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August 5, 2014

Hon. Richard M. Berman  
United States District Judge  
For the Southern District of New York  
500 Pearl Street  
New York, New York 10007

FILED VIA ECF

Re: ***United States v. Rudy Kurniawan 1:12-CR-376 (RMB)***

Dear Judge Berman:

Your honor has requested a report of the status of the parties' efforts to reach agreement on several issues regarding Thursday's hearing.

The defendant accepts the conclusions reached in the report of Maureen Downey with respect to the David Doyle wines she analyzed, concluding that each of the approximately 175 bottles of Doyle wines examined in Los Angeles, and 24 bottles examined in New York, were counterfeit. The defendant also accepts the conclusions reached by Downey with respect to the counterfeit wines examined at Mission Fine Wines.

The Government and the defendant are in agreement that the appropriate restitution and Guidelines loss figure for Mission Fine Wines is \$2,000,000.

The Government and the defendant agree that the appropriate restitution "loss" figure for David Doyle is \$15.11 million. The parties disagree as to Guideline loss.

The Government contends that the Downey analysis regarding a representative sample when viewed as a supplement to the Deck analysis of the Doyle wines is sufficient to allow the Court to extrapolate in its determination of Guidelines loss for Doyle, thus concluding that \$15.11 million is the correct Guidelines figure as well. That is, the Downey analysis that each of the 175 representative Doyle bottles that Downey examined allows the Court to conclude that each of the 1500 bottles that Doyle received from the defendant was counterfeit.

The defense disagrees with this position. The figure for restitution and for

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Guideline calculations is not necessarily the same. When assessing restitution this Court has the authority to look at the value of property either at the time of the offense or at the time of sentencing. *U.S. v. Boccagna*, 450 F.3d 107, 114 (2<sup>nd</sup> Cir. 2005). However, for the purposes of Guideline calculations the value of the property is determined as of the time of the offense. Accordingly use of current value of property when significantly different leads to an improperly high result. Mr. Doyle submitted a list of the 1500 bottles of wine that he purchased from Mr. Kurniawan between 2005 and 2008, and which he segregated after Mr. Kurniawan's arrest. He ascribes a current value to this wine of \$17,724,431.35. (See Exhibit B to Twellman Declaration) This figure is, in many cases, significantly greater than the amount paid for the wine. By way of example: Eight bottles of 1947 Chateau L'Evangile lists a current value of \$30,625. The purchase price from Mr. Kurniawan was \$4,000 per bottle a difference of \$221,000. (See Baker Hostetler letter July 5, 2005 attachment.) Twenty bottles of 1961 Chateau Lafleur are valued at \$8,187 when the purchase price was \$5,500 for one case and \$6,500 for the balance, while 12 magnums for the same wine and year are listed at \$20,152 per bottle when the purchase price was \$15,000. Eight bottles of 1945 DRC are listed at \$84,439 per bottle when the purchase price was \$40,000 per bottle. The defense maintains that for Guideline calculation purposes the current value figure should be reduced to \$8,862,000.

Although Mr. Doyle paid Mr. Kurniawan \$15.1 Million. (See exhibit A to Twellman Declaration) \$1.5 Million of this sum was paid to Mr. Kurniawan as a "cash advance" and was not directly connected to any purchase of any wine. (See Baker Hostetler letter dated August 3, 2014.)

Very truly yours,

WESTON, GARROU &amp; MOONEY

/ s /

By

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