

JUN 08 2021

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BY Melissa Perry
Deputy Clerk

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8 LANGTRY FARMS, LLC

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LAKE

11 LANGTRY FARMS, LLC, a Delaware
12 Limited Liability Company

13 Plaintiff,

14 v.

15 HUGH REIMERS, an individual;
16 TORICK FARMS, LLC, a California
17 Limited Liability Company; and
18 DOES 1-20.

19 Defendants.

20 AND RELATED CROSS-ACTION.

CASE NO. CV421774

**DECLARATION OF JOSHUA S. DEVORE
IN SUPPORT OF PLAINTIFF LANGTRY
FARMS, LLC'S OPPOSITION TO CROSS-
COMPLAINANT TORICK FARMS,
LLC'S REQUEST FOR PRELIMINARY
INJUNCTION**

21
22 I, Joshua S. Devore hereby state and declare:

23 1. I am an attorney for Plaintiff Langtry Farms, LLC ("Langtry") in this action, duly
24 licensed to practice in the State of California, and a partner in the law firm of Dickenson, Peatman
25 & Fogarty. I have firsthand, personal knowledge of the matters set forth herein, except as to
26 those matters which are stated on information and belief, and if called upon to do so, I could and
27 would competently testify thereto.

2. Following the Court's oral order of May 20, 2021 that the parties create a joint interest-bearing account to hold the proceeds of the wine transactions at issue, I contacted First Republic Bank, with whom my firm maintains a banking relationship to discuss the creation of an appropriate form of account. The bank requested to see the Court's order for further information.

3. On May 25, 2021, I provided the Court's written order of the same date to First Republic Bank. On May 26, 2021, First Republic Bank provided a draft escrow template for the required account and account parameters based on the Court's Order. I then provided the draft to counsel for Defendants and request that they advise whether they had any issue using First Republic Bank for the account.

4. I received no response from Defendants' counsel until Tuesday, June 1, 2021, at which point Defendants' counsel suggested instead that the money be held in one of counsel's client trust accounts. I responded that same day that the Court's order requires the funds to be held in a joint account that earns interest, while lawyers trust account interest goes to the bar. As such, a separate joint account is required to comply with the Court's order.

5. I have not received a further response regarding creation of the ordered joint account. A true and correct copy of the email chain containing the foregoing discussions is attached hereto as Exhibit A.

6. Attached as Exhibit B is a true and correct copy of an excerpt from the California ABC's Non-Retail Licensing Guidance on B.P.C. § 23358.3 from 2002.

7. Attached as Exhibit C is a true and correct copy of an excerpt from the California ABC's Guidance on B.P.C. § 23358.3 from 1999.

I declare under penalty of perjury under all of the laws of the State of California that the foregoing matters are true and correct to the best of my knowledge and that this declaration was executed on June 8, 2021 at Napa, California.



JOSHUA S. DEVORE

EXHIBIT A

Joshua S. Devore

From: Joshua S. Devore
Sent: Tuesday, June 01, 2021 10:58 AM
To: 'Kevin Block'
Cc: Roman Block
Subject: RE: Escrow Account

The order requires the money to be held in an interest bearing joint account in the name of both Torick and Langtry. We can't do that in our trust accounts because the interest goes to the bar. It needs to be set up in a separate joint account.

Thanks,
Josh

JOSHUA S. DEVORE

T: 707.252.7122 | JDEVORE@DPF-LAW.COM

From: Kevin Block [<mailto:kb@winelawyers.com>]
Sent: Tuesday, June 01, 2021 9:16 AM
To: Joshua S. Devore
Cc: Roman Block
Subject: RE: Escrow Account

[External Email]

Josh:

I really do not see the need for a third-party escrow account. Why don't you or I just hold the money in our trust account and agree not to release it without the written agreement of all parties or a court order?

Kevin

Kevin P. Block
Block & Block LLP
1109 Jefferson Street
Napa, CA 94559

T: 707.251.0368
C: 707.246.9013
kb@winelawyers.com

From: Joshua S. Devore <jdevore@dpf-law.com>
Sent: Wednesday, May 26, 2021 2:09 PM
To: Kevin Block <kb@winelawyers.com>
Cc: Roman Block <rb@winelawyers.com>
Subject: FW: Escrow Account

I received the attached escrow template from First Republic for the account. Before I go through and revise it, can you please let me know if you have any issue with using First Republic for this? Note that they charge a flat fee of \$1,500.

Thanks,
Josh

JOSHUA S. DEVORE

T: 707.252.7122 | JDEVORE@DPF-LAW.COM

From: Newhall, Gregory [<mailto:Gnewhall@firstrepublic.com>]

Sent: Wednesday, May 26, 2021 1:43 PM

To: Joshua S. Devore; Castillo, Ariel; DACA

Subject: RE: Escrow Account

[External Email]

Hi Josh:

Thank you for sending this over. The attached is our one and only escrow template. You are welcome to propose whatever changes you need to the roles and deal details; The document in Word form to make it easier for them to redline proposed changes. We have used this agreement for all kinds of different escrows.

