

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of)	
)	
)	
E. & J. Gallo Winery,)	
a corporation,)	
)	
Dry Creek Corporation,)	DECISION AND ORDER
a corporation, and)	Docket No. C-
)	
Constellation Brands, Inc.,)	
a corporation.)	

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent E. & J. Gallo Winery, a wholly owned subsidiary of Respondent Dry Creek Corporation, of certain assets of Respondent Constellation Brands, Inc. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as

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required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent E. & J. Gallo Winery is a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of California with its executive offices and principal place of business located at 600 Yosemite Boulevard, Modesto, California 95354.
2. Respondent Dry Creek Corporation is a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Delaware with its executive offices and principal place of business located at 600 Yosemite Boulevard, Modesto, California 95354.
3. Respondent Constellation Brands, Inc. is a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Delaware with its executive offices and principal place of business located at 207 High Point Drive, Building 100, Victor, New York 14564.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions apply:

- A. "Respondent Gallo" means Dry Creek Corporation, its wholly-owned subsidiary E. & J. Gallo Winery, their directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Dry Creek Corporation and E. & J. Gallo Winery, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

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- B. “Respondent CBI” means Constellation Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Constellation Brands, Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- C. “Vie-Del” means Vie-Del Company, a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Nevada, with its executive offices and principal place of business located at 11903 S. Chestnut Ave, Fresno, California 93725.
- D. “Precept” means Precept Brands LLC, a limited liability company organized, existing, and doing business under, and by virtue of the laws of, the State of Washington, with its executive offices and principal place of business located at 1910 Fairview Avenue East, Suite 400, Seattle, Washington, 98102.
- E. “Sazerac” means Sazerac Company Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Louisiana, with its executive offices and principal place of business located at 101 Magazine Street, Fifth Floor, New Orleans, Louisiana 70130, and Sazerac Investments, LLC, a corporation organized, existing and doing business under, and by virtue of the laws of, the State of Delaware, with its offices and principle place of business located at 101 Magazine Street, Fifth Floor, New Orleans, Louisiana 70130.
- F. “Commission” means the Federal Trade Commission.
- G. “Acquisition” means the proposed acquisition described in the Second Amended and Restated Asset Purchase Agreement between Constellation Brands, Inc. and E. & J. Gallo Winery made and entered into as of May 22, 2020, as amended by the First Amendment to the Second Amended and Restated Asset Purchase Agreement, dated September 28, 2020.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Acquirer” means the following:
 - 1. Sazerac or any other person that acquires the Divestiture Assets for the Brandy Business pursuant to this Order;
 - 2. Precept or any other person that acquires the Divestiture Assets for the Dessert Wine Business pursuant to this Order; or
 - 3. Vie-Del or any other person that acquires the Divestiture Assets for the Concentrate Business pursuant to this Order.
- J. “Brandy Business” means the development, sourcing for, production, marketing, sale, and distribution of spirits under the “Grande Amber” (Paul Masson) brand.

- K. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes books, records, information, and data relating to sales, marketing, logistics, products and SKUs, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, and all other information. For clarity, Business Information includes Respondents’ rights and control over information and material provided to any other person.
- L. “Commercial Production” means the ability to produce, market, sell and deliver a Divestiture Product in quantities that meet current customer demand and at a level of quality that meets the requirements for sales during the two years prior to the Divestiture Date.
- M. “Concentrate Business” means the development, sourcing for, production, marketing, sale, and distribution of grape concentrates and permeates by Respondent CBI.
Provided that the Concentrate Business shall not include grape concentrates and associated inputs used in the production of products that are being sold to Respondent Gallo in the Acquisition.
- N. “Concentrate Products” mean the grape concentrates and permeates that CBI used or sold, as of the Acquisition Date, through the Concentrate Business,
- O. “Confidential Information” means Business Information and Intellectual Property that is not in the public domain.
- P. “Consent” means an approval, consent, ratification, waiver, or other authorization from any person.
- Q. “Contracts” means all agreements, contracts, leases, license agreements, consensual obligations, promises or undertakings (whether written or oral and whether express or implied), whether or not legally binding.
- R. “Dessert Wine Business” means the development, sourcing for, production, marketing, sale and distribution of wine under the Fairbanks and Sheffield dessert wine brands, including the Sheffield Silver Lane brand.
- S. “Dessert Wine Products” means the products that Gallo sold, as of the Acquisition Date through the Dessert Wine Business.
- T. “Direct Cost” means the cost of labor, materials, travel, and other expenditures directly incurred to provide Transitional Services. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- U. “Divestiture Agreement” means

