

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

**NOTICE OF OPPORTUNITY FOR
HEARING ON MOTION OF CHAPTER 7
TRUSTEE FOR AUTHORITY,
PURSUANT TO BANKRUPTCY RULES
9019(b) AND 2002(a), TO SETTLE AND
COMPROMISE AVOIDANCE ACTIONS
UNDER OMNIBUS PROCEDURES FOR
NOTICE AND SETTLEMENT**

**TO: THE DEBTOR, THE UNITED STATES TRUSTEE AND THOSE PARTIES ON THE
LIMITED NOTICE LIST:**

PLEASE TAKE NOTICE Michael G. Kasolas, trustee ("Trustee") of the above-captioned debtor's estate (the "Estate"), has filed a *Motion of Chapter 7 Trustee for Authority, Pursuant to Bankruptcy Rules 9019(b) and 2002(a), to Settle and Compromise Avoidance Actions Under Omnibus Procedures for Notice and Settlement* ("Motion") under specified procedures for notice and settlement described herein and in the Motion.

BACKGROUND

On January 8, 2016, Fox Ortega Enterprises, Inc., dba Premier Cru, debtor herein ("Debtor"), filed a voluntary petition for relief under chapter 7 in this Court.

The Trustee believes that the estate holds potential avoidance actions against at least 135 transferees. He anticipates that the net benefit to the Estate and creditors will be maximized if the Trustee is able to compromise and settle certain avoidance actions pursuant to Sections 544(b), 547, 548 and 550 of the Bankruptcy Code ("Avoidance Actions") rather than incur the delay, expense and uncertainty of litigation.

Rather than burden this Court and the Estate with the administrative expenses of presenting a motion to compromise an Avoidance Action each time the Trustee believes it appropriate to do so, the Trustee proposes that this Court modify the compromise procedures pursuant to Bankruptcy Rule 9019(b), and grant the Trustee authority to settle Avoidance Actions within certain parameters described below, without further necessity of notice or court approval, except as set forth herein.

RELIEF REQUESTED

The Trustee hereby seeks entry of an order, pursuant to Bankruptcy Rules 9019(b) and 2002, authorizing the Trustee to settle Avoidance Actions within the settlement ranges and guidelines set forth below (the "Settlement Procedures"). The proposed Settlement Procedures are as follows:

Settlement Procedures

(i) Net Avoidance Claims¹ ("NAC") Less Than \$75,000.00:

The Trustee will be free to consummate settlements in this class in his business judgment without further leave of the Court or additional notice to the parties that have been served with this Motion;

(ii) Net Avoidance Claims Between \$75,000.01 to \$250,000.00:

The Trustee will be free to consummate settlements in his business judgment without further leave of the Court or additional notice to the parties that have been served with this Motion so long as a proposed settlement represents a minimum recovery of at least 70% of the NAC,;

(iii) Net Avoidance Claims Greater Than \$250,000.00:

The Trustee will be free to consummate settlements in his business judgment without further leave of the Court or additional notice to the parties that have been served with this Motion so long as a proposed settlement represents a minimum recovery of at least 75% of the NAC,.

Should a proposed settlement not satisfy one of the parameters set forth in clauses (i)-(iii) of paragraph 6 above, such proposed settlement shall be noticed to those parties entitled to notice ("Limited Notice Parties") pursuant to the *Order Granting Motion to Reduce Notice Required for Future Notices Under Bankruptcy Rule 2002(a)* ("Order Limiting Notice") filed on October 25, 2016 [Doc #437]. The notice shall include a general description of the Avoidance Action, including the amount at issue, and the proposed settlement amount. Unless a Limited Notice Party files with the Court and serves upon the Trustee an objection to the proposed compromise within 21 days of service of the Notice, the Trustee shall be free to consummate the compromise without necessity of further notice or order of the Court, consistent with existing requirements.

¹ The term "Net Avoidance Claims" or "NAC" as used herein means with reference to preferences, the aggregate preference period transfers made to a creditor, less (i) the value to the Debtor of subsequent extensions of credit or other value provided to the Debtor by the creditor ("New Value"), (ii) less credit for a sustainable contemporaneous exchange or ordinary course of business ("OCB") defense, if applicable, and (iii) less a reasonable discount - up to 100 percent - that is commensurate with the transferee's verified inability to pay or collect from. The term Net Avoidance Claims with reference to a fraudulent transfer claim as used herein means the aggregate fraudulent transfer period transfers made to a party that are avoidable, less (i) the value which may be deducted from any recovery based on a reasonably sustainable defense; and (ii) less a reasonable discount - up to 100 percent - that is commensurate with the transferee's verified inability to pay or collect from.

