

Mark S. Bostick (Bar No. 111241)
Elizabeth Berke-Dreyfuss (Bar No. 114651)
Tracy Green (Bar No. 114876)
WENDEL, ROSEN, BLACK & DEAN LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036
Telephone: (510) 834-6600
Fax: (510) 834-1928
Email: mbostick@wendel.com;
edreyfuss@wendel.com;
tgreen@wendel.com

Attorneys for Michael G. Kasolas, Trustee

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

**TRUSTEE'S MOTION FOR ORDER
APPROVING PAYMENT OF ON-GOING
ADMINISTRATIVE EXPENSES PURSUANT
TO §§503(b)(1)(B)(i)**

TO: THE HONORABLE WILLIAM J. LAFFERTY, III, UNITED STATES BANKRUPTCY
JUDGE AT OAKLAND, CALIFORNIA:

Pursuant to 11 U.S.C. §§503(b)(1)(B)(i) and 363, Michael Kasolas ("Trustee"), the duly
appointed and acting Trustee for the Chapter 7 Estate of the Fox Ortega Enterprises, Inc., dba
Premier Cru ("Debtor"), hereby moves the Court to allow payment of the recurring operating
expenses on an ongoing basis without further Court order as set forth in **Exhibit A** attached hereto
conditioned on the filing of a statement of receipts and expenses by the categories listed every two
months by the 20th day of the preceding month. The Trustee is not seeking to compensate any
professional by this motion nor to use cash collateral.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are Sections 503(b)(1)(B)(i) and 363 of Title 11 of the United States Code, (the “Bankruptcy Code”).

B. Factual Background

5. An Order for relief under Chapter 7 of Title 11 of the United States Code was entered herein pursuant to voluntary petition filed by the debtor on January 8, 2016.

6. Among the assets of this estate are approximately 71,000 bottles of wine located in a warehouse, and additional bottles of wine located outside of the United States, in addition to possible wine futures in various wines produced by multiple wineries. To date the Trustee has obtained the authority to use \$23,000 of cash collateral for the purpose of preserving the assets of the estate. Many of the expenses previously approved include recurring expenses such as for the payment of utilities, internet services, website hosting fees, maintenance, and security. In addition, there are expenses that are minimal but will be incurred on an as needed basis for the maintenance, copying and preserving of evidence, both documentary and electronic. There are also small expenses that may be incurred for maintenance of the premises and other minor but unexpected matters. The expenses set forth hereinabove are collectively referred to as “Expenses.”

7. Most of the Expenses will be eliminated or significantly reduced after the wine has been sold or otherwise disposed of (subject to a future determination by the Court) which the Trustee estimates will be the end of July 2016. Until that time, the Trustee needs authority to pay

1 the Expenses as they come due. It is expensive and impractical for the Trustee to file a motion for
2 every administrative expense that he needs to pay during this limited time period. The Trustee is
3 not selling assets without Court authority, and is not asking for permission to pay Court authorized
4 professionals outside of the application process. The Trustee seeks authority to pay the Expenses
5 set forth in **Exhibit A** attached hereto, and to file a Statement of Receipts and Expenses by
6 Category every two months, by the 20th day after the preceding month. As set forth in more detail
7 in **Exhibit A**, the Trustee seeks authority to pay the expenses up to the amounts indicated. If the
8 Trustee needs to increase the amounts he will file an application to do so. To the extent the
9 Trustee intends to use cash collateral, he would obtain consent or a separate order. The Trustee is
10 in possession of \$35,000, which represents the down payment towards a settlement that the
11 Trustee is finalizing and will be obtaining court approval for. That amount is not cash collateral
12 and by the terms is nonrefundable. The final settlement payment will be in excess of that amount.

15 **II. ARGUMENT**

16 The Bankruptcy Code provides that “After notice and a hearing, there shall be allowed
17 administrative expenses . . . including --- the actual, necessary costs and expenses of preserving
18 the estate...”11 U.S.C. § 503(b)(1)(A). Furthermore, Bankruptcy Code Section 363(c)(1) allows
19 the Trustee to use property of the estate and enter into transactions approved by the Court.