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1. Asset Purchase Agreement among Constellation Brands, Inc., Sazerac Investments LLC and Sazerac Company Inc., dated June 24, 2020 and the Trademark License Agreement by and between Sazerac Company Inc. (Licensor) and E. & J. Gallo Winery (Licensee), and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-Public Appendix I;
 2. Amended and Restated Asset Purchase Agreement by and between Constellation Brands U.S. Operations, Inc. and Vie-Del Company dated October 15, 2020, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-Public Appendix III;
 3. Asset Purchase Agreement dated September 11, 2020, by and between E. & J. Gallo Winery and Precept Brands LLC, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-Public Appendix V; or
 4. Any other agreement between Respondents or the Divestiture Trustee and an Acquirer to purchase Divestiture Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- V. “Divestiture Assets” means a Respondent’s rights, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to a Divestiture Business, other than Excluded Assets, including:
1. All tangible personal property, including any tangible personal property removed from the location of the business being divested after the date of the announcement of the Acquisition and not replaced,

Provided, however, the Divestiture Assets shall only include manufacturing equipment used by Respondent CBI in the Concentrate Business that is requested by Acquirer of the Concentrate Assets within 90 days after Respondent CBI ceases supplying Concentrate Products under Paragraph IV.D of this Order, and the price for such requested equipment shall be as specified in the relevant Divestiture Agreement or, if no price is specified, at no cost.
 2. All inventories;
 3. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto,
 4. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
 5. All Business Information,

Provided however, (i) if a Respondent has a legal obligation to retain original Business Information related to a Divestiture Business, Respondent may provide Acquirer with a full, complete copy and provide the Acquirer with access to the original when the Acquirer needs the original for regulatory or evidentiary purposes, and (ii) if a document or record contains Business Information related to a Divestiture Business that cannot be separated from Business Information not related to the Divestiture Business without impairing the meaning or usefulness of the Business Information, Respondents may retain the document or record and provide the Acquirer with a full, complete copy of the document or record; and

6. All intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondents that is not Licensed Intellectual Property, going concern value, goodwill, and telephone and telecopy listings.
- W. “Divestiture Business” means the Brandy Business, the Dessert Wine Business or the Concentrate Business.
- X. “Divestiture Business Employee” means any full-time or part-time employee or independent contractor of a Respondent who, on or after April 3, 2019, worked, in whole or in part, in the Brandy Business, the Concentrate Business, or the Dessert Wine Business.
- Y. “Divestiture Date” means the date on which a Respondent or a Divestiture Trustee consummates the divestiture of the Brandy Business, the Dessert Wine Business or the Concentrate Business as required by Paragraph II of this Order.
- Z. “Divestiture Trustee” means the person appointed by the Commission pursuant to Paragraph X of this Order.
- AA. “Employee Hiring Period” means:
1. For Sazerac or another Acquirer of the Brandy Business, until one year after the Divestiture Date for the Brandy Business for the Acquirer of the Brandy Business,
 2. For Vie-Del or another Acquirer of the Concentrate Business, until one year after Respondent CBI fulfills its obligation to supply product under Paragraph IV.D of this Order, and
 3. For Precept or another Acquirer of the Dessert Wine Business, until one year after Respondent Gallo fulfills its obligation to supply product under Paragraph IV.C of this Order.
- BB. “Employee Information” means for each Divestiture Business Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

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1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (i.e., active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- CC. "Excluded Assets" are the assets on the attached Non-Public Appendices II (Excluded Brandy Assets), IV (Excluded Concentrate Assets) and VI (Excluded Dessert Wine Assets).
- DD. "Governmental Authorization" means a consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- EE. "Intellectual Property" means intellectual property of any kind including patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- FF. "Licensed Intellectual Property" means Intellectual Property that it is predominately or primarily used in or related to businesses not being divested, is used in or related to a Divestiture Business, and is not an Excluded Asset.
- GG. "Mission Bell Assets" mean tangible property, plant and equipment assets used at the Mission Bell Facility such as production equipment, vehicles, furniture, computers and software and does not include current assets such as inventory and supplies.
- HH. "Mission Bell Facility" means collectively, Respondent CBI's Mission Bell Winery facilities located at (a) 12667 Road 24, Madera, California 93637, (b) 23715 Avenue 12, Madera, California 93637, (c) 23774 Avenue 12 1/2, Madera, California 93637, and (d) 24246 Avenue 13, Madera, California 93637.
- II. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- JJ. "Orders" means this Order and the Order to Maintain Assets.