Compromise procedures of the kind requested herein are permissible pursuant to Bankruptcy Rule 9019(b). Bankruptcy Rule 9019(a) sets forth the requirements for the settlement or compromise of controversies after notice to all creditors and a hearing upon each such proposed compromise. Bankruptcy Rule 9019(b), however, provides an exception to this procedure:

(b) Authority to Compromise or Settle Controversies Within Classes. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

The Court is given wide discretion under Bankruptcy Rule 9019(b) to establish classes of controversies and to authorize settlements without further notice or hearing. Bankruptcy Rule 9019(b) was adopted to simplify the procedures associated with settlements in large scale bankruptcies in order to avoid the burden of filing a separate motion as ordinarily required by Bankruptcy Rule 9019(a). The 1983 Advisory Committee Notes to the Bankruptcy Rules indicate that Bankruptcy Rule 9019(b) "permits the court to deal efficiently with a case in which there may be a large number of settlements."

The relief requested herein will promote judicial economy by simplifying the procedures for the anticipated settlement of a potentially large number of adversary proceedings (as many as 135), thereby reducing the administrative burden on the Trustee and this Court, as well as the costs associated therewith. In the absence of such a procedure, the Trustee will be required to draft and file a separate motion pursuant to Bankruptcy Rule 9019(a) seeking Court approval of each independent proposed settlement of an Avoidance Action. Moreover, any delay in settling Avoidance Actions will concomitantly result in increased risk of non-collectability and/or increased collection costs. Accordingly, granting the relief requested herein, subject to the Settlement Procedures, will promote the fair and efficient compromise and settlement of numerous Avoidance Actions without litigation or with minimal litigation.

The Trustee submits that the settlement and notice parameters requested herein are in the best interest of the Estate and creditors because the act and expense of giving notice and seeking Court approval with respect to each and every settlement would diminish the Trustee's net recovery on Avoidance Actions.

A copy of the Motion and the supporting declaration of Michael G. Kasolas are on file with the Court and may be obtained upon request from the undersigned.

PROCEDURE TO OBJECT AND REQUEST A HEARING

PLEASE TAKE FURTHER NOTICE that this matter is governed by Bankruptcy Local Rule 9014-1(b)(3), which provides that:

"Any objection to the requested relief, or a request for hearing on the matter, must be filed and served upon the initiating (undersigned) party within twenty-one (21) days of mailing the notice;

Any objection or a request for a hearing must be accompanied by any declarations or memoranda of law any requesting party wishes to present in support of its position;

If there is no timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default;

The initiating party will give at least seven (7) days written notice of the hearing to the objecting or requesting party, and to any trustee or committee appointed in the case;

Any objection or request for hearing should be served on the undersigned within 21 days of the mailing of this notice, i.e. by March 31, 2017 and filed with the Clerk of the United States Bankruptcy Court, Northern District of California, Oakland Division, 1300 Clay Street, Third Floor, Oakland, California 94612.

DATED: March 10, 2017

[Date of Mailing]

/s/ Mark S. Bostick

Mark S. Bostick (Bar No. 111241)

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

Attorneys for Michael G. Kasolas, Trustee

WENDEL, ROSEN, BLACK & DEAN LLP

CERTIFICATE OF SERVICE

I, Pam Joakimson, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036.

On the date set forth below, I served a copy of the following document(s):

**NOTICE OF OPPORTUNITY FOR HEARING ON MOTION OF CHAPTER 7 TRUSTEE
FOR AUTHORITY, PURSUANT TO BANKRUPTCY RULES 9019(b) AND 2002(a), TO
SETTLE AND COMPROMISE AVOIDANCE ACTIONS UNDER OMNIBUS
PROCEDURES FOR NOTICE AND SETTLEMENT**

- [X] by ECF to the parties listed on the attached service list in accordance with the *Order Granting Motion to Reduce Notice Required for Future Notices Under Bankruptcy Rule 2002(a)* [Docket No. 437] who are ECF recipients.

