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Re: *DFG Wine Company, LLC v. Eight Estates Wine Holdings, LLC*  
C.A. No. 6110-VCN  
Date Submitted: May 10, 2011

Dear Counsel:

This is a books and records action brought by Plaintiff DFG Wine Company, LLC (“DFG”), a limited partner of Defendant Eight Estates Wine Holdings, LLC (“Eight Estates” or the “Company”), under 6 *Del. C.* § 18-305 and Eight Estates’ limited liability company agreement. This post-trial letter opinion announces the Court’s decisions regarding DFG’s claims.

## I. BACKGROUND

### A. Parties

DFG is a Delaware limited liability company with its principal place of business in White Plains, New York.<sup>1</sup> DFG is owned by Peter Deutsch (50%) and Peter's father and mother, William and Frances Deutsch (25% each).<sup>2</sup> On or about June 9, 2008, DFG acquired 1,674,747 Class B Units and 245,510 Class E-5 units of the Company for slightly more than \$16 million.<sup>3</sup> William and Peter are the majority owners of W.J. Deutsch and Sons Ltd. ("Deutsch and Sons").<sup>4</sup>

Eight Estates, also a Delaware limited liability company, was formed in June 2008 for the purpose of holding Ascentia Wine Estates, LLC, its sole asset and wholly owned subsidiary.<sup>5</sup> Ascentia's mission was acquiring, owning and operating eight wine brands and the assets associate with each of the brands.<sup>6</sup> Eight Estates and Ascentia each has its principal place of business at 349 Healdsburg Avenue, Healdsburg, California.

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<sup>1</sup> Pretrial Stipulation and Order ("Stip.") ¶ 1.

<sup>2</sup> Trial Tr. (William Deutsch) 5.

<sup>3</sup> Stip. ¶ 1.

<sup>4</sup> Trial Tr. (William Deutsch) 25.

<sup>5</sup> Stip. ¶¶ 2-3.

<sup>6</sup> *Id.* at ¶ 3.

B. *Facts*

Since it was formed in 2008, Ascentia has owned and managed a number of wine brands. William Deutsch then served as a manager of Eight Estates,<sup>7</sup> and Deutsch and Sons initially acted as the distributor of Ascentia's wine brands.<sup>8</sup> A dispute arose between Deutsch and Sons and Ascentia in 2009, and that dispute is currently the subject of arbitration proceedings in San Francisco, California.<sup>9</sup> While those proceedings were ongoing, William Deutsch resigned (effective April 19, 2010) as a manager of Eight Estates, and DFG, Deutsch and Sons, and William Deutsch brought an action in this Court against Eight Estates (as the Nominal Defendant) and Eight Estates' managers (the "Prior Action"). The Prior Action was dismissed on September 14, 2010.<sup>10</sup>

Thereafter, DFG sent a written demand for access to sixteen categories of Eight Estates', Ascentia's, and others' records. Its stated purposes for seeking the records were to (1) determine the value of its investment in Eight Estates and

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<sup>7</sup> Trial Tr. (William Deutsch) 36-37.

<sup>8</sup> *Id.* at 42.

<sup>9</sup> *See id.* at 33-35, 37.

<sup>10</sup> *DFG Wine Co., LLC v. GESD Wine Investors, Inc.*, C.A. 5463-VCN (Del. Ch. Sept. 14, 2010) (ORDER).

(2) determine whether it should appoint a representative to sit on Eight Estates' board of managers.<sup>11</sup> The Demand sought access to:

1. A current list of the full name and last known business and residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account, and number and class of Units held by each Member and Assignee;
2. A current list of the full name and business and residence address of each Manager, to the extent that this information has changed since April 1, 2010;
3. A copy of any and all amendments to the Certificate of Formation together with executed copies of any powers of attorney pursuant to which any of the amendments have been executed;
4. Copies of the Company's and its direct and indirect subsidiaries' federal, state, and local income tax returns and information returns and reports for the years 2008 through the present;
5. A copy of any and all amendments to the Company's LLC Agreement together with executed copies of any powers of attorney pursuant to which any of the amendments have been executed;
6. Copies of the financial statements (audited and unaudited) of the Company and its direct and indirect subsidiaries for the period from 2008 through the present;

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<sup>11</sup> JX 9, Nov. 8, 2010 Letter from DFG to Eight Estates (the "Demand").