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- KK. “Sparkling Wine Business” means the development, sourcing for, production, marketing, sale, and distribution of sparkling wine under the “Cook’s” and “J Roget” brands.
- LL. “Transitional Services” means services to transfer the Divestiture Assets and Business to an Acquirer and enable the Acquirer to use the assets and operate the business in a manner at least equivalent to their use and operation by Respondent, including technical assistance, operational assistance, training and providing information about all aspects of the Divestiture Business and the Divestiture Assets, including research and development, quality control, operation, maintenance and repair of facilities and equipment, regulatory compliance, customers, sales, marketing, customer service, purchasing, logistics, supply chain management, finance and accounting, employee benefits, payroll, information technology and systems, logistics.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondent CBI shall:
1. Divest, absolutely and in good faith, the Divestiture Assets related to the Brandy Business to Sazerac, and the Divestiture Assets related to the Concentrate Business to Vie-Del, and
 2. Grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to Sazerac for Licensed Intellectual Property related to the Brandy Business, and to Vie-Del for Licensed Intellectual Property related to the Concentrate Business.
- B. No later than 10 days after the Acquisition Date, Respondent Gallo shall:
1. Divest, absolutely and in good faith, the Divestiture Assets related to the Dessert Wine Business to Precept, and
 2. Grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to Precept for Licensed Intellectual Property related to the Dessert Wine Business.
- C. If a Respondent has divested all or part of the Divestiture Assets related to a Divestiture Business prior to the date this Order becomes final and at the time the Commission determines to make this Order final, the Commission notifies the Respondent that:
1. The Acquirer is not an acceptable purchaser of relevant Divestiture Assets, then the Respondent shall immediately rescind the divestiture to that Acquirer, and shall divest the relevant Divestiture Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to one or more persons that receive the prior approval of the Commission; or

2. The manner in which a Respondent has divested the relevant Divestiture Assets is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee and direct the Divestiture Trustee, to modify the manner of divestiture as the Commission determines is necessary to satisfy the requirements of this Order. The Respondent, or the Divestiture Trustee, shall promptly modify the divestiture in the manner the Commission directs.
- D. If within one year after issuing this Order or, for the Concentrate Business before the termination of supply under Paragraph IV.D, the Commission determines, in consultation with the Acquirer of a Divestiture Business and the Monitor, that the Acquirer of that Business needs one or more Excluded Assets to operate the Divestiture Business in a manner that achieves the purposes of this Order, Respondents shall divest, absolutely and in good faith, such Excluded Assets to the Acquirer.
- E. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, each Consent that is necessary to effect the complete transfer and divestiture of the Divestiture Assets to the relevant Acquirer and enable the Acquirer to operate all aspects of the relevant Divestiture Business,

