

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

FOX ORTEGA ENTERPRISES, INC.,
dba PREMIER CRU,

Debtor.

Case No. 16-40050-WJL

Chapter 7

**NOTICE AND OPPORTUNITY FOR
HEARING ON MOTION FOR ORDER
APPROVING COMPROMISE WITH JF
HILLEBRAND FRANCE AND PROPOSED
SALE OF WINES TO SPECTRUM**

TO: THE TWENTY LARGEST CREDITORS, PARTIES REQUESTING SPECIAL NOTICE,
THE U.S. TRUSTEE, THE DEBTOR AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT Michael G. Kasolas (the “Trustee”), the chapter 7 trustee for the bankruptcy estate of above-captioned debtor (“Debtor”), has filed a motion under Bankruptcy Rule 9019 (the “Motion”) for an order approving his compromise with JF Hillebrand France and the sale of the wines held by JF Hillebrand France to Spectrum Wine Auctions. The Motion is based on the facts and merits summarized below.

The Compromise Terms

Under the proposed compromise, the Trustee shall sell Spectrum Wine Auctions (“Spectrum”) certain wines identified in the attached **Exhibit A** (“Wines”) currently in the possession of JF Hillebrand France in Beaune, France, for a sale price of \$95,000.00.

The Trustee shall pay JF Hillebrand France one-third (1/3) of the net sale proceeds from the sale up to, but not exceeding, €20,000.00 Euros.

Factual Background and Merits of Compromise

On January 8, 2016, the Debtor filed its voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. The Trustee is the duly appointed trustee in the case.

On or about February 23, 2016, JF Hillebrand France SAS, a simplified joint-stock company existing and operating under the laws of the Country of France (“JF Hillebrand France”) filed its Proof of Claim (Claim No. 1108) in the amount of \$57,102.12 (the “Claim Amount”). JF Hillebrand France’s claim (the “Claim”) is for freight forwarding services, including costs related to shipping and storage of wines.

JF Hillebrand France has identified 824 bottles of wine that remain in its possession in Beaune, France and that are the property of Debtor’s bankruptcy estate. JF Hillebrand France has asserted that its Claim is secured by a lien on the Wines pursuant to the laws of France. Specifically, JF Hillebrand France contends that it has perfected preferential lien rights under the commercial laws of France on the Wines.

The Trustee has entered into a Sale Agreement with Spectrum for the sale of the Wines to Spectrum for a price of \$95,000.00, subject to adjustments for bad bottles and a potential holdback of 20 bottles that may be subject to competing claims.

The Trustee has entered into a Settlement and Release Agreement (the "Settlement Agreement") with JF Hillebrand France for the payment of a certain sum in exchange for the release of its lien rights on the Wines in order to allow the Trustee to sell the Wines to Spectrum for the benefit of the estate. Under the Settlement Agreement, the Trustee shall pay JF Hillebrand France, one-third (1/3) of the net sale proceeds up to, but not exceeding, €20,000.00 Euros (the "Compromise Payment"). Pending completion of the sale of the Wines to Spectrum and payment of the Compromise Payment to JF Hillebrand France, the Trustee shall deposit funds in the amount of the anticipated Compromise Payment with a third party escrow holder.

The Trustee submits that the proposed compromise is fair and equitable and in the best interests of creditors and the estate under the factors set forth in *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986). The Settlement Agreement with JF Hillebrand France represents a fair compromise of JF Hillebrand France's asserted lien rights under French law. The compromise is a nearly sixty (60%) reduction of JF Hillebrand France's lien claim and is necessary to resolve the lien rights in order to permit the Trustee to obtain possession of the Wines without the expense, delay and risk of litigating JF Hillebrand France's lien rights in France. In addition, the Trustee believes that the sale price under the Sale Agreement with Spectrum represents a fair and reasonable wholesale price under the circumstances.