7. Copies of the Company's and its direct and indirect subsidiaries' books and records as they relate to the internal affairs of the Company and its direct and indirect subsidiaries for the period from 2008 through the present;
8. Copies of the Company's and its direct and indirect subsidiaries' general ledger for the period from 2008 through the present;
9. Copies of the Company's and its direct and indirect subsidiaries' business plans and budgets including projections for future performance, and all documents relating thereto, for the period from 2008 to anytime in the future;
10. Copies of all estimates or projections of the Company's and its direct and indirect subsidiaries past, present or future value, and all documents relating to such estimates or projections, for the period from 2008 to anytime in the future;
11. Copies of all materials concerning the content and value of the Company's and its direct and indirect subsidiaries' inventory for the period from 2008 through the present;
12. Copies of all materials identifying and reflecting the value of the assets (excluding inventory) of the Company and its direct and indirect subsidiaries for the period from 2008 through the present;
13. Copies of all materials including, without limitation, any loan agreements, notes, mortgages, security agreements, credit agreements, guarantees, and UCC Statements, concerning the Company's and its direct and indirect subsidiaries' debts and/or liabilities for the period from 2008 through the present;

14. Copies of all materials reflecting the ability (or lack thereof) of the Company and its direct and indirect subsidiaries to pay their obligations as they become due;

15. Copies of all materials reflecting payments or benefits provided to Managers of the Company for the period from 2008 through the present; and

16. Copies of any and all grape contracts entered into by the Company and/or its direct and indirect subsidiaries during the period from 2008 through the present.<sup>12</sup>

The Company responded on November 24, 2010 that it would promptly provide the requested records held by the Company to the extent that they were maintained, but that DFG was not entitled to Ascentia's records under either Eight Estates' limited liability company agreement or 6 *Del. C.* § 18-305.<sup>13</sup> After making a December 7, 2010 request that Eight Estates reconsider its position,<sup>14</sup> DFG filed this action on January 4, 2011.

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<sup>12</sup> "Category 1" through "Category 16."

<sup>13</sup> JX 10.

<sup>14</sup> JX 12.

On January 24, 2011, Eight Estates provided DFG with the following documents:

- A list of the full name and last known business address of each Member, together with the Capital Contributions, Capital Account, and number and class of Units held by each Member – with the notation that the Member Information was current as of November 30, 2010 and the Capital Account Information was current as of December 31, 2009;
- A copy of the Certificate of Formation and amendment to the Certificate of Formation;
- A copy of Eight Estates’ 2008 tax return;
- A copy of Eight Estates’ 2009 tax return;
- Amended and Restated Limited Liability Company Agreement of the Company dated as of June 9, 2009;
- Second Amended and Restated Limited Liability Company Agreement of the Company dated as of December 3, 2009; and
- “Ascentia Wine Estates, LLC Independent Auditor’s Report and Financial Statements” dated as of June 30, 2009.<sup>15</sup>

*C. Relevant Provisions of Eight Estates’ Limited Liability Company Agreement*

Section 1 of the Amended and Restated Limited Liability Company Agreement of Eight Estates Wine Company, LCC (the “LLC Agreement”) defines the “Company” as Eight Estates itself, and it separately defines the term

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<sup>15</sup> Stip. ¶ 14; JX 1, 2, 3, 4, 6, 11.

“Subsidiary.”<sup>16</sup> A “Preferred Unit Holder” is a holder of one or more Class A Units, Class B Units, Class C Units, or Class D units.<sup>17</sup>

Section 9 of the LLC Agreement defines the rights of Eight Estates’ members and managers to inspect the Company’s books and records; it provides, in relevant part:

**9.1 Books and Records.** The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with generally accepted accounting principles and, to the extent appropriate in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company’s business. The Company shall use its commercially reasonable efforts to maintain at its principal office all of the following:

(a) A current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account, and number and class of Units held by each Member and Assignee;

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<sup>16</sup> The LLC Agreement, dated June 9, 2008, has been amended twice since DFG sent the Demand. The Second Amended and Restated Limited Liability Company Agreement (the “Second Amended LLC Agreement”) is dated December 3, 2009; the Third Amended and Restated Limited Liability Company Agreement (the “Third Amended LLC Agreement”) is dated January 13, 2011. The substance of the provisions governing Eight Estates’ members’ contractual rights to inspect the Company’s books and records has not changed with these amendments.

<sup>17</sup> LLC Agreement § 1.



