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8 [proposed] Attorneys for Michael G. Kasolas,  
Trustee

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 In re  
14 FOX ORTEGA ENTERPRISES, INC.,  
15 dba PREMIER CRU,  
16  
17 Debtor.

Case No. 16-40050-WJL

Chapter 7

**PRELIMINARY APPLICATION FOR  
ORDER AUTHORIZING TRUSTEE TO  
PAY URGENT AND NECESSARY  
ADMINISTRATIVE CLAIMS TO  
PROTECT ASSETS OF THE ESTATE  
AND TO USE CASH COLLATERAL**

Date: January 25, 2016

Time: 3:30 p.m.

Place: Courtroom 220  
1300 Clay Street  
Oakland, CA

Judge: The Hon. William J. Lafferty, III

23 TO: THE HONORABLE WILLIAM J. LAFFERTY, UNITED STATES BANKRUPTCY  
24 JUDGE AT OAKLAND CALIFORNIA, DEBTOR'S COUNSEL, THE U.S. TRUSTEE  
AND INTERESTED PARTIES.

25 Michael G. Kasolas chapter 7 trustee ("Trustee") of the bankruptcy estate of Fox Ortega  
26 Enterprises, Inc., dba Premier Cru ("Debtor"), respectfully requests a preliminary order  
27 authorizing the use of cash collateral to pay for urgent and necessary administrative claims for  
28 insurance, utilities, the alarm system and internet services, and requests a final hearing in 14 days.

## INTRODUCTION

1  
2 1. An Order for relief under Chapter 7 of Title 11 of the United States Code was  
3 entered herein pursuant to voluntary petition filed by the debtor on January 8, 2016. Michael G.  
4 Kasolas is the duly appointed, qualified and acting trustee of the debtor's estate.

5 2. The Debtor has been a well-known seller of top-quality wines in the Bay Area  
6 since it opened in 1980. The Debtor made its reputation by selling top-tier wines at lower prices  
7 than competitors, but often selling them as "pre-arrivals." In return for "unbeatable" prices on  
8 sought-after wines offered as "pre-arrivals," the Debtor often took years to deliver orders. By the  
9 time the Debtor filed bankruptcy, the Debtor scheduled \$6,800,000 in wine inventory, and  
10 \$70,000,000 in debts. Among the assets of the debtor's estate is bottled wine inventory, furniture,  
11 fixtures and equipment ("Inventory").

12 3. The Debtor has a warehouse full of wine that the Trustee is in the process of  
13 selling. Until the wine is sold, the Trustee wants to insure the wine and maintain the premises  
14 with utilities, the alarm and internet systems.

15 4. The Trustee is in the process of conducting an inventory of all assets, and will  
16 conduct an auction as soon as possible so that the expenses set forth above only need to be paid for  
17 as little time as possible. The Trustee is informed and believes that the value of the inventory in  
18 the premises may be as much as \$6.5 million.. The Trustee reserves the right to seek  
19 reimbursement of any expenses paid from third parties, such as secured creditors who claim an  
20 interest in the assets.

21 5. The Trustee seeks authority to pay all utilities, including PG&E to maintain the  
22 proper temperature in the premises to protect the wine inventory, and to operate the necessary  
23 computers systems. The Trustee estimates that the utilities will cost the estate approximately  
24 \$4,500 a month.

25 6. The Trustee also seeks authority to pay Bay Alarm to maintain the current alarm  
26 system, and to direct Bay Alarm to authorize the Trustee to change all passwords if they have not  
27 been changed as of the date of the Order. The Trustee is informed and believes that the alarm  
28 system cost approximately \$500 a quarter to maintain.

1           7.       The Trustee also seeks authority to pay for all internet services, domain names  
2 services and web host fees. It is critical to maintain these systems since they contain information  
3 that may be invaluable in connection with the investigation and prosecution of avoidance actions,  
4 and other information relating to the operations of the business. The Trustee estimates that such  
5 services do not exceed \$500 a month, but the Trustee is still investigating all the charges.

