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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 RICHARD PIEROTTI IN SUPPORT OF MOTION AUTHORIZING SALE OF WINE PURSUANT TO BANKRUPTCY CODE SECTION 363 AND TO DETERMINE TITLE TO SEGREGATED WINE

Date: May 2, 2016
Time: 1:00 p.m.
Place: Courtroom 220
1300 Clay Street
Oakland, CA
Judge: The Hon. William J. Lafferty, III

I, Richard Pierotti, declare:

1. I am a Certified Public Accountant, experienced in rendering accounting services to bankruptcy trustees. I am a principal of the accounting firm of Kokjer, Pierotti, Maiocco & Duck LLP ("KPMD"), with offices at 333 Pine Street, 5th Floor, San Francisco, California. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify thereto, except as to those matters that are alleged upon information and belief and as to those matters, I belief them to be true.

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2. On February 3, 2016, the court entered an Order Authorizing Employment of Accountant, authorizing the employment of KPMD as the accountants for the Trustee to "prepare and file tax returns; to prepare tax projections and tax analysis, if necessary; to analyze tax claims filed in the case; to analyze the tax impact of potential transactions; to review financial records and prepare forensic accountings, if necessary; to analyze as to avoidance issues, if necessary; to testify as to avoidance issues, if necessary; to prepare a solvency analysis, if necessary; to prepare wage claim withholding computations and payroll tax returns, if necessary; to serve as Trustee's general accountant and to consult with the Trustee and the Trustee's counsel as to those matters for this estate . . . ." (Docket No. 57).

3. In my capacity as the Trustee's accountant, on January 11, 2016, I took possession of the Debtor's records consisting primarily of banking records. Thereafter on February 9, 2016, in my capacity as the Trustee's accountant, I took possession of a personal computer belonging to John Fox, one of the principals of the Debtor, containing some of the Debtor's records, including e-mail records. I have also reviewed accounting transactions maintained in the Debtor's accounting software Sage Mas 500.

4. In my review of the Debtor's tax records, I determined that the Debtor did not file tax returns after the 2014 tax year. Attached hereto as **Exhibit 1** is a true and correct copy of the Schedule K and Schedule L - Balance Sheet from the Debtor's Federal Corporate Tax return for the 2014 tax year. The Balance Sheet shows that at the end of the year the Debtor had inventories of $18,417,585. I believe the inventories refer to the Debtor's wine inventories. The supporting statements attached to the Balance Sheet contain amounts but not descriptions. They should have included descriptions also. The Ending Other Current Assets of $42,739,204 should be the alleged wine future contracts and the $53,178,147 of Other Current Liabilities should be the customer deposits.

5. I obtained and reviewed the Debtor's bank records for the three years preceding the commencement of the bankruptcy case. The Debtor maintained its bank accounts at Community Bank of the Bay, 1809 Grand Avenue, Suite 120, Oakland, California. In the period that I reviewed, 2013 to 2016, the Debtor maintained three accounts: (i) a checking account (account

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no. ending in 2956); (ii) a wire account (account no. ending in 3624); and (iii) a payroll account ending in 4184). In my review of the Debtor's records, I have no reason to believe that the Debtor's ordinary course of business varied from maintaining the foregoing three accounts, or such similar three accounts, and using the accounts in the manner in which I described.. In my review of the Debtor's records, it appears to me that the Debtor received all revenue, including customer deposits and payments for wine, and deposited it into the checking account, which functioned as a single operating account until November 2015. Prior to November 2015, the Debtor used the wire account to receive wire transfers of funds into the Debtor's account, and out from the Debtor's account. If the wire transfer was received by the Debtor's wire account, once received, the funds would be transferred into the checking account. In November 2015, the Debtor began to use the wire account in place of the checking account. The Debtor would deposit funds received from all sources, including customer deposits and payments for wine, into the wire account and began to use the wire account as the operating account in place of the checking account. I believe the Debtor changed the use of the wire account to an operating account because the Community Bank of the Bay was sweeping the checking account and applying the funds in the account to the Debtor's obligations owing to the bank.

6. Based on my review of the Debtor's records, it is my belief that the Debtor did not segregate customer deposits for wine from other revenue generated by the Debtor, and instead comingled the deposits with other funds in the checking account.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 25, 2016, at San Francisco, California.

/s/ Richard Pierotti
Richard Pierotti

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