

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

## Updated July 12, 2016 Frequently Asked Questions

### 1. What is going on in this case?

On January 8, 2016, Fox Ortega Enterprises, Inc., dba Premier Cru (“Debtor”) commenced this case by filing a Chapter 7 under the Bankruptcy Code. The Debtor operated under the name of Premier Cru. Upon the commencement of the case, the Office of the United States Trustee appointed Michael G. Kasolas as the duly appointed, qualified and acting trustee of the debtor’s estate (“Trustee”). It is the Trustee’s duty to locate as many assets as he can for the benefit of the unsecured creditors of this estate. Therefore, the Trustee is attempting to locate and protect all of the assets that he can.

### 2. What are the assets in this estate?

The assets in this estate include approximately 79,000 wine bottles in the debtor’s warehouse (“Inventory”), and possibly wine that is located at different locations, including outside of the United States, possibly wine futures, and avoidance actions and other litigation matters. It is too early to know what all of the assets are in this case. The Trustee will liquidate all assets.

### 3. I believe that the Debtor is holding wine that belongs to me and I would like to pick it up. How do I get my wine?

There is a legal issue as to who owns the wine that is in the Debtor’s warehouse. The Trustee takes the position that it all belongs to the estate, and it should be liquidated for the benefit of all creditors. The Trustee understands that many of the creditors dispute this contention, and some believe that it is their wine, and it should be returned to them. Most of the wine bottles are in the warehouse stored by vintage and variety, and not by person. However, at the time this case was commenced there were 3800 bottles that were physically segregated from the other bottles by customer name.

The Trustee filed a motion asking the Court to determine title against claimants whose wine was physically segregated and who stipulated to an expedited procedure to determine title. [See Doc. #235] (the “Motion”). Eight claimants, including claimants whose wine was not segregated, filed oppositions to the Motion. One claimant, Michael Podolsky, filed an opposition and on

April 27, 2016, filed a class action complaint for declaratory and injunctive relief on behalf of the customers who had an interest in bottles located in the warehouse (the “Complaint”) against the Trustee, initiating an adversary proceeding entitled *Michael D. Podolsky, on behalf of himself and all others similarly situated vs. Michael G. Kasolas, Trustee*, A.P. No. 16-04033 (“Class Action”).

The Motion was fully briefed and hearings on the Motion were held on May 3 and May 10, 2016. The Court made certain preliminary findings and conclusions that made it clear that litigation would be complicated, lengthy and the outcome uncertain for both sides. At the Court’s suggestion, the parties participating in the hearing on the Motion agreed to mediate the dispute within the context of the pending class action complaint.

The mediation was conducted by the Honorable Dennis Montali, United States Bankruptcy Judge. After weeks of discussions and two days of intensive negotiations and mediation, the parties agreed to terms that formed the basis for the Stipulation for Settlement dated May 23, 2016, that is the subject of a motion for approval (“Stipulation”). Pursuant to the terms of the Stipulation the Trustee will liquidate the Inventory for the benefit of the creditors of this Estate and the members of the Class Action (with certain bottles excluded). The proceeds of any sale will be divided between the Class Members and this Estate pursuant to the terms of the Stipulation. The Stipulation is subject to Bankruptcy Court approval.

The Class Action requires a two-step process. On May 25 and 27, 2016, the first step occurred when hearings were held on Michael Podolsky’s motions to certify the class, to appoint class counsel, to preliminarily approve the settlement, and to approve the form of notice of the class and settlement to class members. Those motions were granted under an order entered on June 1, 2016 [A.P. Doc #15]. Further hearings on the approval of the Class Action are set for July 27, 2016.

#### **4. I am owed money. What should I do?**

File a proof of claim with the bankruptcy Court. A claim form can be obtained by going to the following website at the bankruptcy court:

<http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0>

The claims bar date was May 24, 2016. Claims filed after that date will be considered late filed claims. Proofs of claim may be filed electronically at the following Bankruptcy Court website:

<https://ecf.canb.uscourts.gov/cgi-bin/autoFilingClaims.pl>

#### **5. Am I a member of the Class Action?**

You are a member of the Class Action if you have an allocated interest in bottles that are located at the warehouse. NOT ALL CREDITORS ARE CLASS MEMBERS. You can go to the website [www.BMCgroup.com/PremierCru](http://www.BMCgroup.com/PremierCru) and look up your account to see if you have an allocated interest in wine located in the warehouse.

**6. I bought wine and do not see all or some of it listed in the warehouse. How is that possible?**

According to the Debtor's schedules creditors are owed \$70,000,000. There are insufficient bottles in the warehouse to cover all bottles sold. The Trustee does not know what happened to the additional orders, and the Trustee cannot explain why some customers received email notification that their bottles were in the warehouse when in fact they were not in the warehouse when the case was commenced. It is very possible that the number of bottles that you list on your proof of claim will not be the same as the number of bottles that show up in the warehouse, and you may have no bottles in the warehouse.

**7. Tell me more about the Class Action what is going on?**

The Trustee cannot tell you more about the class action but you can review the notices sent to the Class at the Premier Cru website set forth in paragraph 5. Members who wanted to opt out of the Class Action had to do so by July 5, 2016. Additionally, certain members could redeem bottles if they submitted their request by July 5, 2016. If you have any questions about the Class Action you can reach out to the Class Action counsel Merle Meyers at the following email address:

MMeyers@meyerslawgroup.com

**8. I do not want copies of pleadings in the mail, but I want to be kept informed, what should I do?**

You can sign up to receive copies of all pleadings filed in the main case by email by going to the following cite:

**[www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru)**

If you do not want to receive emails, but you still want to stay informed, you can refer to this website to see the pleadings that have been filed at no charge to you.

**9. I want copies of all pleadings filed in this case mailed to my address, what should I do?**

File a Request for Notice with the Court. This is a notice that should clearly state the name and number of the bankruptcy case, and in your notice state that you want copies of all pleadings filed mailed to you at the address that you specify. You should file your request with the bankruptcy court at the address indicated below:

United States Bankruptcy Court  
1300 Clay Street, Room 300  
Oakland, CA 94612

**10. What if I don't want copies of pleadings, but I want my rights protected?**

Even if you do not request a hard copy or emailed pleadings, if the Trustee is going to take an action against your interests or claims directly, you will receive direct notice of that by U.S. mail, or by email, if you so request. For example, if you file a proof of claim, and the Trustee decides to object to it, you will receive notice of that objection in the mail. You do not need to sign up for any form of notice to receive notice that your claim is being objected to.

**11. I am not owed any money why do I keep getting notices from the court?**

When the Debtor filed this bankruptcy case it listed all the creditors that it could conceivably owe money to, and you were on that list. The Trustee has no control over this list. If you are not owed any money, and you want to make sure you are removed from the list of creditors to receive notice, you can file a request to be removed from the mailing matrix with the Court. The Court's address is as follows:

United States Bankruptcy Court  
1300 Clay Street, Room 300  
Oakland, CA 94612

**12. I want to change the address that the Court has. What should I do?**

You need to file a Notice of Change of Address with the Bankruptcy Court. It is not sufficient to only send the Trustee a notice. (See paragraph 9 for address of Court)

**13. Who is John Fox?**

John Fox ran Premier Cru, and has now filed his own Chapter 7 case in the Northern District of California, Oakland, California, Case No. 16-40340. You may have received a separate notice about the commencement of that case. Marlene Weinstein is the duly appointed trustee in that case.