AND

- [X] (by mail) to the parties listed on the attached service list in accordance with the *Order Granting Motion to Reduce Notice Required for Future Notices Under Bankruptcy Rule 2002(a)* [Docket No. 437] who are not ECF recipients by placing a true and correct copy thereof enclosed in a sealed envelope with first-class postage prepaid in a designated area for outgoing mail, addressed as set forth below. At Wendel, Rosen, Black & Dean, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California to the following recipients

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on March 10, 2017, at Oakland, California.

/s/ Pam Joakimson
Pam Joakimson

See attached service list.

**FOX ORTEGA ENTERPRISES, INC., DBA PREMIER CRU, DEBTOR
CASE NO. 16-40050**

**LIMITED NOTICE MAILING LIST
(Per Order Dated October 26, 2016)**

Twenty Largest Unsecured Creditors Who Have Timely Claims:

American Express Travel Rltd. Svcs. Co. Inc. c/o Becket and Lee LLP P.O. Box 3001 Malvern, PA 19355-0701
MSI Electronic Payments, LLC c/o T. Micah Dortch Cooper & Scully, P.C. 900 Jackson St., Suite 100 Dallas, Texas 75202
Universal Card, Inc. dba Merchant Services Thomas J. Stolp, Esq. Rogers, MacLeith & Stolp, LLP 10061 Talbert Avenue, Suite 390 Fountain Valley, CA 92708
Mun Hei Li aka Li Mun Hei c/o Raphael Cung, Esq. Callahan & Blaine, APLC 3 Hutton Centre Drive, 9th Floor Santa Ana, CA 92707
Philip B. Gruell, DDS 1717 Santa Clara Ave. Alameda, CA 94501
Lawrence Wai-Man Hui Bennett G. Young, Esq.; Christina L. Chen, Esq. Jeffer Mangels Butler & Mitchell Two Embarcadero Center, 5th Floor San Francisco, CA 94111
Michael D. Thomson 3111 Welborn St. #1604 Dallas, TX 75219
Richard Schmidt 2500 Hospital Drive Mountain View, CA 94040

Nikolai Khabibulin c/o Michael VanNiel Banker and Hostetler 127 Public Square, #2000 Cleveland, OH 44114
Michael Troise 401 E 89th Street New York, NY 10128
Bo Feng Room 605, Admiralty Centre Tower 2, 18 Harcourt Road HONG KONG
Brad Karp 653 Paseo de la Cuma Santa Fe, NM 87501
Robert Nilsson c/o Michael VanNiel 127 Public Square #2000 Cleveland, OH 44114-1214
39 Partners, LLC c/o Lane Powell, PC, Attn: Heidi Anderson 1420 Fifth Avenue, Suite 4200 P.O. Box 91302 Seattle, WA 98111-9402
Ross Bott 152 Poplar St Half Moon Bay, CA 94019
T. Szen Low c/o Akin Gump, et al Attn: David P Simonds 2029 Century Park East #2400 Los Angeles, CA 90067
Michael Collins c/o Gregory K. Jones Dykema Gossett LLP 333 S. Grand Ave. #2100 Los Angeles, CA 90071
Chun Yu Jonathan Polland Gordon & Polland LLP 235 Montgomery Street, Suite 701 San Francisco, CA 94104

Michael Podolsky
c/o Merle C. Meyers
Meyers Law Group
44 Montgomery St. #1010
San Francisco, CA 94104

Albert Hwang
Walnut Hill Capital LLC
101 California Street, Ste. 950
San Francisco, CA 94111

Counsel for Secured Creditors:

David J. Rapson, Esq.
Rapson Law Offices
318 San Carlos Ave.
Piedmont, CA 94611
Counsel for Community Bank of the Bay
(ECF Recipient)

Angela A. Velen, Esq.
Collection at Law, Inc.
3835 E. Thousand Oaks Blvd., #R-349
Westlake Village, CA 91362
Counsel for Advanced Restaurant Finance, LLC

Counsel for Debtor:

Stephen D. Finestone, Esq.
Law Offices of Stephen D. Finestone
456 Montgomery St., 20th Flr.
San Francisco, CA 94104
(ECF Recipient)

The United States Trustee:

Margaret H. McGee
Office of the U.S. Trustee
450 Golden Gate Ave, 5th Flr.
Suite #05-0153
San Francisco, CA 94102
(ECF Recipient)

Governmental Agencies Who Have Filed Claims

Franchise Tax Board
Bankruptcy Section MS A340
P.O. 2952
Sacramento, CA 95812-2952