(b) A current list of the full name and business or residence address of each Manager;

(c) A copy the Certificate of Formation and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Certificate of Formation or any amendments thereto have been executed;

(d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

(e) A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

(f) Copies of the financial statements of the Company, if any, for the six (6) most recent Fiscal Years; and

(g) The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four (4) Fiscal Years.

## **9.2 Delivery to Preferred Unit Holders and Inspection**

(a) Upon the written request of any Preferred Unit Holder or Assignee for purposes reasonably related to the interest of that Person as a Preferred Unit Holder or Assignee, which purpose or purposes shall be set forth in the written request, the Board of Managers shall promptly deliver to the requesting Preferred unit Holder or Assignee, at the expense of the Company, a copy of the information required to be maintained under Section 9.1, and a copy of any other data required to be provided under the [Delaware Limited Liability Company Act].

## II. CONTENTIONS

The Demand requested that Eight Estates produce sixteen categories of records. The parties agree that the documents Eight Estates has produced completely satisfied the demands of Categories 2, 3, and 5.<sup>18</sup> DFG contends that Eight Estates has only partially satisfied the demands of Categories 1, 4, and 6, and has not provided any documents that are responsive to Categories 7-17. Eight Estates responds that it has produced all documents to which DFG is entitled with respect to Categories 1-7, and that, because neither the LLC Agreement nor the Delaware Limited Liability Company Act<sup>19</sup> gives members the right to inspect the books and records of a limited liability company's subsidiary, DFG is not entitled to any documents with respect to Categories 8-16, which concern Ascentia's books and records. Eight Estates also contends that DFG's demands should be denied on the basis that they are not narrowly tailored.

Both parties seek an award of fees and expenses, including attorneys' fees.

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<sup>18</sup> Stip. ¶ 21.

<sup>19</sup> 6 *Del. C.* § 18-101 et seq. (the "Delaware Limited Liability Company Act" or "DLLCA").

### III. DISCUSSION

#### A. *Legal Standards*

Section 18-305 of the Delaware Limited Liability Company Act grants members of a limited liability company the right to “demand for any purpose reasonably related to the member’s interest as a member” certain of the limited liability company’s books and records,<sup>20</sup> subject to requirements that a member’s demand for such information must be in writing and must state the purposes for which the information is sought.<sup>21</sup> If valuation is the purpose for which inspection is sought:

our courts consistently have limited the extent of that inspection to those records which are essential and sufficient to accomplish the stated purpose. However, if a shareholder has been given all the corporate information that he reasonably needs to accomplish his stated purpose, his right has been satisfied and no additional disclosure is required on the part of the entity.<sup>22</sup>

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<sup>20</sup> *Id.* § 18-305(a).

<sup>21</sup> *Id.* § 18-305(e).

<sup>22</sup> *Holman v. Nw. Broad., L.P.*, 2007 WL 1074770, at \*2 (Del. Ch. Mar. 29, 2007) (construing 6 *Del. C.* § 17-305) (citations and internal quotation omitted).

Those seeking to value a closely held company may, because they “do not have access to the same quantity of information available from the regulatory filings of publicly traded companies . . . ,” be given slightly broader access rights.<sup>23</sup>

The right of limited liability company members to inspect the books and records of a limited liability company’s subsidiaries is not made explicit by 6 *Del. C.* § 18-305.<sup>24</sup> Nonetheless, Delaware courts have recognized that the statute provides a right to inspect the records of such subsidiaries where the “facts at least suggested the absence, in reality, of separate entities.”<sup>25</sup> The statutory amendments

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<sup>23</sup> *Id.*

<sup>24</sup> *Cf.* 8 *Del. C.* § 220(b)(2) (granting, after amendments effective Aug. 1, 2003, stockholders the right to inspect a subsidiary’s books and records, to the extent that:

a. The corporation has actual possession and control of such records of such subsidiary; or

b. The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:

1. The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation; and

2. The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.).

<sup>25</sup> *Arbor Place, L.P. v. Encore Opportunity Fund, L.L.C.*, 2002 WL 205681, at \*6 (Del. Ch. Jan. 29, 2002) (holding that the record in that case did not suggest the absence of separate entities because “each of the [subsidiaries] has a separate and functioning board of directors that is not controlled by the [limited liability companies] and . . . each of the [subsidiaries] has a

codifying this right with respect to stockholders of corporate parents did not disturb the rights of members of limited liability companies to inspect the books and records of their companies' subsidiaries where, for example, "those subsidiaries [are] under the full control of the parent and the 'value' of the subsidiaries accrue[s] to the parent."<sup>26</sup>

