

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Meier's Wine Cellars Acquisition, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-11575 (MFW)

(Jointly Administered)

**DECLARATION OF SETH KAUFMAN
IN SUPPORT OF THE DFWS SETTLEMENT MOTION**

I, Seth Kaufman, hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am the President and Chief Executive Officer of Vintage Wine Estates, Inc. (NV) ("VWE Nevada"), a debtor and debtor in possession in the above-captioned chapter 11 cases (together with its affiliates, the "Debtors" or the "Company"). I joined VWE Nevada as President and Chief Executive Officer in October 2023.

2. I submit this declaration (this "Declaration") in support of the *Motion of the Debtors and Debtors in Possession for Entry of an Order (I) Approving the Settlement Between the Debtors and DFWS; and (II) Granting Related Relief* [Docket No. 434] (the "DFWS Settlement Motion").²

¹ The Debtors are the following twelve entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Meier's Wine Cellars Acquisition, LLC (5557); California Cider Co., Inc. (0443); Girard Winery LLC (5076); Grove Acquisition, LLC (9465); Meier's Wine Cellars, Inc. (2300); Mildara Blass Inc. (1491); Sabotage Wine Company, LLC (8393); Splinter Group Napa, LLC (1417); Thames America Trading Company Ltd. (0696); Vinesse, LLC (3139); Vintage Wine Estates, Inc. (CA) (2279); and Vintage Wine Estates, Inc. (NV) (5902). The Debtors' noticing address in these chapter 11 cases is 205 Concourse Boulevard, Santa Rosa, California 95403.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such term in the Ray's Station Private Sale Motion or the Bidding Procedures Order [Docket No. 181], as applicable.

3. The statements in this Declaration are, except where specifically noted, based on (a) my personal knowledge, (b) my review of relevant documents, (c) information provided to me by the Company and/or Company employees working under my supervision, (d) information provided to me by, or discussions with, the Debtors' management team, employees or the Debtors' advisors or (e) my opinion based upon my experience. If called to testify, I could and would testify to the facts and the opinions set forth herein.

4. Prior to taking on my current role at VWE Nevada, I served as the President and Chief Executive Officer of Moët Hennessy North America from August 2019 to October 2023. Before that, I had spent the majority of my career at PepsiCo, where I held several leadership roles between 2001 and 2019, including roles such as senior vice president, Chief Marketing Officer and President, North American Nutrition & The Hive. I received a Bachelor of Arts in Public Communications – Television, Radio & Film Management from Syracuse University and a Master's of Business Administration from the University of Michigan.

5. As part of my role at the Company, I am generally familiar with the Debtors' history, day-to-day operations, business and financial affairs and books and records, as well as the Debtors' restructuring efforts.

The DFWS Agreements

6. Debtor Vintage Wine Estates, Inc. (CA) ("VWE California") and W.J. Deutsch & Sons Ltd. d/b/a Deutsch Family Wine & Spirits ("DFWS") are or were party to the following agreements:

- (a) *Amended and Restated Wine Production Agreement*, dated February 10, 2022 and effective as of January 1, 2021 (collectively with any amendments, supplements, restatements and other related writings or agreements, the "Production Agreement") whereby VWE California provides DFWS with, among other things, production, bottling and warehousing services for wine products at the facility

owned by VWE Nevada and operated by VWE California at 13300 Buckman Drive, Hopland, California ("Ray's Station");

- (b) the *Amended and Restated Exclusive Marketing and Sales Agency Agreement*, dated April 1, 2016, as subsequently amended by that certain *First Amendment to Amended and Restated Exclusive Marketing and Sales Agency Agreement*, dated March 1, 2017 (collectively with any amendments, supplements, restatements and other related writings or agreements, the "Girard Agreement"); and
- (c) the *Exclusive Marketing and Sales Agreement*, dated October 2017 (collectively with any amendments, supplements, restatements and other related writings or agreements, the "Layer Cake Agreement," together with the Girard Agreement, the "Marketing Agreements).

7. Debtors VWE Nevada, VWE California and DFWS are or were party to the following agreements:

- (a) *Change of Control Side Letter Agreement*, dated February 10, 2022 (collectively with any amendments, supplements, restatements and other related writings or agreements, the "Option Agreement");
- (b) *Side Letter Agreement Regarding Right of First Refusal for Representation of New VWE Brands*, dated February 10, 2022 (collectively with any amendments, supplements, restatements and other related writings or agreements, the "ROFR Side Letter", and collectively with the Production Agreement, the Marketing Agreements and Option Agreement the "DFWS Agreements");

8. Under Section 4.1 of the Production Agreement, VWE California had, until the Production Agreement's rejection, the exclusive right to produce for DFWS such Josh Cellars brands products of California appellation wines set forth on Schedule 4 to the Production Agreement and any other varietals that DFWS designates in writing to VWE to produce.

9. On the Petition Date, the Debtors filed the *Omnibus Motion of the Debtors and Debtors in Possession for an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts Nunc Pro Tunc to the Petition Date and (II) Granting Certain Related Relief* [Docket No. 13] (the "Rejection Motion") seeking rejection of, among other executory contracts, the DFWS Agreements nunc pro tunc to the Petition Date under section 365 of the Bankruptcy

Code. Subsequently, the Debtors and DFWS agreed to adjourn consideration of the Rejection Motion with respect to the Production Agreement.