Department of the Treasury
Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

State Board of Equalization
Special Operations Branch MIC:55
PO Box 942879
Sacramento CA 94279-0055

Chapter 7 Trustee of the Estate of John Eugene Fox

Marlene G. Weinstein, Trustee
1511 M Sycamore Ave., #259
Hercules, CA 94547

Charles P. Maher
Rincon Law, LLP
268 Bush Street, No. 333
San Francisco, CA 94104
(Counsel for Marlene G. Weinstein, Trustee)
(ECF Recipient)

Request for Special Notice

sfinestone@pobox.com

Stephen D. Finestone, Esq.
Law Offices of Stephen D. Finestone
456 Montgomery St., 20th Flr.
San Francisco, CA 94104

pjerry@cmprlaw.com

Firadis Ltd.
c/o Philip J. Terry, Esq.
Carle, Mackie, Power & Ross LLP
100 B Street, #400
Santa Rosa, CA 95401

iain@macfern.com

Todd McAllister
c/o Iain A. Macdonald, Esq.
Macdonald | Fernandez
221 Sansome Street, 3rd Flr.
San Francisco, CA 94104

mgwtrustee@mgwtrustee.com

Marlene G. Weinstein, Trustee
1511 M Sycamore Ave., #259
Hercules, CA 94547

byoung@jmbm.com

William Hui
c/o Bennett G. Young, Esq.
Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111-3824

mcharlson@velaw.com

Michael D. Thomson
c/o Michael L. Charlson
Vinson & Elkins LLP
555 Mission Street, Suite 2000
San Francisco, CA 94105

drapson@grclaw.com

Community Bank of the Bay
c/o David J. Rapson, Esq.
Rapson Law Offices
318 San Carlos Ave.
Piedmont, CA 94611

Theodore H. Latty
Hughes Hubbard & Reed LLP
350 South Grand Ave., Suite 3600
Los Angeles, CA 90071

Maggie.mcgee@usdoj.gov

Margaret H. McGee
Office of the U.S. Trustee
1301 Clay Street, #690N
Oakland, CA 94612

tsolp@rmslawyers.com

Universal Card Inc.
c/o Thomas J. Stolp, Esq.
Rogers, MacLeith & Stolp, LLP
10061 Talbert Ave., Suite 390
Fountain Valley, CA 92708

dhc@severson.com

Alvin W. Smith
c/o Donald H. Cram
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

jdaniel@vlaw.com

Michael D. Thomson
c/o Josiah M. Daniel, III
Vinson & Elkins LLP
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975

michael.lee@lee-li.com

Lee Qu. Shim
c/o Michael D. Lee, Esq.
Lee & Li, Attorneys
333 W. Santa Clara St., #610
San Jose, CA 95113

dmiller@steinlubin.com

Jian Dong
c/o Dennis D. Miller
Lubin Olson & Niewiadomski LLP
600 Montgomery St., 14th Floor
San Francisco, CA 94111

Eandphorn@comcast.net

Erling L. Horn
1029 Windsor Dr.
Lafayette, CA 94549-4145

Wesley E. Thompson
4050 El Molino Lane
Sebastopol, CA 95472

ecf@daryalaw.com

Hector Ortega
c/o Darya S. Druch, Esq.
One Kaiser Plaza, Ste. 1010
Oakland, CA 94612

mjsimon@simonlaw.com

PG&E
c/o Martha J. Simon, Esq.
Law Offices of Martha J. Simon
155 Montgomery Street, #1004
San Francisco, CA 94104

notifications@bkservicing.com

Daimler Trust
c/o Cheryle Williams, Agent
BK Servicing, LLC
PO Box 131265
Roseville, MN 55113-0011

lzeman@fyklaw.com

William Witte
c/o Larry S. Zeman
Fitzgerald Yap Kreditor LLP
16148 Sand Canyon Avenue
Irvine, CA 92618

albert.kennedy@tonkon.com

Raj Garg
c/o Albert Kennedy, Esq/Tonkon Torp.
1600 Pioneer Tower
888 SW Fifth Ave.
Portland, OR 97204

komal.chokshi@cooperscully.com

MSI Electronic Payments, LLC
c/o Komal Chokshi
Cooper and Scully, P.C.
235 Pine Street, Suite 1475
San Francisco, CA 94104

David Kelton
423 Rockingham
Los Angeles, CA 90049-2637

Russell Friedman
1726 Delancy Place
Philadelphia, PA 19103

Entries in bold NOT on ECF – Service by First Class Mail.