Provided, however, Respondents may satisfy the requirement to obtain a Consent by certifying that an Acquirer has entered into an equivalent agreement or arrangement directly with the relevant party that is acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order; *provided, however,* that no Divestiture Agreement shall limit, or be construed to limit, the terms of this Order. To the extent any provision in a Divestiture Agreement varies from or conflicts with any provision in this Order such that Respondents cannot fully comply with both, Respondents shall comply with this Order.
- B. Respondents shall not modify or amend the terms of a Divestiture Agreement after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred Business Information included in the Divestiture Assets to the Acquirers, Respondents shall ensure that this Business Information is maintained and updated in the ordinary course of business and shall provide the relevant Acquirer with access to this Business Information (wherever located and however stored) and to employees who possess this Business Information.
- B. At the option of the Acquirer, Respondents shall provide Transitional Services sufficient to efficiently transfer the Divestiture Business and Divestiture Assets to the Acquirer and allow the Acquirer to operate the Divestiture Business and Divestiture Assets in a manner that is in all material respects equivalent to the manner in which Respondents operated them prior to the Acquisition:
 - 1. As set forth in a Divestiture Agreement, or otherwise reasonably requested by the Acquirer (whether requested before or after the Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - 3. For a period sufficient to meet the requirements of this Paragraph.
- C. At the option of the Acquirer of the Dessert Wine Assets, Respondent Gallo shall, on terms and conditions and at the price set forth in the relevant Divestiture Agreement, produce and supply Dessert Wine Products, or components thereof, for sale by the Acquirer. Respondent Gallo shall produce and supply Dessert Wine Products, or components thereof, in quantities sufficient to meet the needs of the Acquirer and in a manner that enables the Acquirer to provide customers with Dessert Wine Products of the same quality and on the same schedule as did Respondent Gallo. Unless the Acquirer requests an earlier termination in writing, Respondent Gallo shall not cease supplying products under this Paragraph until the Acquirer begins Commercial Production of the Dessert Wine Products.
- D. At the option of the Acquirer of the Concentrate Assets, Respondent CBI shall, on terms and conditions and at the price set forth in the relevant Divestiture Agreement, produce and supply Concentrate Products, or components thereof, for sale by the Acquirer. Respondent CBI shall produce and supply Concentrate Products, or components thereof, in quantities sufficient to meet the needs of the Acquirer and in a manner that enables the Acquirer to provide customers with Concentrate Products of the same quality and on the same schedule as did Respondent CBI. Unless the Acquirer requests an earlier termination in writing, Respondent CBI shall not cease supplying products under this Paragraph until:
 - 1. The Acquirer begins Commercial Production of the Concentrate Products, and

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2. For a six-month period after the Acquirer begins Commercial Production, the Acquirer independently produces 100% of the products it sells to customers.
- E. Until 90 days after Respondent CBI ceases to supply products under Paragraph IV.D. above:
1. Respondent CBI shall take no action to, directly or indirectly, induce any person to discontinue or reduce grape concentrate purchases from the Acquirer of the Concentrate Business and shall, at the request of the Acquirer, provide reasonable assistance to the Acquirer to obtain or retain customers for Concentrate Products, and
 2. Respondent Gallo shall not, directly or indirectly, induce any person to discontinue or reduce its grape concentrate purchases from the Acquirer of the Concentrate Business,

Provided, however, Respondent Gallo may (i) advertise in newspapers, trade publications, trade shows, or other media in a manner not targeted specifically at customers of the Acquirer; (ii) sell products to a customer that initiates communications with Respondent Gallo to purchase grape concentrate, so long as such customer was not solicited by Respondent Gallo in violation of this Paragraph; and (iii) sell products, including through brokers, as Respondent Gallo has done in its ordinary course.
- F. Respondents shall allow each Acquirer to terminate, in whole or part, any agreement to provide Transitional Services at any time upon commercially reasonable notice and without cost or penalty.
- G. Respondents shall not cease providing Transitional Services or supplying products to an Acquirer as required by this Order due to breach by an Acquirer of a Divestiture Agreement. Further, Respondents shall not limit any damages (including indirect, special, and consequential damages) that an Acquirer would be entitled to receive in the event of a Respondent's breach of any agreement relating to Transitional Services or product supply required by this Order.

V. Asset Maintenance

IT IS FURTHER ORDERED that until Respondents fully transfer a Divestiture Business and related Divestiture Assets to an Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the Divestiture Business and related Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business, to minimize the risk of loss of competitive

