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7 [Proposed] Attorneys for Michael G. Kasolas,
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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 BRIAN NISHI IN
SUPPORT OF APPLICATION FOR ORDER
AUTHORIZING EMPLOYMENT OF BRIAN
NISHI**

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19 I, Brian Nishi, declare:

20 1. I have been asked to assist the Trustee in the above-captioned case. The following
21 facts are true of my own personal knowledge and if called upon to do so, would and could
22 competently testify thereto, except as to those matters that are alleged upon information and belief
23 and as to those matters, I believe them to be true. I make this declaration in support of the
24 Application for Order Authorizing Employment of Brian Nishi.

25 2. I have worked for FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU
26 (“Debtor”) for over 20 years, and was the in house “IT Technician” since 2008.

27 3. I have agreed to assist the estate in recovering information from the Debtor’s
28 business records, including electronic records. To the extent I am able, I have agreed to assist the

1 Estate by producing reports that will show the status of each bottle of wine: its identity and
2 location, sale orders pending against it, the date it may have been shipped or picked up and its
3 cost, among other reports.

4 4. While I was out of the country on vacation in January 2016, I was asked by John
5 Fox to assist the Estate in gaining remote access to the Debtor's servers so that the Trustee could
6 obtain copies of the data on those servers, and I did so.

7 5. I am familiar with the Debtor's business practices, and know what information is
8 kept electronically, what reports can be generated, and what material information is not in the
9 electronic records, such as the status of certain pending purchase orders.

10 6. I never had and have no ownership interest in the Debtor, and was never a
11 controlling person of the Debtor. I was an employee in charge of technology.

12 7. I did file a proof of claim against the estate for unpaid wages based on nonpayment
13 of my last pay check for about \$2,500, and will withdraw that claim if my employment is
14 approved by the Court to assist the Trustee.

15 8. I have agreed to accept the sum of \$100 per hour for my services, effective from
16 January 15, 2016.

17 9. I have agreed to execute a non-disclosure agreement substantially in the form
18 attached hereto as **Exhibit A**.

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

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/s/ Brian Nishi
Brian Nishi

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