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

13 In re

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

16 Debtor.

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF MICHAEL G.
KASOLAS IN SUPPORT OF APPLICATION
FOR ORDER AUTHORIZING
EMPLOYMENT OF BRIAN NISHI**

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19 I, Michael G. Kasolas, declare:

20 1. I am the duly appointed and acting trustee of the above-captioned chapter 7
21 bankruptcy estate. The following facts are true of my own personal knowledge and if called upon
22 to do so, would and could competently testify thereto, except as to those matters that are alleged
23 upon information and belief and as to those matters, I believe them to be true. I make this
24 declaration in support of the Application for Order Authorizing Employment of Brian Nishi.

25 2. An Order for relief under Chapter 7 of Title 11 of the United States Code was
26 entered herein pursuant to voluntary petition filed by the Debtor on January 8, 2016. I am the duly
27 appointed, qualified and acting trustee of the debtor's estate.

1 3. FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU (“Debtor”)
2 maintained sophisticated electronic data programs and websites to record its financial, sales and
3 inventory data, and to maintain operations.

4 4. I have secured all data on the debtor’s servers and wish to retain Mr. Nishi to to
5 assist the estate in accessing all electronic data and business records and reports.

6 5. I am informed and believe the following: Brian Nishi has worked for the Debtor
7 for over 20 years, and was its in-house “IT Technician” since 2008. In such capacity, he
8 developed, modified and operated the Debtor’s electronic record-keeping systems, and has a
9 thorough understanding of its unique contents, functions, capabilities and reliability. As a long-
10 standing employee, he understands how the Debtor’s business worked and how that can be
11 demonstrated and accessed through its electronic data systems and record-keeping practices. Mr.
12 Nishi is the primary person that I am aware of with such knowledge and expertise specific to the
13 Debtor’s systems.

14 6. Mr. Nishi is able to generate reports at my direction to show, for example, the
15 status of each recorded bottle of wine on hand, its identity and location, its cost, sale orders
16 relating to it, among other reports. His assistance in locating assets, explaining the Debtor’s
17 business practices, identifying transactions, substantiating sale orders in favor of interested parties
18 will serve as an invaluable and substantial benefit to creditors and the estate.

19 7. I am informed and believe Mr. Nishi has no ownership interest in the Debtor, and
20 was not a controlling officer of the Debtor; he worked as an employee in charge of technology.

21 8. Mr. Nishi holds a claim against the estate for unpaid wages based on nonpayment
22 of his last pay check for about \$2,500, which he is willing to waive if retained. I am also informed
23 and believe that he had advanced credit to the Debtor by allowing it to use his credit card. Within
24 90-days before the filing of the Debtor’s bankruptcy petition, he was repaid \$25,000 for such
25 credit extension by receiving wine from the Debtor that was not otherwise subject to any purchase
26 orders that the Debtor had valued at \$25,000.

27 9. Mr. Nishi is not being retained as a professional, but as a person with expert and
28 percipient knowledge unique to this case, and he has agreed to waive his claim against the estate if

1 this Court approves his employment. I have advised Mr. Nishi of the potential avoidability of
2 the transfer he received.

3 10. Mr. Nishi will not be assisting the estate with any matter related to any claim that
4 the estate may have against him.

5 11. Mr. Nishi has agreed to work for the estate at the rate of \$100 per hour effective
6 from January 19, 2016, when he first provided assistance to the estate (with the exception of some
7 phone calls he participated in prior to that date).

8 12. Mr. Nishi was out of the country on vacation from late 2015 through January 18,
9 2016, and upon his return on January 19th began assisting the Trustee. Therefore, I seek authority
10 to retain him from January 19, 2016.

11 13. The source of funds to pay Mr. Nishi will come from assets of the estate to be
12 distributed upon further court order.

13 14. Mr. Nishi's services will be necessary throughout this case, but most critically in
14 the initial phases of this case while I investigate the issues of this case, in addition to future
15 litigation.

16 15. Mr. Nishi has agreed to execute a non-disclosure agreement substantially in the
17 form attached hereto as **Exhibit A**.

18 I declare under penalty of perjury that the foregoing is true and correct, and that this
19 declaration was executed on January 29, 2016, at Oakland, California.

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/s/ Michael G. Kasolas
Michael G. Kasolas

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NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is made this 27th day of January, 2016, by and between Brian Nishi (“Recipient”) and Michael Kasolas, the Chapter 7 Trustee in Bankruptcy in the estate of Fox Ortega Enterprises, Inc., dba Premier Cru (“Trustee”).

WHEREAS: Recipient has agreed to assist the Trustee in accessing the business records, computer systems, online websites, and all other electronic data that Recipient had access to in the course of his employment with the Debtor at the direction of the Trustee, his accountant or counsel (the “Employment”). To enable Recipient to perform these tasks, Trustee has agreed to provide access to the Debtor’s business records and computer systems (the “Confidential Information”) to Recipient upon the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. All information of whatsoever nature (whether oral, written or in any other form) containing material of a legal, technical, business or financial nature or in the nature of intellectual property of any kind and relating to the Confidential Information shall be held in complete confidence by Recipient, and shall not, without Trustee’s written consent, be disclosed to any other person, nor used for any purpose, other than in connection with the Employment.
2. This obligation to maintain the confidentiality of Confidential Information shall continue to apply after the end of the Employment.
3. Recipient shall make no use of the Confidential Information at any time.
4. Recipient will not disclose any Confidential Information to any person other than the Trustee or agent of the Trustee such as an accountant or attorney.
5. Recipient agrees not to copy any written or electronic documents or extracts of documents containing Confidential Information.
6. Recipient shall not remove any Confidential Information from the Debtor’s location, except as instructed by the Trustee or his attorney or accountant.
7. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California as they apply to contracts entered into and wholly to be performed in the State of California. The federal and state courts within the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement.
8. In the event any portion of this Agreement is ever held unenforceable by a court of competent jurisdiction, then that portion shall be severed and the remainder of this Agreement shall remain in full force and effect.

9. By signing this Agreement, the undersigned acknowledges and agrees to every term of this Agreement and that such terms shall survive the termination of this Agreement and that this Agreement shall be binding upon and inure to the benefit of the Trustee and his respective successors and assigns.

10. The undersigned acknowledges that legal damages may not be an adequate remedy for any breach or attempted breach of this Agreement, and agrees that provisional equitable relief may be required in appropriate circumstances and that the Trustee shall, in addition to any other rights and remedies in the event of a breach by the undersigned of this Agreement have the right to seek provisional injunctive relief restraining any breach or attempted breach of this Agreement by the undersigned.

11. This Agreement may be executed (a) by facsimile signature, (b) electronic signature and (c) one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

12. Should suit be brought to enforce or interpret any of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not damages, reasonable attorney's fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal). The prevailing party shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. Post judgment attorneys' fees incurred by the prevailing party in enforcing any judgment or an action brought to resolve a dispute hereunder will also be recoverable. This right to post judgment attorneys' fees shall be separate and distinct from the right to recover attorneys' fees in the underlying action, shall survive any judgment and shall not be deemed merged into any judgment. A party not entitled to recover its costs shall not be entitled to recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining if a party is entitled to recover costs or attorney's fees.

UNDERSTOOD AND AGREED:

Brian Nishi

Michael G. Kasolas, Chapter 7 Trustee for
the bankruptcy estate of Fox Ortega Enterprises, Inc.,
dba Premier Cru