- potential of the Divestiture Business, to operate the Divestiture Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, or deterioration of the Divestiture Assets, except for ordinary wear and tear.
- B. Not sell, transfer, encumber, or otherwise impair the Divestiture Assets, or terminate any of the operations of the Divestiture Business, other than in the ordinary course of business consistent with past practice or as prescribed in the Orders.
 - C. Make all payments required to be paid under any contract or lease when due, and pay all liabilities and satisfy all obligations associated with the Divestiture Business.
 - D. Provide the Divestiture Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on, at least at their scheduled pace, all capital projects, business plans, promotional plans, capital expenditure plans, research and development plans, and commercial activities for the Divestiture Business.
 - E. Use best efforts to preserve the existing relationships and goodwill with suppliers, customers, employees, vendors, distributors, landlords, licensors, licensees, government entities, brokers, contractors, and others having business relations with the Divestiture Business.
 - F. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Divestiture Business, including by:
 - 1. Filling vacancies that occur in the regular and ordinary course of business consistent with past practice; and
 - 2. Not transferring any employees from the Divestiture Business to another of Respondents' businesses.
 - G. Maintain and preserve Business Information related to the Divestiture Business.
 - H. Provide the resources necessary for the Divestiture Business to respond to competition, prevent diminution in sales, and maintain its competitive strength.
 - I. Continue providing customary levels of support services to the Divestiture Business.
 - J. Maintain all licenses, permits, approvals, authorizations, or certifications used in the operation of the Divestiture Business, and operate the Divestiture Business in accordance and compliance with all regulatory obligations and requirements.
 - K. Maintain the levels of production, quality, pricing, service, or customer support typically associated with the Divestiture Business,

Provided, however, Respondents may take actions that an Acquirer has requested or agreed to in writing to facilitate the Acquirer's acquisition of the Divestiture Assets if the relevant actions are consistent with the purposes of the

Orders and the Monitor (in consultation with Commission staff) approves the action in advance.

VI. Employees

IT IS FURTHER ORDERED that:

- A. Until termination of the Employee Hiring Period for an Acquirer, Respondents shall:
1. Cooperate with and assist the Acquirer to evaluate independently and offer employment to any Divestiture Business Employee who worked in the relevant Divestiture Business;
 2. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all relevant Divestiture Business Employees, and provide Employee Information for each;
 3. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet, outside the presence or hearing of any employee or agent of any Respondent, with any relevant Divestiture Business Employee, and to make an offer of employment to any relevant Divestiture Business Employee;
 4. Remove any impediments within the control of Respondents that may deter relevant Divestiture Business Employees from accepting employment with the Acquirer, including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a relevant Divestiture Business Employee who receives an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 5. Continue to provide the relevant Divestiture Business Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 6. Provide reasonable financial incentives for the relevant Divestiture Business Employees to continue in their positions, and as may be necessary, to facilitate the employment of relevant Divestiture Business Employees by the Acquirer; and
 7. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any relevant Divestiture Business Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any relevant Divestiture Business Employee by an Acquirer.

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8. Not directly or indirectly, solicit or otherwise attempt to induce a Divestiture Business Employee to reject a written offer of employment from an Acquirer, or terminate existing employment with an Acquirer,

Provided, however, Respondents may:

- (i) Hire an employee whose employment has been terminated by the Acquirer;
- (ii) Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Divestiture Business Employees; or
- (iii) Hire an employee who has applied for employment with a Respondent, as long as such application was not solicited or induced in violation of this Paragraph.

- B. Within 6 months after the Divestiture Date, if the Commission determines that any additional employee of a Respondent who worked for or supported the Divestiture Business should be included as a Divestiture Business Employee, the Commission shall so notify the Respondent and as of the date of such notification, the identified employee shall be considered a Divestiture Business Employee under this Order.

VII. Confidential Information

IT IS FURTHER ORDERED that:

- A. Respondents shall not (i) disclose (including to Respondents' employees) or (ii) use for any reason or purpose, any Confidential Information solely related to one or more Divestiture Businesses that is received or maintained by Respondents;

Provided, however, that a Respondent may disclose or use such Confidential Information in the course of:

- (i) Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or any Divestiture Agreement; or
 - (ii) Complying with financial reporting requirements, historical record-keeping for audit purposes, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Assets or any Divestiture Business, or as required by law, rule or regulation.
- B. Respondent shall only disclose Confidential Information solely related to one or more Divestiture Businesses to an employee or other person if disclosure is permitted in Paragraph VII.A. and the employee or other person has signed an agreement to maintain

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the confidentiality of such information and not violate the disclosure requirements of this Order.

