

Fair Oaks Law Building – 490 S. Fair Oaks Avenue • Pasadena, California 91105 • 866-203-2911 <a href="https://www.salpetergitkin.com">www.salpetergitkin.com</a>

January 31, 2019

## VIA U.S. MAIL

Xavier Becerra, Attorney General
Office of the Attorney General
Attn: Health & Safety Code § 25249.7(d)(1) (Proposition 65) Notice
1300 "I" Street
Sacramento, California 95814-2919

San Sebastian Winery 157 King Street St Augustine, FL 32084

[District & City Attorneys Copied]

Re: Notice Pursuant to Cal. Health & Safety Code §§ 25249.7(a) & (d)(1)

Violation or Threatened Violation of Proposition 65 Warning by San Sebastian Winery

Dear Mr. Becerra & to whomever else it may concern:

I represent California consumer John Devlin and write on his behalf, pursuant to California Health & Safety Code §§ 25249.7(a) & (d)(1), to notify you as to San Sebastian Winery's violation, or threatened violation, of § 25249.6, *i.e.*, Proposition 65. The violations alleged by this Notice consist of types of harm that may potentially result from exposures to the toxic chemicals: ethyl alcohol in alcoholic beverages; alcoholic beverages, when associated with alcohol abuse; and alcoholic beverages, which were listed as a known hazardous substances in 1987, 1988 and 2011, respectively.

#### **NATURE OF ALLEGED VIOLATION**

# **Duration of the Violations**

The violations have been occurring since at least December 12, 2018, and are ongoing.

## Provision of Proposition 65

This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.

## <u>Listed Chemical(s)</u>



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The listed chemicals involved in these violations are: ethyl alcohol in alcoholic beverages; alcoholic beverages, when associated with alcohol abuse; and alcoholic beverages, known to the State of California to cause cancer, birth defects and other reproductive harm.

## Type of Product and Route of Exposure

The types of product causing these violations is alcoholic beverages. Examples of alcoholic beverages may include beer, wine or liquor. The consumer is exposed to the Listed Chemicals through ingestion as a result of drinking the product.

# **Description of Violation**

San Sebastian Winery is an online retailer selling alcoholic beverages to residents of California through its website. No clear and reasonable Proposition 65 warning is provided with these products, neither on the product pages nor at the point of sale, regarding the presence of the Listed Chemicals in the products.

#### **RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, John Devlin intends to file a citizen enforcement lawsuit against San Sebastian Winery unless it agrees in a binding written agreement to: (1) recall products already sold or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future to eliminate unknowing exposures or reformulate such products to eliminate Listed Chemicals exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If San Sebastian Winery is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact me directly on behalf of John Devlin. It should be noted that neither John Devlin nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with John Devlin will resolve its claims, such agreement may not satisfy the public prosecutors.

Sincerely,

Jane Braugh



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Attachment: Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1))

cc: City and District Attorneys, as follows:

	-	•
Stacey Grassini,	Yen Dang,	Nancy O'Malley,
Deputy District Attorney	Deputy Assistant District Attorney	
Contra Costa County	Santa Clara County	District Attorney, Alameda County 7776 Oakport Street, Suite 650
900 Ward Street	70 West Hedding Street, West Wing	I
Martinez, CA 94553	San Jose, CA 95110	Oakland, CA 94621
sgrassini@contracostada.org	epu@da.sccgov.org	CEPDProp65@acgov.org
Gary Lieberstein	Dije Ndreu, Deputy District Attorney, Monterey	Stephan R. Passalacqua
District Attorney Napa County	County	District Attorney, Sonoma County
931 Parkway Mall	1200 Aguajito Road	600 Administration Drive, Rm. 212J
Napa, CA 94559	Monterey, CA 93901	Sonoma, CA 95403
CEPD@countyofnapa.org	Prop65DA@co.monterey.ca.us	jbarnes@sonoma-county.org
Phillip J. Cline	Gregory D. Totten	Paul E. Zellerbach
District Attorney, Tulare County	District Attorney, Ventura County	District Attorney, Riverside County
221 S. Mooney Avenue, Rm. 224	800 South Victoria Avenue	3072 Orange Street
Visalia, CA 93291	Ventura, CA 93009	Riverside, CA 92501
Prop65@co.tulare.ca.us	daspecialops@ventura.org	Prop65@rivcoda.org
Barbara Yook	Thomas L. Hardy	Michelle Latimer
District Attorney, Calaveras County	District Attorney, Inyo County	Program Coordinator, Lassen County
891 Mountain Ranch Road	168 North Edwards Street	220 S. Lassen Street, Ste. 8
San Andreas, CA 95249	Independence, CA 93526	Susanville, CA 96130
·		
Prop65Env@co.calaveras.ca.us	inyoda@inyocounty.us	mlatimer@co.lassen.ca.us
Anne Marie Schubert	Mark Ankcorn	Valerie Lopez
District Attorney, Sacramento County	Deputy City Attorney	Deputy City Attorney
901 "G" Street	1200 Third Avenue	1390 Market Street, 7th Floor
Sacramento, CA 95814	San Diego, CA 92101	San Francisco, CA 94102
Prop65@sacda.org	CityAttyProp65@sandiego.gov	Valerie.Lopez@sfcityatty.org
Gregory Alker	Tori Verber Salazar, District Attorney	Eric J. Dobroth
Assistant District Attorney	222 E. Weber Avenue, Room 202	Deputy District Attorney
732 Brannan Street	Stockton, CA 95202	County Government Center Annex, 4th Floor
San Francisco, CA 94103	DAConsumer.Environmental@sjcda.org	San Luis Obispo, CA 93408
gregory.alker@sfgov.org	DACONSUMET.Environmental@sjeda.org	edobroth@co.slo.ca.us
Christopher Dalbey	Jeffrey S. Rosell	Jeff W. Reisig
Deputy District Attorney	District Attorney	District Attorney
1112 Santa Barbara St.	701 Ocean Street	301 Second Street
Santa Barbara, CA 93101	Santa Cruz , CA 95060	Woodland, CA 95695
DAProp65@co.santa-barbara.ca.us	Prop65DA@santacruzcounty.us	cfepd@yolocounty.org
District Attorney of Stanislaus County	District Attorney of Kern County	District Attorney of Kings County
832 12th Street, Ste. 300	1215 Truxtun Avenue	1400 West Lacey Blvd.
Modesto, CA 95354	Bakersfield, CA 93301	Hanford, CA 93230
·	District Attorney of Butte County	
District Attorney of Lake County	Administration Building	District Attorney of Los Angeles County
255 N. Forbes Street	25 County Center Drive	210 W. Temple Street, Ste. 1800
Lakeport, CA 95453	Oroville, CA 95965	Los Angeles, CA 90012
District Attorney of Madera County	District Attorney of Marin County	District Attorney of Mariposa County
209 West Yosemite Avenue	3501 Civic Center Drive, Rm. 130	P.O. Box 730
Madera, CA 93637	San Rafael, CA 94903	Mariposa, CA 95338
District Attorney of Mendocino County	District Attorney of Merced County	District Attorney of Modoc County
P.O. Box 1000	2222 "M" Street	204 S. Court Street, Rm. 202