Section 18-305(c) limits the inspection rights granted to members of limited liability companies, however, providing that the limited liability company "has the

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significant shareholder other than the [limited liability companies]."). In *Arbor Place*, the court distinguished *Salovarra v. SSP, Inc.*, C.A. No. 18903, ltr. op. at 8 (Del. Ch. Jan. 10, 2001) and *Dobler v. Montgomery Cellular Holding Co., Inc.*, 2001 WL 1334182, at \*9 (Del. Ch. Oct. 19, 2001), cases decided before 8 *Del. C. § 220* explicitly granted the right to inspect the books and records of a corporation's subsidiaries. The *Salovarra* and *Dobler* courts had held that stockholders had a right to inspect the books and records of a corporation's subsidiaries where the facts suggested that the corporation and its subsidiary were not really separate entities. See *Salovarra*, C.A. No. 18903, at 8 ("[I]f the parent is holding the books of the subsidiary or has control or possession over those books, a stockholder with the right to inspect books and records of the parent may access the subsidiary's books if the parent controls or possesses them."); *Dobler*, 2001 WL 1334182, at \*9 (noting that the Court had previously granted the right to inspect the books and records of a subsidiary where:

[t]hose subsidiaries were under the full control of the parent and the "value" of the subsidiaries accrued to the parent. Thus, in seeking to value the parent and, perhaps, in seeking to pursue other legitimate shareholder purposes, the relevance of the subsidiary's books and records to those lawful considerations of the shareholders of the parent is apparent. Here, Plaintiffs have not shown, except to the extent noted below, that the books and records of the Price entities are relevant, or even helpful, to their stated purposes.).

<sup>26</sup> *Dobler*, 2001 WL 1334182, at \*9 (interpreting 6 *Del. C. § 220* (1998)).

opportunity to establish a good faith belief that disclosure of the desired information would not be in the best interest of the entity . . . .”<sup>27</sup>

A limited liability company, of course, is a creature of contract,<sup>28</sup> and a limited liability company agreement may grant members inspection rights that are “in addition to and separate from” the statutory inspection right,<sup>29</sup> and to which the restrictions described in 6 *Del. C.* § 18-305(c) do not necessarily apply.<sup>30</sup> The “clear, literal meaning of the terms in a legally binding agreement should be given effect when those terms establish the parties’ common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language.”<sup>31</sup>

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<sup>27</sup> *Arbor Place*, 2002 WL 205681, at \*5.

<sup>28</sup> *TravelCenters of Am., LLC v. Brog*, 2008 WL 1746987, at \*1 (Del. Ch. Apr. 3, 2008) (“[l]imited liability companies are creatures of contract, ‘designed to afford the maximum amount of freedom of contract, private ordering and flexibility to the parties involved.’”) (quoting *In re Grupo Dos Chiles, LLC*, 2006 WL 668443, at \*2 (Del. Ch. Mar. 10, 2006)).

<sup>29</sup> *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 746 A.2d 842, 853 (Del. Ch. 1999).

<sup>30</sup> *Arbor Place*, 2002 WL 205681, at \*4 n.9.

<sup>31</sup> *NAMA Holdings, LLC v. World Mkt. Ctr. Venture, LLC*, 948 A.2d 411, 418 (Del. Ch. 2007), *aff’d*, 945 A.2d 594 (Del. 2008) (citation and internal quotation omitted).

B. *Whether DFG has a Proper Purpose under the LLC Agreement or 6 Del. C. § 18-305.*

DFG stated two purposes in the Demand. First, it seeks information that would help it determine the value of its investment in Eight Estates; second, it seeks information that would help it to determine whether, and perhaps whom, it should appoint as a representative to sit on Eight Estates' board of managers.

DFG's stated purpose of valuing its interest in Eight Estates is proper. Eight Estates invokes *JAKKS PACIFIC, Inc. v. THQ/JAKKS PACIFIC, LLC* for the proposition that, while valuation "might generally qualify as a valid purpose for a demand," where valuation of one's interest is a matter of simple arithmetic, valuation as a purpose was "meaningless."<sup>32</sup> Eight Estates argues that valuation is similarly meaningless here because in the Prior Action, William Deutsch and DFG asserted that Eight Estates was insolvent and had no value. DFG responds that its beliefs month ago are irrelevant, and that, in any case, since the Prior Action was resolved, circumstances have changed: "public information about Eight Estates and Ascentia, although lacking in details, suggests that there has been a reorganization

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<sup>32</sup> 2009 WL 1228706, at \*5 (Del. Ch. May 6, 2009).

of debt and management over the past year—and there may well be *some* value there.”<sup>33</sup> Determining exactly what its investment in Eight Estates is now worth, a question which, the parties agree, depends entirely on the valuation of Ascentia,<sup>34</sup> is a proper purpose under Delaware law. Because that purpose is related to DFG’s status as a Preferred Unit Holder of Eight Estates, it is also proper under § 9.2 of the LLC Agreement.

