



**Wendell C. M. Lee**  
**Vice President and**  
**General Counsel**

July 24, 2014

Dear Wine Institute Member:

I want to bring to your attention an issue that Wine Institute has been involved in for almost two years – Proposition 65 and its effect on wineries selling in California. This email also includes a request for you to consider opting into a court settlement and consent judgment.

Background: Proposition 65 is a California law that requires companies producing designated products containing chemicals that the State believes cause cancer, birth defects or other reproductive harm, to inform California citizens about exposure to such chemicals. Alcohol is one of the designated products, which means you may not sell alcohol in California without providing this warning to customers before they make a purchase:

"WARNING: Drinking Distilled Spirits, Beer, Coolers, Wine and Other Alcoholic Beverages May Increase Cancer Risk, and, During Pregnancy, Can Cause Birth Defects."

Many companies that are subject to Prop 65 warning requirements put the requisite warning on their product, but alcohol warnings are different. When Prop 65 first went into effect, the State agreed that in lieu of putting that warning on bottles, cans or packaging, the beverage alcohol industry could provide free Prop 65 signs for California retailers to post. For the last 29 years, the beverage alcohol industry has spent considerable sums providing Prop 65 alcohol warning signs to retailers, and many of you have contributed to Sign Management Company to pay for your fair share of the program costs. Unfortunately, the law as written says that the producer, not the retailer, has the legal responsibility to make sure there is a warning sign actually posted for customers to see, and some retailers do not like posting the signs.

Litigation: In late 2012, an enterprising lawyer found a couple of California retail establishments that did not have Prop 65 signs posted. This discovery led to claims against a number of brewers, wineries and distilled spirits companies. Wine Institute worked closely with Beer Institute and the Distilled Spirits Council of the United States (DISCUS) to respond to the claims, with two goals: (1) to resolve the complaints against the producers; and (2) to find a way to absolve an alcohol producer of liability if a retailer receives a free sign, but chooses not to post it. We knew that it was important to achieve change through the courts, because it is not feasible to amend the language of Prop 65 in the California General Assembly.

Settlement: In late May, with the approval of the California Attorney General's office, the claims were settled in the form of a Consent Judgment. Attached are: (a) the Prop 65 Consent Judgment; and (b) a copy of a Prop 65 alcohol warning sign.

Opt-In: The Consent Judgment provides the opportunity for other beverage alcohol producers to opt-in to the settlement. I would like to encourage you to opt into the settlement. There are several benefits to becoming an opt-in defendant:

1. A winery who IS a defendant has an obligation to provide Prop 65 signage to retailers in California, but is not obligated to ensure that the retailer posts and maintains the signs. A winery who IS NOT a defendant must ensure that every retailer selling that winery's products in California has a sign and posts and maintains the sign. The obligation falls on the winery, not the wholesaler. For your information, we are providing signs to licensees by means of mass mailings and an ecommerce site. The ecommerce site is already operational, [www.prop65signmanagement.com](http://www.prop65signmanagement.com). The first mass mailing will occur within the next month.
2. An opt-in defendant can participate in the tri-industry group that prints and distributes signs to licensees. The costs of this program are split between beer, wine and distilled spirits. Contributions are proportional, not equal. For wineries opting in, annual contribution levels will be based on total gallons of wine produced, not limited to wine sold only in California:

Gallons Produced	Contribution
0-9,999 Gallons	\$250
10,000 – 99,999 Gallons	\$500
100,000 – 499,999 Gallons	\$750
500,000 – 999,999 Gallons	\$1,000
1,000,000 – 4,999,999 Gallons	\$1,500
5 million and above	Wineries producing over 5 million gallons will pay based on market share of product sold in California

3. The consent judgment is designed to cut off claims brought by other plaintiffs.
4. The consent judgment covers all of a defendant's products, not just the products purchased.

Financial Obligations of an Opt-In Defendant: Each opt-in defendant must pay \$1500 to the plaintiffs, \$435 to the court, and make a contribution to the sign program as set forth above. The contribution is annual; the other payments are one-time only. If you want your outside counsel to review the settlement, you will need to cover those fees. All other fees and settlement amounts have been covered by the DISCUS, Beer Institute, and Wine Institute.

Please let me know if your winery would like to opt-in. Ideally, I'd like to know on or before August 15, 2014.

Call or email me if you have any questions.

Sincerely,

Wendell C. M. Lee  
Vice President and General Counsel