20 As this Court is aware, this case involves a unique situation, which is somewhat of a
21 hybrid Chapter 7. Because of the nature and extent of the wine, it must be carefully preserved to
22 protect the value of the wine, and due to some unusual title issues, the wine cannot be liquidated
23 immediately. Therefore, although the Trustee is not selling the wine until he is so authorized, he
24 is paying ongoing expenses to maintain the wine and the records. Therefore, he requests that he
25 be authorized to pay the ongoing expenses pursuant to the categories set forth in the **Exhibit A**.

26 The Trustee requests that he be authorized to use assets of the estate for the payment of
27 utilities, security, cleaning and maintenance, and the expense of copying, maintaining, and
28 protecting the electronic data and intellectual property up to the amounts set forth in **Exhibit A**

1 attached hereto. If there are amounts which exceed the scheduled amounts in **Exhibit A**, the
2 Trustee will seek further approval. The Trustee's proposal is that he be allowed to use the
3 proceeds, and every two months file a statement of receipts and expenses by category by the 20th
4 day of the preceding month. In addition, the Trustee seeks authority to reimburse himself for
5 expenses that he incurred purchasing hard drives, or paying for the cost of copying, imaging and
6 retrieving the electronic data, internet charges, hiring a locksmith, and a minor federal express
7 charge. He estimates that he paid at least \$2,000 for such items so that the estate could use them
8 immediately to protect the assets of the estate.

9 The Trustee seeks authority to use property of the estate that is not cash collateral. If cash
10 collateral is to be used, the Trustee will obtain the consent of the lender or a Court order if consent
11 is not agreed to. The sources of income that the Trustee anticipates using will be from a Court-
12 approved sale, settlement, compromise or loan, each to be approved by this Court in due time, if
13 applicable.

14 In addition, the Trustee has been asked by American Express to provide extensive reports
15 related to its substantial claim on an expedited basis. The Trustee seeks authority to charge
16 American Express an amount sufficient to cover the Trustee's expenses, and to use the funds to
17 pay expenses for such items as the payment of Brian Nishi, to the extent his services are used.

18 WHEREFORE, pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 363, Trustee respectfully
19 requests that the Court authorize the Trustee to pay the ongoing recurring expenses set forth in
20 **Exhibit A** for the purpose of preserving and maintaining the assets of the estate, without further
21 Court order, under the circumstances set forth herein conditioned on filing a statement of receipts
22 and disbursements by category every two months by the 20th day of the preceding month. The
23 Trustee also asks the Court to waive the stay set forth in Bankruptcy Rule 6004(h).

24 DATED: February 24, 2016

WENDEL, ROSEN, BLACK & DEAN LLP

25
26 By: /s/ Tracy Green

Tracy Green

27 Attorneys for Michael G. Kasolas
28

EXHIBIT A

Authorized Monthly Ongoing Expenses

1.	Utilities: gas, electric, water, garbage:	\$4,500
2.	Internet, web service, security, electronic storage, copying, imaging, retrieving, insurance, purchasing external hard ¹ drives, and maintenance of assets of the estate:	\$8,000
3.	Miscellaneous:	\$500
4.	Postage and related copying charges:	\$12,000
5.	Shipping ²	\$15,000

¹ The Trustee has purchased hard drives and copied and imaged the electronic system spending and he seeks authority to reimburse himself for said expenses, paid for locksmith, internet charges, and a small federal express charge.

² Among the assets of this Estate is wine located out of the country. The Trustee is in the process of locating the wine, and wants the options of having the wine shipped to the Berkeley location if it is determined that it is in the best interest of the estate to ship the wine back to the United States for sale or other disposition. If the quantity of wine is significant, a further court order would be required. However, if there is a small amount that makes business sense to bring over to the United States to sell, the Trustee would like the option, subject to available funds, to pay that shipping charge.