That DFG needs access to the books and records it has demanded for purposes of deciding whether to appoint someone and, if so, whom to appoint as a member of the Eight Estates board of managers, is also a proper purpose. It seems that documents that DFG would need to accomplish this purpose would be of a very limited nature. The Court also notes that DFG should already be able to determine that any person or entity it might appoint to the board of managers would, as a manager, have greater rights to inspect Eight Estates’ books and records than DFG itself.<sup>35</sup> Nonetheless, where a plaintiff has established it has a

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<sup>33</sup> Pl.’s Pretrial Reply Br. at 7.

<sup>34</sup> See Trial Tr. (William Deutsch) 34-35; *id.* (Daniel Stromberg) 106-07.

<sup>35</sup> Compare 6 *Del. C.* § 18-305(b) (giving managers the right to examine all the materials described in § 18-305(a)) with 6 *Del. C.* § 18-305(c) (allowing good faith defenses to a books and record action brought by members, but not managers).



proper purpose for its books and records demand, that it may have another purpose or other purposes is inconsequential.<sup>36</sup>

C. *Whether DFG has the right to inspect Ascentia's Books and Records.*

1. Section 9 of the LLC Agreement

Section 9.2 of the LLC Agreement creates a contractual right for Eight Estates' members to receive "information required to be maintained under Section 9.1, and a copy of any other data required to be provided under the [DLLCA]." Section 9.1 requires Eight Estates to maintain only the records "of the Company." It imposes no contractual duty to maintain, and thus no contractual obligation to deliver, the documents of Eight Estates' Subsidiary (as defined under § 1.01 of the LLC Agreement) Ascentia that is separate and in addition to any right DFG would have to inspect Ascentia's books and records under the DLLCA.<sup>37</sup>

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<sup>36</sup> See *Compaq Computer Corp. v. Horton*, 631 A.2d 1, 6 (Del. 1993) ("So long as Horton establishes a single proper purpose related to his role as a stockholder, all other purposes are irrelevant.") (construing 6 Del. C. § 220).

<sup>37</sup> See *Arbor Place*, 2002 WL 205681, at \*5.

2. Section 18-305 of the DLLCA

Ascentia is Eight Estates' sole asset, and Ascentia is wholly owned by Eight Estates; the parties do not dispute that Ascentia's value accrues to Eight Estates and that Eight Estates has no value apart from Ascentia's.<sup>38</sup> Ascentia has no board of managers, but is instead managed by its sole member, Eight Estates.<sup>39</sup> Eight Estates and Ascentia have the same address.<sup>40</sup> Eight Estates has no budget, business plan, or projections apart from Ascentia's.<sup>41</sup>

Unlike the limited liability companies and their subsidiaries described in *Arbor Place*, therefore, the facts of this case more than "suggest[] the absence, in reality, of separate entities."<sup>42</sup> It would be unfair, under the circumstances, to require, for example, a member of Eight Estates to attempt to value its holdings without providing access to the records of the Company's only asset, records that would allow the member to value that asset.<sup>43</sup> Accordingly, to the extent that

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<sup>38</sup> Trial Tr. (William Deutsch) 34-35; *id.* (Daniel Stromberg) 106-07.

<sup>39</sup> *Id.* (Daniel Stromberg) at 113.

<sup>40</sup> Stip. ¶¶ 2-3.

<sup>41</sup> Trial Tr. (Daniel Stromberg) 102.

<sup>42</sup> *Arbor Place*, 2002 WL 205681, at \*6.

<sup>43</sup> See *EBG Holdings LLC v. Vredzicht's Gravenhage 109 B.V.*, 2008 WL 4057745, at \*12 (Del. Ch. Sept. 2, 2008) ("A decision to disregard the corporate entity generally results not from a

DFG's demand seeks documents from Eight Estates under 6 *Del. C.* § 18-305 for purposes proper under that statute, DFG is also entitled to receive copies of Ascentia's books and records as they relate to those purposes.

