tuolumne County District Attorney<br>2 S Green St<br>Sonora, CA 95370                       | Tulare County District Attorney<br>County Civic Center, Rm 224<br>Visalia, CA 93291                       | Yolo County District Attorney<br>310 Second St<br>Woodland, CA 95695                                   |
| Ventura County District Attorney<br>800 S Victoria Ave<br>Ventura, CA 93009                 | Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080                                    | San Jose City Attorney<br>200 E. Santa Clara St<br>16th Floor<br>San Jose, CA 95110                    |