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8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

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13 In re
14 FOX ORTEGA ENTERPRISES, INC.,
dba PREMIER CRU,

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16 Debtor.
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Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF BRIAN NISHI IN
SUPPORT OF TRUSTEE'S REPLY TO
LIMITED OBJECTION FILED BY DR.
MALIK M. HASAN TO MOTION FOR
ORDER AUTHORIZING SALE OF WINE**

Date: August 30, 2016

Time: 10:00 a.m.

Place: Courtroom 220
1300 Clay Street
Oakland, CA

Judge: Hon. William J. Lafferty, III

1 I, Brian Nishi, declare:

2 1. I am a former employee of Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor")
3 and have been retained to assist Michael G. Kasolas ("Trustee") by looking up information,
4 preparing reports derived from the Debtor's books and records, and providing information related to
5 the Debtor's pre-bankruptcy operations as requested by the Trustee, his counsel, or the Class
6 Action. The following facts are true of my own personal knowledge and if called upon to do so, I
7 would and could competently testify thereto, except as to those matters that are alleged upon
8 information and belief and as to those matters, I believe them to be true.

9 2. I have reviewed the list of bottles that Malik M. Hasan ("Dr. Hasan") attached as
10 Exhibit A to his objection ("Third Party Bottles").

11 3. The Third Party Bottles references 6 bottles of Cheval Blanc 2010; however, there
12 are no such bottles in the warehouse. I assume Dr. Hasan is referring to the 2009 vintage of the
13 Cheval Blanc, some of which are allocated to Dr. Hasan, and which the Trustee already pulled
14 from the sale.

15 4. Attached hereto as **Exhibit A** is a list of bottles that are allocated to Dr. Hasan and
16 which I am informed and believe are not part of the sale since Dr. Hasan opted out of the Class
17 Action.

18 5. The Third Party Bottles listed in Dr. Hasan's Objection have been allocated to other
19 customers. Additionally, all of those customers placed their order before Dr. Hasan placed his
20 orders, with one exception. One customer who was allocated a bottle purchased his bottle after Dr.
21 Hasan. However, that customer was allocated a higher priority in connection with a lawsuit. If that
22 customer had not been allocated that wine, there were other customers who purchased that wine
23 before Dr. Hasan who in the normal course of business would have been allocated the bottle before
24 Dr. Hasan.

25 6. The Premier Cru allocation was not arbitrary. While the Premier Cru records did not
26 allocate a specific bottle to a specific purchaser, the Premier Cru MAS system indicates that a
27 specific vintage and variety is allocated to a customer based on a first purchased, first allocated
28 concept. All customers had sale orders, only some had wines allocated.

Vintage	Description	Bottles in Inventory	Hasan Opt-Out Bottles
2008	08 Ausone	3	3
2008	08 Larcis Ducasse	12	12
2008	08 Latour	10	10
2008	08 Margaux	6	6
2008	08 Pavie Decesse	10	10
2009	09 Cheval Blanc	6	6
			47

EXHIBIT A