Because § 9.2 of the LLC Agreement also entitles the Company's members to receive copies of the books and records to which they would be entitled access under the DLLCA, the cost of any additional production of documents must be born by the Company.<sup>44</sup>

### 3. Eight Estates' Defenses

Eight Estates, however, asserts that divulging certain information to DFG would not be in the best interests of the Company. Daniel Stromberg, one of Eight Estates' managers, testified to his belief that, because William Deutsch and DFG had, in the Prior Action, alleged that the Company was insolvent, sought permission to inform the Eight Estates' creditors of their views, and sought the dissolution of the Company, divulging details regarding Ascentia's and Eight

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single factor, but rather some combination of them, and an overall element of injustice or unfairness must always be present, as well.") (citation and internal quotation omitted).

<sup>44</sup> LLC Agreement § 9.2(a) (entitling Preferred Holders to delivery "at the expense of the Company, a copy of the information required to be maintained under Section 9.1, and a copy of any other data to be provided under the Act.").

Estates' relations and conversations with their creditors would not be in the best interests of the Company.<sup>45</sup> The Court is satisfied that Eight Estates' managers had a good faith belief that William Deutsch was "trying to undermine Ascentia's very existence,"<sup>46</sup> and that divulging to DFG materials regarding Ascentia's contracts and future ability to repay its creditors would not be in the best interests of the Company, and they are thus empowered by 6 *Del. C.* § 18-305(c) to refrain from divulging such materials. Eight Estates has not established that its managers had a good faith belief that granting DFG information more tenuously related to Ascentia's relationship with its creditors, such as Ascentia's financial statements, would not be in the Company's best interests.

Eight Estates also argues that DFG hopes to acquire or "cherry pick" at least two of its wine brands,<sup>47</sup> but that was merely the "general impression [the managers] were left with."<sup>48</sup> Further, the Company demonstrated its willingness to

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<sup>45</sup> Trial Tr. (Daniel Stromberg) 120-24; *see also id.* (William Deutsch) 47-49 (acknowledging that dissolution would be harmful to the Company, but denying that he remembered whether he sought dissolution of the Company in the Prior Action).

<sup>46</sup> *Id.* (Daniel Stromberg) 121.

<sup>47</sup> *See id.* at 114-18.

<sup>48</sup> *Id.* at 116.

sell the same brands to others.<sup>49</sup> Thus, the Court is not satisfied that Eight Estates' managers have established their good faith belief that revealing information relating to the wine brands that they argue DFG is interested in acquiring would not be in the best interests of the Company.

On the other hand, Ascentia may possess information that would qualify as trade secrets and yet was not discussed at trial. Where the Court orders production of Ascentia's documents, Eight Estates may redact such information that Eight Estates' managers "reasonably believe[] to be in the nature of trade secrets . . . ."<sup>50</sup>

Eight Estates also contends that Ascentia has already produced to Deutsch and Sons "more than 29,000 pages of hard copy documents" in connection with the arbitration proceeding involving those two parties,<sup>51</sup> and that forcing Eight Estates to produce those documents again, this time to DFG, would serve no purpose. The documents produced in the separate arbitration proceedings are designated "Highly Confidential: Outside Attorneys' Eyes Only," and DFG's principals have testified

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<sup>49</sup> *Id.* at 117.

<sup>50</sup> 6 *Del. C.* § 18-305(c) (subjecting managers' beliefs that information is in the nature of trade secrets to an objective standard and managers' beliefs that disclosures would not be in the best interest of the company to a subjective standard).

<sup>51</sup> Stip. ¶ 15 n.3.

that they have not reviewed any of these documents.<sup>52</sup> Accepting these stipulated facts, the Court cannot say that DFG's right to receive copies of certain of Ascentia's books and records has been satisfied by Ascentia's production of documents in the arbitration proceeding involving it and Deutsch and Sons.<sup>53</sup>

*D. The Demand and the Scope of Relief*

The Court now proceeds to analyze each of the Categories enumerated in the Demand to determine whether DFG is entitled to additional access regarding the respective Category under either (1) the LLC Agreement or (2) the DLLCA, subject to Eight Estate's good faith defense under 6 *Del. C.* § 18-305(c).

