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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VINOTEMP INTERNATIONAL CORPORATION, a California corporation,

Plaintiff,

v.

WINE MASTER CELLARS, LLC, a Colorado Limited Liability Company,

Defendant.

Case No.: CV 11-01543 ABC (PLAx)

DEFENDANT WINE MASTER CELLARS, LLC'S NOTICE OF MOTION AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE

Hearing Date: July 11, 2011
Time: 10:00 a.m.
Courtroom: 680
Judge: Hon. Audrey B. Collins

PLEASE TAKE NOTICE THAT on July 11, 2011, at 10:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 680 of the above entitled Court, Defendant Wine Master Cellars, LLC ("Wine Master") will and hereby does move for an Order dismissing the First, Second and Third Claims for Relief and to transfer the Fourth Claim for Relief to the United States District Court for the District of Colorado.

The Motion is based on the grounds that: (1) the first-to-file rule dictates that the Fourth Claim for Relief should be transferred to the United States District Court for the District of Colorado; (2) the Third Claim for Relief should be dismissed due to

the lack of declaratory judgment jurisdiction under 28 U.S.C. § 2201(a); (3) the First and Second Claims for Relief with respect to U.S. Patent No. 7,850,017 should be dismissed due to lack of declaratory judgment jurisdiction under 28 U.S.C. § 2201(a); and (4) the First and Second Claims for Relief with respect to U.S. Patent No. 6,991,117 should be dismissed, or in the alternative, stayed, pending resolution of *Wine Master Cellars, LLC v. Vinotemp International Corporation*, United States District Court, District of Colorado, Case No. 11-CV-00623.

This Motion is made following conference of counsel pursuant to Local Rule 7-3, which took place on May 26, 2011.

The Motion is based upon this Notice of Motion and Motion, the incorporated Memorandum of Points and Authorities, the Declarations of John R. Posthumus and the exhibits thereto attached as Exhibits "A," "B" and "C," respectively, the Complaint including Exhibits ("Ex.") in this action, and such oral and documentary evidence as may be presented to the Court at or before the hearing of this Motion.

Dated: May 26, 2011

FOX ROTHSCHILD LLP

By: /s/ Alan C. Chen
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