6           8.       The Trustee seeks authority to spend \$16,280 for Cargo Insurance for the period of  
7 5 months to insure the Debtor's wine inventory located at 1011 University Ave., Berkeley,  
8 California. A true and correct copy of the policy is attached to the Declaration of Michael G.  
9 Kasolas, filed concurrently herewith. The salient terms are as follows:

- 10           a.       The limit of coverage is \$7,000,000.
- 11           b.       The policy deductible is \$25,000 per event, except with respect to  
12 earthquake loss, in which event the deductible is \$150,000.
- 13           c.       Terrorism coverage has not been purchased.
- 14           d.       Jurisdiction under the policy is in the State of California.
- 15           e.       The insurer must provide 15 days' notice of cancellation.
- 16           f.       The insurer issuing the policy is Besso Limited, and it is underwritten by  
17 Lloyds of London.
- 18           g.       It is the Trustee's understanding of the policy is that the premium per month  
19 is \$3,000, but if the Trustee sells approximately one-half of the wine inventory in the first  
20 month, the monthly premium would be reduced to \$1,500 per month, and any unearned  
21 premium will extend the term of the policy.

22           9.       The Trustee also seeks authority to purchase an additional personal property  
23 insurance policy to cover some of the equipment and other miscellaneous items that the Cargo  
24 Insurance Policy does not cover. The Debtor has no insurance on the Debtor's premises. The  
25 Trustee is procuring a commercial package general liability and premises policy. The general  
26 liability policy limits are \$2 million as an aggregate limit and \$1 million as an occurrence limit.  
27 The commercial property limits are \$40,000 for electronic data processing hardware and \$10,000  
28

1 for business personal property. The policy has an annual premium of \$3,497.50. The insurance  
2 company for this policy is Penn Star Insurance Company.

3 10. The Trustee believes that purchasing the policy is in the best interests of the estate.  
4 There is no insurance in place. The Trustee understands that the Debtor ceased paying insurance  
5 in March 2015. The Trustee contacted the Debtor's former insurance company, Alliance, and due  
6 to the Debtor's history of nonpayment, Alliance declined to re-issue the Debtor's policy to the  
7 estate. The Trustee located the policies through a licensed insurance broker, John Bills, Aegis  
8 Insurance Markets, and after an extensive search of the markets. It is the Trustee's understanding  
9 that the foregoing policies are the only policy that Mr. Bills could locate.

10 **CERTIFICATION**

11 The undersigned Certifying Professional has read the accompanying motion and the Cash  
12 Collateral Introductory Statement; to the best of my knowledge, information and belief, formed  
13 after reasonable inquiry, the terms of the relief sought in the motion are in conformity with the  
14 Court's Guidelines for Cash Collateral and Financing Motions and Stipulations except as set forth  
15 above. I understand and have advised the Trustee that the Court may grant appropriate relief  
16 under circumstances, if the Court determines that a material element of the motion or stipulation  
17 was not adequately disclosed in the Introductory Statement.

18 **CASH COLLATERAL**

19 11. The Trustee is currently holding approximately over \$23,000 in cash. The Trustee  
20 understands that Community Bank of the Bay ("CBC") has a recorded a UCC-1 against all of the  
21 Debtor's Inventory, Chattel Paper, Accounts, Equipment and General Intangibles, and all proceeds  
22 relating to any of the foregoing, including insurance, general intangibles and other accounts  
23 proceeds. On the date of the commencement of the Debtor's case, the Debtor scheduled the  
24 amount owing to CBC as \$936,033. Notwithstanding the Debtor's Schedules, the Trustee is  
25 informed and believes that CBC's secured claim against the Debtor was cross-collateralized by  
26 one of the Debtor's principal's (John E. Fox) residence, and the sale of that residence closed on  
27 January 21, 2016, leaving CBC with a secured claim in the Debtor's case of approximately  
28 \$150,000 to \$200,000. CBC is not being given any additional liens, but is adequately protected.

**MOTION**

The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the statutory predicates for relief sought herein are 11 U.S.C. §§ 105(a) and 363(b), and Federal rule of Bankruptcy Procedure (“Fed. R. Bank. P.”) 2002(a), 4001(b), and 6004(a).

The Trustee seeks authority to pay the administrative expenses as set forth above on the grounds that said expenses are urgent and are required for the protection of the assets of this Estate. On January 22, 2016, Counsel for the Trustee spoke with Counsel for the secured creditor CBC, Paul Pascuzzi of Felderstein, Fitzgerald, Willoughby & Pascuzzi who stated that CBC consents to the use of cash collateral set forth herein subject to Court approval.

WHEREFORE, Trustee requests that this Court enter a preliminary order authorizing Trustee to pay the necessary expenses set forth above to protect the assets of the Estate from the cash collateral that he is holding, and if necessary setting a final hearing in 14 days.

DATED: January 22, 2016

WENDEL, ROSEN, BLACK & DEAN LLP

By:           /s/ Tracy Green          

Tracy Green  
Attorneys for Michael G. Kasolas