1. Categories 2, 3, and 5

The Parties agree that the documents produced by Eight Estates satisfied completely Categories 2, 3, and 5 of the Demand.<sup>54</sup>

2. Category 1: "A current list of the full name and last known business and residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account, and number and class of Units held by each Member and Assignee"

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<sup>52</sup> *Id.*

<sup>53</sup> An alternative to producing the documents for DFG, however, might be releasing Deutsch and Sons from its confidentiality obligations in the arbitration proceedings.

<sup>54</sup> Stip. ¶ 21.

DFG acknowledges that it has received this information with a notation that information regarding the Company's members was current as of November 30, 2010, and that the Capital Account was current as of December 31, 2009.<sup>55</sup> On April 6, 2011, Eight Estates represented that the information was current as of that date,<sup>56</sup> and the Court accepts this representation. No additional production regarding this Category of the Demand is required.

3. Category 4: "Copies of the Company's and its direct and indirect subsidiaries' federal, state, and local income tax returns and information returns and reports for the years 2008 through the present"

Eight Estates has produced its own 2008 and 2009 tax returns; DFG has demanded access to Ascentia's tax returns for those years. Ascentia is a disregarded entity for purposes of federal taxes because its income is recorded and "passed through" to Eight Estates; Ascentia, therefore does not file federal tax returns. It does, however, file separate state tax returns.

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<sup>55</sup> *Id.* at ¶ 23.

<sup>56</sup> *Id.*

DFG is not entitled to Ascentia's state tax returns under the LLC Agreement, but such returns would be part of the "[t]rue and full information regarding the status of the business," and thus fall within the category of information to which DFG is entitled under 6 *Del. C.* § 18-305(a)(1). Eight Estates has not established a good faith belief that revealing this information would not be in the best interests of the Company, and thus, DFG is entitled to receive copies of both Eight Estates' and Ascentia's state tax returns from the years 2008 through the present.

4. Category 6: "Copies of the financial statements (audited and unaudited) of the Company and its direct and indirect subsidiaries for the period from 2008 through the present"

Eight Estates has produced certain documents that DFG agrees are responsive to this category, and Stromberg testified that "Ascentia Wine Estates, LLC Independent Auditor's Report and Financial Statements" for the fiscal year ending June 30, 2010, would likely be available as of end of June 2010, as would Eight Estates' first unaudited financial statements.<sup>57</sup> Because these documents are reasonably related to DFG's purpose of valuing its membership interest in Eight Estates, DFG is entitled to inspect these records under the LLC Agreement.

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<sup>57</sup> Trial Tr. (Daniel Stromberg) 94.



5. Category 7: “Copies of the Company’s and its direct and indirect subsidiaries’ books and records as they relate to the internal affairs of the Company and its direct and indirect subsidiaries for the period from 2008 through the present”

DFG has not delineated the full scope of records it seeks under this Category, and the Court will not speculate as to what documents it might be seeking beyond those identified at trial. Stromberg testified that “books and records as they relate to the internal affairs of the Company and its direct and indirect subsidiaries” would probably include, for example, internal records of the board of managers and employment agreements with key personnel.<sup>58</sup>

A right to access Eight Estates’ records within this Category could be derived either from the LLC Agreement or from 6 Del. C. § 18-305(a)(6). However, because Eight Estates has no employees,<sup>59</sup> the only type of information that both falls within this Category and constitutes records of the Company—the internal records of the board of managers—is not reasonably related to DFG’s proper purpose: DFG has not shown why these records are necessary to value DFG’s interest in the Company.

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<sup>58</sup> *Id.* at 97-98.

<sup>59</sup> *Id.* at 98.

DFG's right to access Ascentia's books and records relating to this Category would derive from DLLCA and the case law explaining and applying statutes granting such access. Ascentia's employment agreements with its key employees would be "information regarding the affairs of the limited liability company."<sup>60</sup> Further, these documents could contribute to DFG's valuation of its interest, and Eight Estates has not established a basis for the managers' belief that withholding these records on confidentiality grounds would be in the Company's best interest.

Accordingly, DFG is entitled to receive copies of the employment agreements of Ascentia's key employees, subject to reasonable redaction of information that is reasonably related to Ascentia's trade secrets.

6. Category 8: "Copies of the Company's and its direct and indirect subsidiaries' general ledger for the period from 2008 through the present"

A general ledger would be part of the "[t]rue and full information regarding the status of the business," and thus falls within the category of information to which DFG is entitled under 6 *Del. C.* § 18-305(a)(1). Eight Estates maintains no general ledger of its own; DFG would reasonably need Ascentia's general ledger in

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<sup>60</sup> 6 *Del. C.* § 18-305(a)(6).

order to value its interest in the Company, and Eight Estates' good faith defenses do not provide a basis to withhold Ascentia's general ledger from DFG; DFG is, therefore, entitled to receive a copy of it.