- C. Respondents shall enforce the terms of this Paragraph VII and take necessary actions to ensure that their employees and other persons comply with its terms, including implementing access and data controls, training employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Until 4 years after the entry of this Order, Respondent CBI shall not terminate the operations of the Sparkling Wine Business and shall take all actions necessary to maintain the full economic viability, marketability and competitiveness of the Sparkling Wine Business.
- B. Respondents shall not, except as required to comply with this Order or the Divestiture Agreement with the Acquirer of the Concentrate Business:
 - 1. Use any Divestiture Assets or Excluded Assets related to the Concentrate Business for the production of grape concentrate, or
 - 2. Produce grape concentrate at the Mission Bell Facility.
- C. Respondent CBI shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, sell, transfer, convey or lease to Respondent Gallo the Mission Bell Facility, or any Mission Bell Assets used, or used within 6 months of the Acquisition Date, at the Mission Bell Facility,

Provided, however, this Paragraph VIII.C. shall not apply to the assets identified in the attached Non-Public Appendix VII.
- D. Respondent Gallo shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, acquire or lease the Mission Bell Facility, or any Mission Bell Assets used, or used within 6 months of the Acquisition Date, at the Mission Bell Facility,

Provided, however, this Paragraph VIII.D. shall not apply to the assets identified in the attached Non-Public Appendix VII.
- E. No later than 2 days after the Divestiture Date for the Concentrate Business, Respondent Gallo shall create and maintain a website with the URL MegaNatural.com. Except as otherwise agreed to in writing by Respondent Gallo and Vie-Del, the website shall contain only one webpage that contains the following:
 - 1. No logos, trade dress or other imagery used by Respondent Gallo or by Vie-Del;

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2. The title MegaNatural; and
 3. Two buttons of identical size, format and prominence and related statements of identical font, font size and placement that comply with the following:
 - a. A button captioned “Color Concentrates” that links to www.vie-del.com and is located directly above the statement, “click here if you are interested in MegaNatural color concentrates products, including Mega Red or Mega Purple,” and
 - b. A button captioned “Polyphenolics” that links to www.polyphenolics.com and is located directly above the statement, “click here if you are interested in MegaNatural Polyphenolics products.”
- F. Gallo shall not use or retain information regarding any third party who selects the Color Concentrates button on the MegaNatural.com website.
- G. Starting on the Divestiture Date for the Concentrate Business until the earlier of 5 years after issuance of this Order or 2 years after Respondent CBI ceases to supply products under Paragraph IV.D above, Respondent Gallo shall:
1. Not directly link any webpage on the website polyphenolics.com, or any other website Respondent Gallo creates or maintains for the primary purpose of selling polyphenolics, to a website or webpage used or maintained by Gallo that markets products that compete with Concentrate Products;
 2. Not use the MEGANATURALBP.com or MEGANATURAL-BP.com domain names; and
 3. Not market products that compete with Concentrate Products on any website that includes MegaNatural in its URL.
- H. Respondent Gallo shall not interfere with Vie-Del’s ability to use “MegaNatural,” or any other derivation or variant thereof, in connection with the marketing or sale of Concentrate Products or other grape concentrates by entering into exclusive arrangements regarding the term MegaNatural in connection to advertising words, sponsored links, hyperlinks, search priorities, or any other domain name.

IX. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints William Berlin as the Monitor to observe and report on Respondents’ compliance with the terms of the Orders. The Monitor shall serve pursuant to the agreement between the Monitor and Respondents contained in the Monitor Agreement Appendix to the Orders, *provided, however*, such agreement shall not limit, or be construed to limit, the terms of the Monitor Paragraph of the Orders.

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- B. No later than one day after the Commission issues the Order to Maintain Assets, Respondents shall:
1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders as set forth in Monitor Paragraph of the Orders; and
 2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in the Monitor Paragraph of the Orders.
- C. The Monitor:
1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
 2. Shall act in consultation with the Commission or its staff;
 3. Shall serve as an independent third party and not as an employee, agent, or fiduciary of Respondents or of the Commission;
 4. Shall serve at the expense of Respondents, without bond or other security;
 5. May employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement;
 7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 5 days should they arise;
 8. Within 30 days after the Order to Maintain Assets is issued, and every 90 days thereafter, and at such other times as may be requested by staff of the Commission, the Monitor shall report in writing to the Commission regarding Respondents' compliance with its obligations under the Orders and, where relevant, each Acquirer's or its Manufacturing Designee's progress toward obtaining the Product Approvals necessary to manufacture each Divestiture Product acquired by that Acquirer, independently of Respondents; and
 9. Shall serve until 30 days after all Divestiture Agreements to provide Transition Manufacturing or transition services have expired or been terminated or until such other time as may be determined by the Commission or its staff.
- D. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the monitor to monitor Respondents' compliance with its obligations under the Orders; and