Case: 16-40050 Doc#: 516 Filed: 03/10/17 Entered: 03/10/17 15:39:25 Page 11 of 12

Luis So
3128 Geary Blvd.
San Francisco, CA 94118

bjones55@gmail.com
Brian R. Jones
2001 Sabrina Terrace
Corona Del Mar, CA 92625

Donald E. Thomas, Jr.
POB 755
Silver Spring, MD 20918

David Shalleck
44 Lower North Terrace
Tiburon, CA 94920

mmeyers@meyerslawgroup.com
Merle C. Meyers, Esq.
Meyers Law Group, P.C.
44 Montgomery St., #1010
San Francisco, CA 94104

chris.lindstrom@cooperscully.com
Merchant Services
c/o Christopher D. Lindstrom, Esq.
Cooper & Scully, PC
815 Walker, #1040
Houston, TX 77002

ekreditor@fyklaw.com
Danh Kuennemann + Kim Tang
c/o Eoin L. Kreditor, Esq.
Fitzgerald Yap Kreditor LLP
16148 Sand Canyon Ave.
Irvine, CA 92618

mark@chavezgertler.com
nance@chavezgertler.com
Podolsky+Class Action
c/o Mark A. Chavez/Nance F. Becker
42 Miller Ave.
Mill Valley, CA 94941

ecfcamb@aldredgepitel.com
U.S. Bank National Association
c/o Drew A. Callahan, Esq.
Aldridge Pite, LLP
POB 17933
San Diego, CA 92177-0933

Jeffrey L. Rosen
1905 Windfield Drive
Munster, IN 46321

mtnhdwy@charter.net
Craig M. Congdon
PO Box 120602
Big Bear Lake, CA 92315

lseidman@diamondmccarthy.com
Lon J. Seidman, Esq.
Diamond McCarthy LLP
489 Fifth Ave., 21st Flr.
New York, NY 10017

cburnett@nomoredebt.com
Scott W. Siegner
c/o Craig Burnett, Esq.
537 Fourth Street, Ste. A
Santa Rosa, CA 95401

bmarum@sheppardmullin.com
Chrisafis Nicola
c/o J. Barrett Marum
Sheppard, Mullin, et al.
501 W. Broadway, 19th Flr.
San Diego, CA 92101-3598

jkim@kellerbenvenuti.com
T. Szen Low
c/o Tobias S. Keller / Jane Kim
Keller & Benvenuti LLP
650 California Street, #1900
San Francisco, CA 94108

kpope@downeybrand.com
Albert Nassi
c/o Kelly L. Pope, Esq.
Downey Brand LLP
621 Capitol Mall, 18th Flr.
Sacramento, CA 95814

Advance Restaurant Finance, LLC
c/o Angela A. Velen, Esq.
3835 E. Thousand Oaks Blvd., #R-349
Westlake Village, CA 91362

darren.goldstein@flastergreenberg.com
Darren H. Goldstein
Flaster/Greenberg PC
1810 Chapel Avenue W.
Cherry Hill, NJ 08002

jessecacosta@gmail.com
Jesse Acosta
130 Barrow St., Apt. 219
New York, NY 10014

Joel F. Citron, Esq.
Citron & Citron
3420 Ocean Park Blvd., #3030
Santa Monica, CA 90405

Amir Arbisser
644 Beach Road
Sarasota, FL 34242

Micah.Dortch@cooperscully.com
MSI Electronic Payments
c/o T. Micah Dortch
Cooper & Scully, PC
900 Jackson Street, #100
Dallas, TX 75202

lyun@sheppardmullin.com
Chrisafis Nicola
c/o Lisa S. Yun
Sheppard, Mullin, et al.
501 W. Broadway, 19th Flr.
San Diego, CA 92101-3598

klumplaw@gmail.com
Pedro Solis Camara
c/o Gina R. Klump, Esq.
17 Keller Street
Petaluma, CA 94952

jim@elkship.com
Malik Hasan, M.D.
c/o James A. Shepherd, Esq.
Elkington Shepherd LLP
409 - 13th Street, 10th Flr.
Oakland, CA 94612

Entries in bold NOT on ECF – Service by First Class Mail.

Case 16-40050 - Service by ECF Notice Filed 03/10/17 Entered: 03/10/17 15:39:25 Page 12 of 12