Since the order is in the names of both Torick Farms and Langtry Farms, per the attached order we would have the account setup under both business names. Also, since the account will earn interest we will need to know who will have the interest reported to.

Lastly, please reply to this team should you have any questions as we will be the people assisting with getting this setup.

Thank you,
Greg

Gregory Newhall
Senior Managing Director
District Manager Preferred Banking Offices - North Bay

Office: (707) 526-8793

Mobile: (707) 291-8150

Fax: (707) 544-8882

Email: gnewhall@firstrepublic.com

NMLS ID: 1367148

EXHIBIT B

NON-RETAIL LICENSING

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WINE GRAPE GROWER'S STORAGE - TYPE 29

Introduction

This license was authorized by legislation in 1982 to enable wine grape growers to more effectively deal with unpredictable market conditions that periodically caused an oversupply of grapes. Subsequent legislation in 1985 expanded the number of licensees to whom a wine grape grower could sell wine.

Definitions and Functions

A wine grape grower's storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this State to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers. (Section 23358.3).

Privileges and Limitations

This license confers very limited privileges. Essentially, this licensee may sell only wine produced from grapes grown by him/her to those persons specifically named in Section 23358.3.

A wine grape grower's storage license does not authorize sales of wine produced from grapes not grown by the licensee.

This licensee may not sell wine to other supplier-type licensees, except as provided in Section 23358.3, or to retail licensees or to unlicensed persons.

Tied-House

This licensee's activities are directly related to specified supplier-type licensees. Therefore, a tied-house situation would exist if a wine grape grower's storage licensee also held a retail license since suppliers are prohibited from giving money or other things of value (i.e., payments for wine sold by the wine grape grower) to retail licensees (Sections 25500 and 25502).

Other Requirements

A wine grape grower's storage licensee is not required to post a surety bond with the Board of Equalization.

EXHIBIT C

23358. SALES BY WINEGROWERS. (Continued)

CONSTRUCTION AND APPLICATION: (Continued)

- (b) A winegrower licensed prior to September 17, 1965, who held more than one duplicate license and who manufactured less than fifty percent of the wine sold by him to consumers, may continue to do so and he may transfer such license.
 - (c) If, prior to September 17, 1965, a winegrower held but one duplicate license and did in fact manufacture at least fifty percent of all wine sold to consumers on his licensed premises or any licensed premises, he must continue to do so. He may not manufacture less than fifty percent of such wine sold to consumers and claim exemption under the grandfather clause of Section 23356.7. The grandfather clause applies only to licenses in existence and exercised prior to September 17, 1965. It does not apply to rights which may have existed but were not exercised.
 - (d) A duplicate winegrower's license is only issuable where an original license is in effect. It is an appurtenance to the original license, and a duplicate has no validity except in conjunction with the original license (Section 23390). A duplicate winegrower's license may not be transferred person-to-person independently of the original license.
 - (e) A winegrower, licensed after September 17, 1965, may obtain one duplicate license for premises at which sales to consumers are made or winetasting activities are conducted (Sections 23390 and 23390.5, Subdivision (b)), and may not obtain additional duplicate licenses by transfer to him from a winegrower, licensed prior to September 17, 1965, unless the winegrowers master license is transferred along with the duplicates.
4. Section 23358 permits a winegrower to hold a brandy importer's license. The winegrower may only sell imported brandy which was produced and packaged for him and is sold under a brand name owned by him to consumers.

DEPARTMENT PROCEDURE:

Winetastings

P 84

23358.2. RESTRICTIONS ON WINEGROWER'S AND BRANDY MANUFACTURER'S SALES.

See Cross References and Annotations under Section 23358

23358.3. WINEGRAPE GROWER'S STORAGE LICENSE.

CONSTRUCTION AND APPLICATION:

- 1. The privileges of this section apply only to grapes produced (grown) by the holder of this license. It does not permit production and storage of wine made from grapes purchased or obtained from other growers.

May 19, 1999

23359. FORTIFYING BRANDY.CROSS REFERENCES:

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CONSTRUCTION AND APPLICATION:

1. A licensed winegrower may sell bottled or bulk brandy to another licensed winegrower for fortifying purposes.
2. A licensed winery may sell brandy in containers of larger than one gallon, but not in bottled form, to a bakery for use in the manufacture of food products, including mince pies and cakes. There is no requirement for excise tax on sale of brandy in bulk.

23360. SALES BY BRANDY MANUFACTURERS.CROSS REFERENCES:

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CONSTRUCTION AND APPLICATION:

1. A brandy manufacturer's license authorizes the sale of wine and brandy to consumers for consumption off the premises where sold or to any person holding a license authorizing the sale of brandy; but it does not authorize the manufacture of wine.
2. A brandy manufacturer may sell brandy to food manufacturers to be used exclusively in the preparation of food products State tax free in containers of larger than one gallon only.

Brandy on which State and federal taxes have been paid may be sold by a brandy manufacturer to any consumer for consumption off the premises in containers of one gallon or less.

Section 32214 of the Revenue and Taxation Code provides that brandy manufacturers can receive a tax credit from the State Board of Equalization in the amount of State taxes paid on brandy sold to food manufacturers who hold federal drawback permits.

May 19, 1999