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

12
13 In re

14 FOX ORTEGA ENTERPRISES, INC.,
15 dba PREMIER CRU,

16
17 Debtor.

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF MICHAEL G.
KASOLAS IN SUPPORT OF MOTION
FOR ORDERS (1) AUTHORIZING SALE
OF WINE, (2) 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
AND MOTION FOR APPROVAL OF
BIDDING PROCEDURE AND BREAKUP
FEE**

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, Michael G. Kasolas, declare:

2 1. I am the duly appointed and acting trustee of the above-captioned chapter 7
3 bankruptcy estate. The following facts are true of my own personal knowledge and if called upon
4 to do so, would and could competently testify thereto, except as to those matters that are alleged
5 upon information and belief and as to those matters, I believe them to be true.

6 2. I am informed and believe that on January 8, 2016, the Debtor filed its petition for
7 relief under chapter 7 and ceased operations. Thereafter I was appointed the chapter 7 trustee, and
8 since that time, I have been is the duly appointed and acting trustee in the Debtor's chapter 7
9 bankruptcy case.

10 3. Attached hereto as **Exhibit A** is a true and correct copy of a Sale Agreement
11 between myself on behalf of the estate and Spectrum Wine Auctions ("Buyer") for all of the wine
12 bottles in the debtor's premises, except for the wine related to those class members who have
13 opted out of the Class Action or redeemed bottles pursuant to the Class Action Stipulation for
14 Settlement with this estate, and the unfettered bottles ("Sale Agreement").

15 4. The wine bottles that are subject to the Sale Agreement relate to that settlement
16 agreement between the class action filed by Michael Podolsky filed against me, initiating an
17 adversary proceeding entitled *Michael D. Podolsky, on behalf of himself and all others similarly*
18 *situated vs. Michael G. Kasolas, Trustee*, A.P. No. 16-04033 ("Class Action") and that Stipulation
19 of Settlement dated May 23, 2016 ("Stipulation"), between the Class Action and the Trustee,
20 pursuant to which it was agreed that I could sell all of the wine, except for those bottles which
21 belonged to members who opted out of the Class Action or who fell into the small category of
22 class members who were eligible to redeem their bottles, and who in fact did redeem their bottles.

23 5. Attached hereto as **Exhibit B** is a true and correct copy of a Unfettered Sale
24 Agreement between myself on behalf of the estate and the Buyer for all of the unfettered wine
25 bottles in the Debtor's premises ("Unfettered Sale Agreement").

26 6. To the best of my knowledge the wine bottles that are subject to the Unfettered Sale
27 Agreement are not subject to any of the Debtor's former customers' purchase orders, and are not
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1 allocated to any customer in the Debtor’s books and records, based on my review of the Debtor’s
2 books and records.

3 7. These sales are in the best interest of the estate taking into consideration many
4 factors including, but not limited to sale price, the time it will take to close the sale and receive
5 total payment, the time it will take the buyer to remove the wine from the warehouse, and the
6 Buyers financial resources to close the sales.

7 8. Although I knew that the title issues had to be resolved before I could sell the
8 Debtor’s wine inventory, in January, I started to reach out to individuals, who I knew had the net
9 worth to purchase the wines and contacts in the wine industry, seeking advice on the best methods
10 to evaluate and sell the wines. In addition, I met with a wine consultant at the warehouse that had
11 conducted an auction of a large sale of wine under similar conditions. I considered all methods of
12 selling the wine. From these sources, I developed a list of companies which were the most likely
13 “customers” to sell the wine to in a bulk sale.

14 9. I concluded that selling the wine in bulk was in the best interest of the estate
15 because of the high cost of selling the wine to consumers, and the impact to the value of the wine
16 if 79,000 bottles were put on the market for sale to consumers at the same time. Furthermore, I
17 knew that there was a short window to complete the sale and vacate the Debtor’s premises.

18 10. I contacted all of the companies that I could find who purchase wine in these
19 quantities, and also contacted companies who knew such companies to ask about additional
20 referral sources. More than 11 companies asked for further information and signed a
21 nondisclosure agreement to obtain detailed information about the wines that were for sale.
22 Thereafter, five of those companies indicated that they were interested in presenting an offer, and I
23 considered all of the terms of the offers presented. Since I required the initial stalking horse
24 bidder to submit a per bottle price list some of the potential purchasers indicated that they did not
25 have time to submit a bid, but would be interested in overbidding.

26 11. After receiving the bids, I communicated with most of the bidders and asked if they
27 wanted to increase or clarify certain portions of the offers. After thoroughly vetting all of the
28 offers, and speaking to the bidders at length, I concluded that the Spectrum Wine Auction offer

1 was the best offer to proceed with because it was an all-cash offer and the terms were clear, and
2 the bottles would be removed from the premises the soonest of the leading bids.

3 12. Although I have been looking for a buyer since the beginning of this case, I
4 increased the intensity of my efforts in May of 2016, after we reached a tentative settlement in the
5 Class Action, by reaching out to the most interested buyers and setting a deadline for them to
6 submit bids. I extended the deadline for several of those interested in bidding upon their request
7 to insure that I would receive the most number of bids. After receiving the bids, I spent
8 approximately 3 weeks negotiating terms to make sure that the stalking horse bid was the highest
9 and best offer that I could obtain. Thereafter, I spent about one week memorializing the terms and
10 negotiating additional terms.

11 13. I also marketed the unfettered wine separately in the hopes that I could close that
12 sale earlier.

13 14. I do not think that I could have obtained a sale without a breakup fee in some
14 amount. The breakup fee at issue is a reasonable amount given the sale price. Spectrum Wine
15 Auctions has asked for a breakup fee of \$50,000 for the Sale Agreement and \$5,000 for the
16 Unfettered Sale Agreement to recognize its expenditure of time, energy and resources incurred in
17 investigating the assets, and in negotiating the agreements.

18 15. Under the terms of the agreements, the initial overbid will exceed the amount of the
19 breakup fee; therefore, there will be sufficient proceeds to pay the breakup fee. Subsequent
20 bidding will be in increments of \$25,000 for the Sale Agreement and \$5,000 for the Unfettered
21 Sale Agreement.

22 16. I believe that the sale procedures attached hereto as **Exhibit C** should be approved
23 by the Court and they will enhance my ability to obtain the best price in an auction.

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17. I negotiated this transaction with Jason Borland of Spectrum Wine Auction in arm's length negotiations. I have no connection to Mr. Borland or Spectrum Wine Auction, other than the agreements attached to this declaration.

I declare under penalty of perjury that the foregoing is true and correct that this declaration was executed on the 22nd day of July 2016, at San Francisco, California.

/s/ Michael G. Kasolas
Michael G. Kasolas