10. On August 16, 2024, the Court entered an order granting the Rejection Motion [Dkt. 144], as revised, under which the Debtors were authorized to reject the Option Agreement, the ROFR Side Letter and the Marketing Agreements, among other executory contracts, nunc pro tunc to the Petition Date.

11. On September 24, 2024, the Court entered an order authorizing the Debtors to reject the Production Agreement, effective as of September 30, 2024 [Dkt. 339].

12. Prior to rejection of the Production Agreement, certain disputes arose between DFWS and the Debtors over, among other things, DFWS's assertions that (a) VWE California failed to meet its production obligations; (b) VWE California inappropriately denied DFWS's requests to waive VWE California's exclusive production right under the Production Agreement so that DFWS could contract with third parties to produce wine without risking breach of the Production Agreement; and (c) DFWS was entitled to an administrative expense claim for alleged damages resulting from alleged postpetition breaches of the Production Agreement. The Debtors strongly dispute each of DFWS's assertions and allege, among other things, that DFWS (x) is the party responsible for any delays in production services, (y) breached the Production Agreement by directly contracting with the Debtors' third party service providers for certain production services that would have been provided by the VWE California under the Production Agreement and (z) is not entitled to the allowance of an administrative expense for damages resulting from any VWE California's breaches (there are none) of the rejected prepetition Production Agreement even if VWE California breached that agreement postpetition (it did not).

The Settlement Agreement

13. Following negotiations among the Debtors and DFWS, the Debtors have agreed to enter into that certain *Asset Purchase Agreement* (the "Ray's Station Asset Purchase Agreement"), dated as of October 7, 2024, by and among VWE Nevada, VWE California, DFG Real Estate, LLC ("DFG"), and DFWS for the sale of Ray's Station and related assets to DFWS and its affiliate DFG (the "Ray's Station Sale Transaction").

14. In conjunction with the Ray's Station Asset Purchase Agreement, the Debtors and DFWS have negotiated the Settlement Agreement, which resolves all disputes between the Debtors and DFWS, asserted or unasserted, arising out of or relating in any way under the DFWS agreements.

15. Pursuant to the Settlement Agreement, upon the Closing Date (as defined in the Settlement Agreement), the Debtors and DFWS will expressly release and discharge each other of claims of any and every nature at law or in equity, liquidated or unliquidated, known or unknown, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, foreseeable or unforeseeable arising out of or related in any way to the DFWS Agreements and all other related agreements between the Debtors and DFWS. This release will cover all such claims that either party has or may have had from the beginning of time through the Closing Date.

16. Importantly, the Settlement Agreement is intertwined with – and inseparable from – the Ray's Station Asset Purchase Agreement. The Settlement Agreement will not become effective unless and until the Court enters a final order approving the Ray's Station Sale Transaction and the contemplated releases will not be provided unless the transaction closes. The Ray's Station Sale Transaction and the Settlement Agreement comprise a global

resolution of the Debtors' disputes with DFWS. The Settlement Agreement provides that, notwithstanding the rejection of the Production Agreement, the Debtors will continue to operate and maintain Ray's Station (as defined in the Settlement Agreement), including producing, bottling and storing wine for DFWS, until the earlier of (a) the Closing Date, (b) the termination of the Ray's Station Asset Purchase Agreement in accordance with its terms, (c) the revocation by DFWS of the license granted under Section 11.13(b) of the Ray's Station Asset Purchase Agreement and (d) October 31, 2024 (the "Interim Bottling Arrangement").

17. DFWS told the Debtors that the Debtors' agreeing to the Interim Bottling Arrangement was a necessary precondition for DFWS and DFG's entering into the Ray's Station Asset Purchase Agreement. Because the Interim Bottling Arrangement will facilitate a sale of Ray's Station and related assets, it is critical for maximizing the value of the assets subject to the Ray's Station Asset Purchase Agreement.

18. While the Debtors are confident that they would prevail in any litigation with DFWS regarding their disputes, the Debtors understand that success in litigation is not assured and there are material risks a court could resolve the disputes in DFWS' favor. Moreover, the Debtors believe any litigation with DFWS likely would (a) be complex, (b) not be resolved before the Debtors' postpetition financing facility matures and (c) require the incurrence of substantial attorneys' fees and expenses. For these reasons, and because the compromise of these disputes will facilitate the sale of Ray's Station and its related assets, it is my judgment that the Settlement Agreement is in the best interests of the Debtors' estates, their creditors and other constituents.

19. The Debtors and DFWS participated in the diligence and negotiation process on an arm's-length basis and the resulting Settlement Agreement is reasonable and

justified by the benefits the Debtors will receive via the Settlement Agreement and the Ray's Station Asset Purchase Agreement.

20. Having fully reviewed the terms of the Settlement Agreement, and in light of my familiarity with the Debtors' business and restructuring goals, it is my judgment that the Debtors' decision to enter into the Settlement Agreement represents an exercise of their reasonable business judgment. As such, the Debtors' requests for the relief in the DFWS Settlement Motion is in the best interests of the Debtors, their creditors, their employees and their other stakeholders.

Dated: October 9, 2024

/s/ Seth Kaufman
Seth Kaufman
President and Chief Executive Officer
Vintage Wine Estates, Inc.