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7 Attorneys for Michael G. Kasolas, Trustee

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10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 In re

15 FOX ORTEGA ENTERPRISES, INC.,  
16 dba PREMIER CRU,

17 Debtor.  
18  
19

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF MARK S. BOSTICK IN  
SUPPORT OF FIRST INTERIM  
APPLICATION FOR COMPENSATION AND  
REIMBURSEMENT OF EXPENSES OF  
COUNSEL FOR TRUSTEE RE STATUS OF  
ESTATE FUNDS**

20 Date: December 14, 2016

21 Time: 10:30 a.m.

22 Place: 1300 Clay Street

Courtroom 220

Oakland, CA

23 Judge: The Hon. William J. Lafferty  
24

25 I, Mark S. Bostick, declare:

26 I am duly admitted to practice before the above-entitled court and am a partner with the  
27 firm of Wendel, Rosen, Black & Dean, counsel for Michael G. Kasolas, trustee of the above-  
28 captioned estate, and I have personal knowledge of the matters set forth herein. If called as a

witness I would and could competently testify as follows.

1. I submit this declaration to address the availability of funds to pay allowed professional expenses in support of my firm's *First Interim Application for Compensation and Reimbursement of Expenses of Counsel for Trustee* ("Fee Application") filed on November 16, 2016 [Docket No. 465]. My calculations for the disposition of proceeds in connection with the pending fee applications is as set forth below.

2. **The Net Wine Sale Proceeds are \$3,429,039.00.** Pursuant to the Order Approving Sale entered on September 2, 2016 [Doc # 397], the trustee sold the estate's wine inventory to Spectrum Wine Auctions for \$3,676,000 subject to adjustments for the value of opt out bottles, missing bottles, redeemed bottles and bad bottles. The adjustments are now complete, and as indicated on the *Projected Distribution of Sale Proceeds per Stipulation of Settlement* attached hereto as **Exhibit A** (the "*Distribution Statement*"), the net sale proceeds amount to \$3,429,039.00.

3. **Under the Stipulation of Settlement, the Estate's Share of the Net Sale Proceeds is \$1,853,313.00.** As further indicated in the *Distribution Statement*, after reserving \$270,000 for Administrative Deductions (as agreed by counsel for the class and the trustee), the estate's share of the net sale proceeds under the *Stipulation of Settlement* formulae is \$1,853,313.00.

4. **The pending administrative expense applications total \$1,200,339.80.** The administrative expense applications (as amended) now before the court include:

Applicant	Fees	Expenses
Wendel Rosen	\$960,353.50	\$4,259.76
Kokjer, Pierotti	145,385.50	82.84
Arent Fox	13,144.00	451.74
BMC Group Inc.	21,049.00	32,926.44
West Auctions	21,512.00	1,174.50
<b>Total</b>	<b>\$1,161,444.00</b>	<b>\$38,895.28</b>

1           5.       **Additional accrued administrative expenses, net of projected Administrative**  
2 **Deductions (i.e. those not to be paid under the Stipulation of Settlement) amount to**  
3 **\$76,974.00.**

4           In addition to the foregoing administrative expenses, under an Amended Order entered on  
5 December 13, 2016 [Doc. #492], Brian Nishi's fees and expenses were allowed in the sum of  
6 \$93,375.00 and moving expenses were allowed in the sum of \$3,598.04. In addition, Michael G.  
7 Kasolas, the trustee, is entitled to a fee, subject to future allowance, in the sum of about \$128,000  
8 based on the net sale price. However, \$55,000 of the trustee's fee, about \$79,000 of Brian Nishi's  
9 fees and about \$14,000 of BMC's fees and expenses are projected to be paid as Administrative  
10 Deductions under the *Stipulation of Settlement* (Section 16). Thus, the net amount of these  
11 additional administrative expenses to be paid from the estate's share of the net sale proceeds is  
12 projected to be \$76,974.00 (i.e. \$224,974 - \$148,000).  
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15           6.       **The total outstanding administrative expenses to be paid from the estate's**  
16 **share of sale proceeds is therefore about \$1,277,313.80.**

17           7.       **Under the Surcharge Agreement, there is \$1,000,000.00 available to pay**  
18 **professional expenses.**

19           8.       **If a holdback reserve of 30 percent is applied to current administrative**  
20 **expenses, the total payments (including the trustee's fee) will be less than One Million**  
21 **Dollars (i.e. \$894,119.66 to be precise) and \$709,193.40 will remain in the estate after**  
22 **transferring \$250,000.00 to Community Bank of the Bay as security under the *Surcharge***  
23 ***Agreement.***  
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25           9.       **The estate expects to recover an additional \$80,000 as Administrative**  
26 **Deductions for reimbursement of preservation expenses under the *Stipulation of Settlement.***

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Oakland, California on December 13, 2016.

/s/ Mark S. Bostick

Mark S. Bostick

Attorneys for Michael G. Kasolas, Trustee

# **EXHIBIT A**

Projected Distribution of Sale Proceeds Per Stipulation of Settlement

		Unfettered	Unallocated	New Bottles	Purchased	Oversubscribed	Segregated	Segregated Oversubscribed	Total:
Purchase	Main List	\$139,187	\$287,765	\$172,656	\$2,135,980	\$593,191	\$143,246	\$77,976	\$3,550,000
	Unfettered List	\$126,000	-						\$126,000
	From Bott		\$28,773		-\$28,773				\$0
					\$70,322				\$70,322
<b>Total Purchase:</b>		<b>\$265,187</b>	<b>\$316,538</b>	<b>\$172,656</b>	<b>\$2,177,529</b>	<b>\$593,191</b>	<b>\$143,246</b>	<b>\$77,976</b>	<b>\$3,746,322</b>
Deductions	Redeemed	-	-	-			\$29,595		\$29,595
	Bott to Buy	-	-	-	\$148,321		\$19,906		\$168,228
	SWA Rejects	\$88,350			\$27,633	\$3,145	\$333		\$119,461
	<b>Total Deductions:</b>	<b>\$88,350</b>	<b>\$0</b>	<b>\$0</b>	<b>\$175,954</b>	<b>\$3,145</b>	<b>\$49,834</b>	<b>\$0</b>	<b>\$317,283</b>
Subtotal		<b>\$176,837</b>	<b>\$316,538</b>	<b>\$172,656</b>	<b>\$2,001,575</b>	<b>\$590,045</b>	<b>\$93,412</b>	<b>\$77,976</b>	<b>\$3,429,039</b>
Admin Fees		\$13,924	\$24,924	\$13,595	\$157,603	\$46,460	\$7,355	\$6,140	\$270,000
Proceeds Less Admin		\$162,913	\$291,614	\$159,062	\$1,843,972	\$543,586	\$86,057	\$71,836	\$3,159,039
<b>To Estate</b>		<b>\$162,913</b>	<b>\$291,614</b>	<b>\$159,062</b>	<b>\$921,986</b>	<b>\$271,793</b>	<b>\$17,211</b>	<b>\$28,734</b>	<b>\$1,853,313</b>
To Class		-	-	-	\$921,986	\$271,793	\$68,845	\$43,102	\$1,305,726
Class Counsel (25%)		-	-	-	\$230,497	\$67,948	\$17,211	\$10,775	\$326,432
<b>Net To Class:</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>\$691,490</b>	<b>\$203,845</b>	<b>\$51,634</b>	<b>\$32,326</b>	<b>\$979,295</b>
Class Claims:					\$2,926,239	\$1,917,236	\$153,557	\$1,093,655	\$6,090,687
Class Payout Ratio:					23.63%	10.63%	33.63%	2.96%	16.08%