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Ukiah, CA 95482	Merced, CA 95340	Alturas, CA 96101-4020
District Attorney of Mono County	District Attorney of Nevada County	District Attorney of Orange County
P.O. Box 617	110 Union Street	401 Civic Center Drive West
Bridgeport, CA 93546	Nevada City, CA 95959	Santa Ana, CA 92701
District Attorney of Placer County	District Attorney of Plumas County	District Attorney of Amador County
10810 Justice Center Drive, Ste. 240.	520 Main Street, Rm. 404	708 Court Street, Ste. 202
Roseville, CA 95678	Quincy, CA 95971	Jackson, CA 95642
District Attorney of San Benito County	District Attorney of San Bernardino County	District Attorney of San Diego County
419 Fourth Street, 2nd Fl.	316 N. Mountain View Avenue	330 West Broadway, Ste. 1300
Hollister, CA 95023	San Bernardino, CA 92415	San Diego, CA 92101
District Attorney of El Dorado County	District Attorney of Fresno County	District Attorney of Glenn County
515 Main Street	2220 Tulare Street, Ste. 1000	P.O. Box 430
Placerville, CA 95667	Fresno, CA 93721	Willows, CA 95988
District Attorney of San Mateo County	District Attorney of Humboldt County	District Attorney of Imperial County
400 County Center, 3rd Fl.	825 5th Street	939 Main Street, Ste. 102
Redwood City, CA 94063	Eureka, CA 95501	El Centro, CA 92243
District Attorney of Shasta County	District Attorney of Sierra County Courthouse	District Attorney of Siskiyou County
1525 Court Street, 3rd Fl.	100 Courthouse Sq., 2nd Fl.	P.O. Box 986
Redding, CA 96001-1632	Downieville, CA 95936	Yreka, CA 96097
District Attorney of Solano County	District Attorney of Sutter County	District Attorney of Tehama County
675 Texas Street, Ste. 4500	446 Second Street	P.O. Box 519
Fairfield, CA 94533	Yuba City, CA 95991	Red Bluff, CA 96080
District Attorney of Trinity County	District Attornoon of Tradrama County	Can Jaco City Attampada
P.O. Box 310	District Attorney of Tuolumne County	San Jose City Attorney's
11 Court Street	423 N. Washington Street	Office 200 East Santa Clara Street
Weaverville, CA 96093	Sonora, CA 95370	San Jose, CA 95113
District Attorney of Yuba County	Los Angeles City Attorney's Office City Hall East	District Attorney of Colusa County
215 Fifth Street	200 N. Main Street, Rm. 800	547 Market Street, Ste. 102
Marysville, CA 95901	Los Angeles, CA 90012	Colusa, CA 95932
	·	
		California Attorney General's Office
District Attorney of Del Norte Courts		Attention: Proposition 65 Coordinator and
District Attorney of Del Norte County		Robert Thomas
450 H Street, Ste. 171		1515 Clay Street, Ste. 2000
Crescent City, CA 95531		P.O. Box 70550
		Oakland, CA 94612-0550



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## January 31, 2019

## CERTIFICATE OF MERIT PURSUANT TO CAL. HEALTH & SAFETY CODE § 25249.7(d)(1)

I, Jane Braugh, 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.
- 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 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.
- 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 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.

Dated: January 31, 2019

Jane Braugh

Attorney for John Devlin

[Attachments for Attorney General Only]

# PROOF OF SERVICE

I, Christina Tanner, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of Broward, State of Florida, however, the law firm that employs me maintains an office in Pasadena, California and is licensed to do business in California. My California business address is Fair Oaks Law Building, 490 S. Fair Oaks Avenue, Pasadena, California 91105.

On January 31, 2019, I served the following documents:

- (1) 60 DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(d);
- (2) CERTIFICATE OF MERIT;
- (3) PROPOSITION 65: A SUMMARY (sent only to those on service list marked with an asterisk); and
- (4) CERTIFICATE OF MERIT ATTACHMENTS (served only on the Attorney General)

on the parties listed below by placing a true and correct copy thereof in a sealed envelope, addressed to each party and depositing it with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

## Via U.S. Mail

San Sebastian Winery 157 King Street St Augustine, FL 32084

On January 31, 2019, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website.

On January 31, 2019, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service.

On January 31, 2019, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

See Attached Service List

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

Executed on January 31, 2019, at Broward County, Florida.

Christina Tanner

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