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7 [Proposed] Attorneys for Michael G. Kasolas,  
Trustee

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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 Debtor.

Case No. 16-40050-WJL

Chapter 7

**APPLICATION FOR ORDER  
AUTHORIZING EMPLOYMENT OF  
BRIAN NISHI**

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

21 Michael G. Kasolas respectfully requests an order authorizing him to employ Brian Nishi  
22 as an IT consultant to access the electronic data of Fox Ortega Enterprises, Inc., dba Premier Cru  
23 ("Debtor") and in support thereof, represents as follows:

24 1. The Debtor filed its petition for relief under chapter 7 on January 8, 2016 (the  
25 "Filing Date"). Michael G. Kasolas is the duly appointed and acting trustee of the debtor's estate  
26 (the "Trustee").

27 2. The Debtor maintained sophisticated electronic data programs and websites to  
28 record its financial, sales and inventory data, and to maintain operations.

1           3.       The Trustee has secured all data on the debtor’s servers and wishes to retain Mr.  
2 Nishi to assist him in accessing all electronic data and business records and reports.

3           4.       Brian Nishi has worked for the Debtor for over 20 years, and was its in-house “IT  
4 Technician” since 2008. In such capacity, he developed, modified and operated the Debtor’s  
5 electronic record-keeping systems, and has a thorough understanding of its unique contents,  
6 functions, capabilities and reliability. As a long-standing employee, he understands how the  
7 Debtor’s business worked and how that can be demonstrated and accessed through its electronic  
8 data systems and record-keeping practices. Mr. Nishi is the primary person that the Trustee is  
9 aware of with such knowledge and expertise specific to the Debtor’s systems.

10          5.       Mr. Nishi is able to generate reports at the Trustee’s direction to show, for example,  
11 the status of each recorded bottle of wine on hand, its identity and location, its cost, sale orders  
12 relating to it, among other reports. His assistance in locating assets, explaining the Debtor’s  
13 business practices, identifying transactions, substantiating sale orders in favor of interested parties  
14 will serve as an invaluable and substantial benefit to creditors and the estate.

15          6.       Mr. Nishi had no ownership interest in the Debtor, and was not a controlling officer  
16 of the Debtor; he worked as an employee in charge of technology.

17          7.       Mr. Nishi holds a claim against the estate for unpaid wages based on nonpayment  
18 of his last pay check for about \$2,500, which he is willing to waive if retained. He also had  
19 advanced credit to the Debtor by allowing it to use his credit card to purchase wine. Within 90  
20 days before the filing of the Debtor’s bankruptcy petition, he was repaid \$25,000 for such credit  
21 extension by receiving wine from the Debtor that was not otherwise subject to any purchase orders  
22 that the Debtor had valued at \$25,000.

23          8.       Mr. Nishi is not being retained as a professional, but as a person with expert and  
24 percipient knowledge unique to this case, and he has agreed to waive his claim against the estate if  
25 this Court approves his employment. Mr. Nishi has been advised of the potential avoidability of  
26 the transfer he received.

27          9.       Mr. Nishi will not be assisting the estate with any matter related to any claim that  
28 the Trustee may have against him.

1 10. The Trustee proposes to retain Mr. Nishi at the rate of \$100 per hour effective from  
2 January 19, 2016, when he first provided assistance to the Trustee.

3 11. Mr. Nishi was out of the country on vacation from late 2015 through January 18,  
4 2016, and upon his return on January 19<sup>th</sup> began assisting the Trustee. Therefore, the Trustee seeks  
5 authority to retain him from January 19, 2016.

6 12. The source of funds to pay Mr. Nishi will come from assets of the estate to be  
7 distributed upon further court order.

8 13. Mr. Nishi’s services will be necessary throughout this case, but most critically in  
9 the initial phases of this case while the Trustee investigates the issues of this case, in addition to  
10 future litigation.

11 14. Mr. Nishi has agreed to execute a non-disclosure agreement substantially in the  
12 form attached as Exhibit A to the Declaration of Michael Kasolas filed concurrently herewith.

13 **MOTION**

14 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is  
15 a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the statutory predicates for relief sought  
16 herein are 11 U.S.C. §§ 105(a) and Federal rule of Bankruptcy Procedure (“Fed. R. Bank. P.”)  
17 6004(a).

18 The Trustee seeks authority to retain Mr. Nishi to assist the estate in investigating and  
19 reviewing the Debtor’s electronic records. Mr. Nishi is not being retained as a professional but as  
20 a person most knowledgeable about the Debtor’s business practices, record keeping and electronic  
21 records. There is no requirement that he be disinterested in this matter, because he is not a  
22 professional. He will not be assisting the Trustee in any matter that is related to any claim that the  
23 Trustee would have against him.

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WHEREFORE, Trustee requests that this Court enter an order authorizing Trustee to retain Mr. Nishi at the rate of \$100.00 per hour. The Trustee requests that Mr. Nishi be deemed to have an Allowed Administrative claim until he is paid in full.

DATED: January 29, 2016 WENDEL, ROSEN, BLACK & DEAN LLP

By:           /s/ Tracy Green            
Tracy Green  
Attorneys for Michael G. Kasolas