7. Categories 9 and 10: "Copies of the Company's and its direct and indirect subsidiaries' business plans and budgets including projections for future performance, and all documents relating thereto, for the period from 2008 to anytime in the future" and "Copies of all estimates or projections of the Company's and its direct and indirect subsidiaries past, present or future value, and all documents relating to such estimates or projections, for the period from 2008 to anytime in the future"

For the same reasons as animated the Court's decision regarding Category 8, DFG is entitled to receive copies of the documents captured by Categories 9 and 10; to the extent that Eight Estates' managers hold an objectively reasonable belief that the documents incorporate trade secrets, the documents may be reasonably redacted before inspection.

8. Categories 11 and 12: "Copies of all materials concerning the content and value of the Company's and its direct and indirect subsidiaries' inventory for the period from 2008 through the present" and "Copies of all materials identifying and reflecting the value of the assets (excluding inventory) of the Company and its direct and indirect subsidiaries for the period from 2008 through the present"

Assessment of Ascentia's inventory and non-inventory assets would be needed to value DFG's holdings in the Company. Access to these documents, with information regarding Ascentia's trade secrets reasonably redacted, is granted for the reasons discussed above.

9. Categories 13 and 14: "Copies of all materials including, without limitation, any loan agreements, notes, mortgages, security agreements, credit agreements, guarantees, and UCC Statements, concerning the Company's and its direct and indirect subsidiaries' debts and/or liabilities for the period from 2008 through the present" and "Copies of all materials reflecting the ability (or lack thereof) of the Company and its direct and indirect subsidiaries to pay their obligations as they become due"

Although Ascentia's documents concerning its relationship with creditors would help DFG value its interest in the Company, Eight Estates' managers have established their good faith belief that disclosing this information would not be in the interest of Eight Estates. Accordingly, Eight Estates is not required to allow DFG to inspect or to receive copies of these materials.

10. Category 15: "Copies of all materials reflecting payments or benefits provided to Managers of the Company for the period from 2008 through the present"

Past payments or benefits to Eight Estates' managers would, to the extent they affect the value of the Company, be reflected in the Company's or Ascentia's financial statements. Thus, these documents would not aid DFG in pursuing its proper purpose of valuing its interest in the Company. Further, although the documents might, in some-as-yet-unarticulated way, be related to DFG's other proper purpose—determining whether to appoint a representative to the board of managers—DFG has not shown how these documents would be needed to accomplish that purpose. Therefore, its demand regarding access to materials reflecting payments to the managers of the Company is denied.

11. Category 16: "Copies of any and all grape contracts entered into by the Company and/or its direct and indirect subsidiaries during the period from 2008 through the present"

William Deutsch testified as to the importance of grape contracts in valuing a winery:

Grape contracts are very important to a winery. You want to be assured that the farmer or the owner of the grape contract is going to deliver what he promised to deliver.

In a perfect world, you'd like the grape contract to provide for a selling price at market. Some contracts have locked in costs, and those

might be good in some years, but they could be extremely detrimental in other years.<sup>61</sup>

He also testified that, while he was a member of the Eight Estates' board of managers, "[t]here was concern [among the members of the Board] about reducing the number of grape contracts because everyone believed that there were too many for too long a period of time."<sup>62</sup>

The Court is satisfied that an evaluation of the Company's grape contracts in light of the specific concerns that DFG has identified would be needed to value DFG's interest in the Company, but the contracts themselves would contain much more information than this, information that would not relate to valuing the Company, and which might involve the Company's trade secrets. Accordingly, Eight Estates may produce either the grape contracts themselves or a summary of the Company's contracts that shows how many contracts it has and has had since 2008, which of its contracts are tied to the market price of grapes, which have locked-in costs (and what those costs are), and the Company's good faith estimate of the confidence it has that each contract will be fulfilled by the grower.

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<sup>61</sup> Trial Tr. (William Deutsch) 19.

<sup>62</sup> *Id.* at 20.

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#### **IV. CONCLUSION**

The Court will enter judgment in favor of DFG and grant it relief to the extent set forth above. Court costs are assessed against the Company. No party has provided a sound basis for shifting the usual burdens of attorneys' fees and expenses.

Counsel are requested to confer and to submit an implementing order.

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Register in Chancery-K