

1 Mark S. Bostick (Bar No. 111241)  
Elizabeth Berke-Dreyfuss (Bar No. 114651)  
2 Tracy Green (Bar No. 114876)  
**WENDEL, ROSEN, BLACK & DEAN LLP**  
3 1111 Broadway, 24<sup>th</sup> Floor  
Oakland, California 94607-4036  
4 Telephone: (510) 834-6600  
Fax: (510) 834-1928  
5 Email: mbostick@wendel.com;  
edreyfuss@wendel.com;  
6 tgreen@wendel.com

7 Attorneys for Michael G. Kasolas, Trustee

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re  
FOX ORTEGA ENTERPRISES, INC.,  
dba PREMIER CRU,  
  
Debtor.

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF BRIAN NISHI IN  
SUPPORT OF MOTION FOR ORDERS (1)  
AUTHORIZING SALE OF WINE AND  
OVERBIDDING PROCEDURES, AND (2)  
MOTION FOR ORDER AUTHORIZING  
SALE FREE AND CLEAR OF LIENS OF  
COMMUNITY BANK OF THE BAY AND  
ADVANCE RESTAURANT FINANCE LLC,  
AND (3) AUTHORIZING TRUSTEE TO  
MAKE CERTAIN PAYMENTS RELATED  
TO REDEEMED BOTTLES**

Date: August 30, 2016  
Time: 10:00 a.m.  
Place: Courtroom 220  
1300 Clay Street  
Oakland, CA  
Judge: William J. Lafferty, III

1 I, Brian Nishi, declare:

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

9 2. I have reviewed the Exhibits and Schedules attached to the Sale Agreement and the  
10 Unfettered Sale Agreement attached as Exhibits to the Declaration of Michael Kasolas. I prepared  
11 the Exhibits and Schedules based upon my review of the Debtor’s books and records and further  
12 clarified by an inventory prepared by Wests Auctions.

13 3. Attached as Exhibit A to the Sale Agreement is a true and correct copy of the list of  
14 the 73,785 bottles of wine that are in the Debtor’s warehouse that do not include the unfettered  
15 wine bottle list, defined below (“Primary Wine Bottles”) The copy that is attached as Exhibit A to  
16 the Sale Agreement has been altered to remove certain columns (such as the Debtor’s item  
17 number), but the list is an accurate list of the Primary Wines based on the Debtor’s records.

18 4. Attached as Exhibit A to the Unfettered Sale Agreement is a true and correct copy  
19 of the list of 5007 bottles of wine that are in the Debtor’s warehouse that are not associated with  
20 any customer sale order (“Unfettered Wine Bottles”).

21 5. Attached as Schedule 3.1 to the Sale Agreement is a true and correct copy of the  
22 list of wines that are in the Debtor’s warehouse that relate to one of the class members who have  
23 opted out of the Class Action. I was provided with the names of the persons who opted out of the  
24 class action, and then I prepared Schedule 3.1 by finding the wines that are in the warehouse that  
25 are associated with that person’s orders. In some circumstances the wines are oversubscribed, that  
26 is that person’s wines were allocated to multiple people in addition to the person opting out.

27 6. Attached as Schedule 3.2 to the Sale Agreement is a true and correct copy of the  
28 list of wines that are in the Debtor’s warehouse that relate to one of the class members who have