Good Faith Sale and Waiver of Stay

The Trustee requests a finding by the Court that the purchaser is in good faith and entitled to the protections of 11 USC § 363(m), as supported by the Declaration of Jason Boland filed in support of the Motion. In addition, the Trustee requests that the Court's order included a waiver of any applicable stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

Procedure to Object and Request a Hearing

PLEASE TAKE FURTHER NOTICE that this matter is governed by Federal Rules of Bankruptcy Procedure sections 9019 and 6004, 11 USC § 363, and by Bankruptcy Local Rule 9014-1(b)(3), which provides that:

1. Any objection to the requested relief, or a request for hearing on the matter, must be filed and served upon the initiating (undersigned) party within **twenty-one (21) days** of mailing the notice;
2. Any objection or a request for a hearing must be accompanied by any declarations or memoranda of law any requesting party wishes to present in support of its position;
3. If there is no a timely objection to the requested relief or a request for hearing, the Court may enter an order granting the relief by default;
4. In the event of a timely objection or request for hearing, the initiating party will give at least seven (7) days written notice of the hearing to the objecting or requesting party, and to any trustee or committee appointed in the case.

Any objection or request for hearing must be served on the undersigned and filed with the Clerk of the United States Bankruptcy Court, Northern District of California, Oakland Division, 1300 Clay Street, Suite 300, Oakland, CA 94612 (the "Clerk's Office"), or in the case via the online Pacer system, by no later than December 13, 2017.

PLEASE TAKE FURTHER NOTICE that the Motion and the supporting Declarations, including copies of the JF Hillebrand France Settlement Agreement and Spectrum Sale Agreement, are filed with the Court and may be obtained from the Bankruptcy Court Clerk, through Pacer at <https://ecf.canb.uscourts.gov/>, or upon request from the undersigned.

Dated: November 22, 2017

/s/ Mark S. Bostick

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Attorneys for Michael G. Kasolas, Trustee

EXHIBIT A

Qty in bottles	Nbr of bottles	Description
12	12	St. Romain "Cuvée de la Mésange", Ponsot 2012
12	12	Bourgogne "Cuvée du Pinson", Ponsot 2012
12	12	Gevrey Chambertin "Cuvée de l'Abelle", Ponsot 2012
18	18	Morey St. Denis 1er cru Les Alouettes, Ponsot 2012
6	6	Chambolle Musigny "Cuvée des Cigales", Ponsot 2012
12	0	Chambolle Musigny 1er cru Charmes, Ponsot 2012
6	0	Corton "Cuvée du Bourdon", Ponsot 2012
6	6	Chapelle Chambertin, Ponsot 2012
6	6	Griotte Chambertin, Ponsot 2012
6	6	Clos Vougeot., Ponsot 2012
36	36	Clos de la Roche.v.v., Ponsot 2012.
21	21	Clos de la Roche v.v., Ponso 2012 (magnum)
3	3	Clos de la Roche v.v., Ponsot 2012 (jeroboam)
		Mixed case of grand crus, Ponsot 2012 comprising: 1Clos de la Roche, 1 Chambertin, 1 Chambertin
1	12	Clos de Bèze, 1 Clos Vougeot. 1 Griotte Chambertin, 1 Chapelle Chambertin, 1 Charmes
6	6	Chambertin, 1 Clos St. Denis, 1 Mazls Chambertin, 1 Corton, 1 Corton Charlemagne, 1 Montrachet
		Morey St. Denis, Ponsot 2012
12	12	Corton "cuvée du Bourdon", Ponsot 2011
18	18	Chapelle Chambertin, Ponsot 2011
12	12	Griotte Chambertin, Ponsot 2011
66	66	Clos de la Roche v.v., Ponsot 2011
24	24	Clos de la Roche v.v., Ponsot 2011 (magnum)
3	3	Clos de la Roche v.v., Ponsot 2011 (jeorboam)
24	24	Clos Vougeot, Ponsot 2011
60	60	Bourgogne aligoté, Ponsot 2011
48	48	Saint Romain cuvée des Mésanges, Ponsot 2011
138	138	Bourgogne cuvée Pinson, Ponsot 2011
18	18	Gevrey Chambertin cuvée l'Abelle, Ponsot 2011
48	48	Morey St. Denis cuvée des Alouettes, Ponsot 2011
6	6	Chambolle Musigny cuvée des Cigales, Ponsot 2011
12	12	Chambolle Musigny 1er cru Les Charmes, Ponsot 2011
5	5	Morey St. Denis 1er cru Les Monts Luisants "centenaire", Ponsot 2011 (magnum)
2	24	2 Mixed cases of grand crus, Ponsot 2011 comprising: 1 Clos de la Roche, 1 Chambertin, 1
		Chambertin Clos de Bèze, 1 Clos Vougeot. 1 Griotte Chambertin, 1 Chapelle Chambertin, 1 Charmes
		Chambertin, 1 Clos St. Denis, 1 Corton, 1 Corton Bressandes, 1 Corton Charlemagne, 1Montrachet
6	6	Corton Charlemagne, Domaine Ponsot 2012
12	12	Latricières Chambertin, Arnoux-Lachaux 2012
12	12	Clos Vougeot, Arnoux-Lachaux 2012
24	24	Vosne Romanée 1er cru Chaume, Arnoux Lachaux 2012
24	24	Nuits St. Georges Corvée Pagets, Arnoux-Lachaux 2012
24	24	Vosne Romanée, Arnoux Lachaux 2012
24	24	Chambolle Musigny, Arnoux-Lachaux 2012
24	24	Bourgogne Pinot Fin, Arnoux-Lachaux 2012
842	824	