- (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to the Orders.
- E. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, or expenses (including attorney's fees and out of pocket costs) that arise out of, or in connection with, any claim concerning the Monitor's performance of the Monitor's duties under the Orders, whether or not such claim results in liability, except, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor in the performance of his or her duties under the Orders.
- F. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement; provided, however, that such agreement does not restrict the Monitor from providing any information to the Commission.
- G. Respondents shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including the Monitor's written reports submitted to the Commission, or with any person with whom the Monitor communicates in the performance of the Monitor's duties.
- H. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and subject to all obligations of the Monitor Paragraph of the Orders:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondents which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor to Respondents, Respondents has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 10 days after such notice; and
 2. Not later than 5 days after the Commission appoints a substitute Monitor, Respondents shall enter into an agreement with the substitute Monitor that (i) contains substantially the same terms as the agreement attached as Monitor Agreement Appendix to the Orders or (ii) is approved by the Commission and confers on the substitute Monitor the rights, powers, and authority of a Monitor under the Monitor Paragraph of the Orders.
- I. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

X. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and other obligations required by Paragraph II of this Order with respect to some or all of the Divestiture Assets, the Commission may appoint a trustee to divest the relevant Divestiture Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures or other action required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest relevant Divestiture Assets and takes such other action as may be required to perform Respondents' other obligations in a manner that satisfies the requirements of this Order;

2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; The Divestiture Trustee shall have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to Acquirers as required by this Order, provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for Divestiture Assets related to a particular Divestiture Business, and if the Commission determines to approve more than one such acquiring entity for the divestiture, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission, *provided further, however*, that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval;
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the

authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph X.6, the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to this Order;
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets the Divestiture Trustee is required to divest by Paragraph X of this Order;
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish each divestiture; and
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement, provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same

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manner as provided in this Paragraph X, and who will have the same authority and responsibilities as the original Divestiture Trustee.

- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and each Divestiture Date no later than 5 days after the occurrence of each; and
 2. Submit each Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the relevant Divestiture Date.
- B. Respondent CBI and Respondent Gallo shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Each Respondent shall submit:
 - a) Interim compliance reports 30 days after this Order is issued, every 30 days thereafter until Respondents have fully complied with the provisions of Paragraphs II, IV, V and VI of this Order, and every 90 days thereafter until Respondents have fully complied with the provisions of Paragraphs VIII.A. of this Order;
 - b) Annual compliance reports one year after the date this Order is issued and annually thereafter for the next 9 years on the anniversary of that date; and
 - c) Additional compliance reports as the Commission or its staff may request.
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are complying with this Order. Conclusory statements that a Respondent has complied with its obligations under this Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented and plan to implement to comply with each paragraph of this Order, including notice of any change or modification to the Processing and Winemaking Services Agreement.

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3. Respondents shall retain all material written communications with each party identified in its compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under this Order and shall provide copies of these documents to Commission staff upon request.
4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov; provided, however, the Respondents need only file electronic copies of the 30-day reports required by XI.B.1.a. In addition, Respondents shall provide a copy of each compliance report to the Monitor.

XII. Change in Respondent

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least 30 days prior to:

- A. Its proposed dissolution (i.e. the dissolution of E. & J. Gallo Winery, Dry Creek Corporation, or Constellation Brands, Inc.);
- B. Its proposed acquisition, merger or consolidation (i.e. the acquisition, merger or consolidation of E. & J. Gallo Winery, Dry Creek Corporation or Constellation Brands, Inc.); or
- C. Any other change in the Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all

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documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirers can operate the Divestiture Businesses in a manner at least equivalent in all material respects to the manner in which Respondents operated the Divestiture Businesses prior to the Acquisition.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED:

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In re Gallo, et al.

Non-Public Appendix I

Brandy Divestiture Agreement

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix II

Excluded Brandy Assets

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix III

Concentrate Divestiture Agreement

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix IV

Excluded Concentrate Assets

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix V

Dessert Wine Divestiture Agreement

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix VI

Excluded Dessert Wine Assets

In re Gallo, et al.

In re Gallo, et al.

Non-Public Appendix VII

Excluded Mission Bell Facility Assets