Not received at Hillebrand
Not received at Hillebrand

Cuvée des Grives

EMBI
"A"

CERTIFICATE OF SERVICE

I, Jeanne Rose, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036.

On the date set forth below, I served a copy of the following document(s):

NOTICE AND OPPORTUNITY FOR HEARING ON MOTION FOR ORDER APPROVING COMPROMISE WITH JF HILLEBRAND FRANCE AND PROPOSED SALE OF WINES TO SPECTRUM

[X] by ECF to the parties listed on the attached service list in accordance with the *Order Granting Motion to Reduce Notice Required for Future Notices Under Bankruptcy Rule 2002(a)* [Docket No. 437] who are ECF recipients.

AND

[X] (by mail) to the parties listed on the attached service list in accordance with the *Order Granting Motion to Reduce Notice Required for Future Notices Under Bankruptcy Rule 2002(a)* [Docket No. 437] who are not ECF recipients by placing a true and correct copy thereof enclosed in a sealed envelope with first-class postage prepaid in a designated area for outgoing mail, addressed as set forth below. At Wendel, Rosen, Black & Dean, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California to the following recipients

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on November 22, 2017, at Oakland, California.

/s/ Jeanne Rose
JEANNE ROSE

See attached service list.

**FOX ORTEGA ENTERPRISES, INC., DBA PREMIER CRU, DEBTOR
CASE NO. 16-40050**

**LIMITED NOTICE MAILING LIST
(Per Order Dated October 26, 2016)**

Twenty Largest Unsecured Creditors Who Have Timely Claims:

American Express Travel Rltd. Svcs. Co. Inc. c/o Becket and Lee LLP P.O. Box 3001 Malvern, PA 19355-0701
MSI Electronic Payments, LLC c/o T. Micah Dortch Cooper & Scully, P.C. 900 Jackson St., Suite 100 Dallas, Texas 75202
Universal Card, Inc. dba Merchant Services Thomas J. Stolp, Esq. Rogers, MacLeith & Stolp, LLP 10061 Talbert Avenue, Suite 390 Fountain Valley, CA 92708
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Richard Schmidt 2500 Hospital Drive Mountain View, CA 94040

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<p>Brad Karp 653 Paseo de la Cuma Santa Fe, NM 87501</p>
<p>Robert Nilsson c/o Michael VanNiel 127 Public Square #2000 Cleveland, OH 44114-1214</p>
<p>39 Partners, LLC c/o Lane Powell, PC, Attn: Heidi Anderson 1420 Fifth Avenue, Suite 4200 P.O. Box 91302 Seattle, WA 98111-9402</p>
<p>Ross Bott 152 Poplar St Half Moon Bay, CA 94019</p>
<p>T. Szen Low c/o Akin Gump, et al Attn: David P Simonds 2029 Century Park East #2400 Los Angeles, CA 90067</p>
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Governmental Agencies Who Have Filed Claims

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Bankruptcy Section MS A340
P.O. 2952
Sacramento, CA 95812-2952

Department of the Treasury
Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

State Board of Equalization
Special Operations Branch MIC:55
PO Box 942879
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