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Attorneys for Michael G. Kasolas, Trustee

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

**DECLARATION OF MARK S. BOSTICK
IN SUPPORT OF MOTION FOR ORDER
APPROVING COMPROMISE WITH
EAST WEST BANK**

1. I am a partner with the law firm of Wendel, Rosen, Black and Dean, LLP, attorneys for trustee Michael Kasolas ("Trustee"). If called upon to testify regarding the facts set forth herein, I could competently testify to those facts based upon my own personal knowledge, except for those matters based upon my belief, which I believe to be true.

1. I submit this declaration in support of the Trustee's *Motion for Order Approving Compromise with East West Bank* (the "Motion") filed herewith.

2. Attached as Exhibit 1 to the Motion is a copy of the Trustee's *Notice and Opportunity for Hearing on Trustee's Motion for Order Approving Compromise with East West Bank* (the "Notice"), which was served on those creditors and interested parties entitled to notice.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement Agreement and Release executed by the Trustee and East West Bank.

4. The Debtor's records reflect that commencing in December 2010, the debtor paid John Fox's mortgage payments to East West Bank in the total sum of \$479,196.91; of that amount \$371,764.00 was paid within four years of the petition filing date and \$107,522.15 was paid within 5 – 7 years before the filing date.

5. The \$397,733.44 settlement represents a percentage recovery of 90 percent of funds transferred within 4 years of the filing date (i.e. \$344,587.00) plus about 50 percent of funds transferred within 5-7 years before the filing date (i.e. \$53,146.44); or a recovery of 83 percent on the entire claim.

6. Under the Trustee's counsel's contingency fee agreement, if the matter is tried and appealed, legal fees would increase by 15%, and litigation expenses are likely to exceed \$9,600, or 2 percent of the claim. Therefore, the fees and expenses of litigating the claim could well exceed the 17% discount of the claim.

7. In addition, East West Bank is waiving its claim, the value of which is unknown at this time, but could be at least \$20,000 (i.e. based on a potential dividend of 5%).

8. For these reasons and for those stated in the Notice, the Trustee and I believe that the proposed compromise is fair and equitable and in the best interest of creditors and the estate.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on April 24, 2017 at Oakland, California.

/s/ Mark S. Bostick
Mark S. Bostick

EXHIBIT A

SETTLEMENT AND RELEASE AGREEMENT

*Fox Ortega Enterprises, Inc., dba Premier Cru, Debtor,
Case No. 16-40050-WJL*

This SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into on April 20, 2017, between Michael G. Kasolas, trustee ("Trustee") of the Chapter 7 bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru, debtor ("Debtor"), and East West Bank. This Agreement is based upon the following facts, intentions and understandings of the Trustee and East West Bank (the "Parties"):

RECITALS

A. On January 8, 2016, the Debtor filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code, and an order for relief was entered on that date (the Filing Date), commencing Case No.16-40050-WJL (the "Bankruptcy Case"). Thereafter, the Trustee was appointed as the Chapter 7 trustee of the Debtor's estate.

B. A dispute has arisen between the Parties concerning the avoidability and recoverability of payments by the Debtor to East West Bank from December 2010 through December 2015 in the total amount of \$479,196.91 (the "Transfers") made on account of a mortgage obligation of John Fox, the Debtor's former chief executive officer.

C. The Trustee contends that the Transfers are avoidable under 11 U.S.C. §548(a) and Cal Civil Code §3439 under the Trustee's strong-arm powers under 11 U.S.C. §544 (b). East West Bank disputes the Trustee's contentions.

D. The Parties wish to resolve their disputes without further cost, risk or delay and agree to settle on the terms set forth below.

In consideration of the promises and covenants herein contained, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Payment. In consideration of and subject to the covenants and conditions herein, East West Bank will pay the Trustee the sum of \$397,733.44 (the "Settlement Payment") by no later than 7 days from the date of entry of an order by the Bankruptcy Court approving this compromise. The Payment shall be made payable to "Michael G. Kasolas, Trustee" and be delivered to the Trustee's attorneys, care of Mark S. Bostick, Wendel, Rosen, Black & Dean, LLP, 1111 Broadway, 24th Floor, Oakland, California 94607.

2. Mutual Releases. In consideration of the mutual promises and covenants contained in this Agreement and except as otherwise provided herein, the Parties, individually and in their representative capacities, and on behalf of all predecessors, successors, agents, assigns and all other persons or entities who may claim through or on behalf of any of them, hereby release, remise, acquit and forever, absolutely and unconditionally discharge each other

and each and all of their agents, partners, members, attorneys, affiliated entities, representatives, heirs, devisees, assigns, receivers, executors, trustees, settlors, transferees, predecessors, successors and officers, directors, shareholders and members, of and from any and all actions, causes of actions, claims, demands, rights, debts, obligations, liabilities, rights, contracts, duties, damages, costs, attorneys' fees, expenses or losses of every kind, nature, character, or description whatsoever, by whomever asserted, whether known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, arising from any matter, cause or thing, whatsoever occurred, done or omitted, including, without limitation, any matters arising out of the Bankruptcy Case and any claims arising out of or related to the Transfers (the "Released Claims"). The Parties further covenant not to commence or prosecute, or aid in commencing or prosecuting, any Released Claims against anyone.

3. Release of Unknown Claims. With the exception of claims expressly preserved by this Agreement, it is intended that this Agreement shall be effective as a bar to each and every action, cause of action, claim, loss and damage whether now known or unknown, foreseen or unforeseen, suspected or unsuspected that any party may have against any other party, and the Parties expressly waive any and all rights and claims under Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

4. Bankruptcy Court Approval. This agreement is subject to Bankruptcy Court approval.

5. Waiver and Release of Claims. East West Bank waives and releases all claims that it may assert in the Bankruptcy Case, including all filed claims, administrative claims, and claims pursuant to 11 U.S.C. §502(h).

6. No Admission of Liability. This Agreement was negotiated, in part, to avoid the time, effort and cost of litigation. This Agreement was never intended and shall never constitute nor be construed as an admission of any liability or wrongdoing by either Party.

7. Consultation with Counsel. The Parties have consulted with their respective legal counsel before entering into this Agreement and have read, understood, and voluntarily agreed to execute this Agreement with full knowledge that it shall become a binding and enforceable contract.

8. Entire Agreement. This Agreement contains the entire agreement among the Parties with respect to the matters referred to in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, and there are no representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No delay or omission on the part of either Party in exercising any right hereunder will operate as a waiver of such right or any other right. A waiver

on one occasion will not be construed as a bar to or a waiver of any right on any further occasion.

9. Modification. No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by all the Parties that would be affected by the modification or amendment.

10. No Other Representations or Warranties. The Parties acknowledge that no representations or warranties of any kind have been made by anyone to induce the signing of this Agreement other than as set forth in this Agreement.

11. Ownership of Claims. The Parties represent and warrant that they have not assigned, transferred or otherwise encumbered any of the claims, demands, causes of action or interest herein settled, released or transferred and that they are fully entitled to enter into this Agreement.

12. Attorneys' Fees. If any action or proceeding is brought to enforce any of this Agreement's terms and conditions, the prevailing party in any such action or proceeding is entitled to recover all of the attorneys' fees and costs actually incurred by the prevailing party. As used in this Agreement, "attorneys' fees" are defined, to the extent allowed by law, as the full and actual cost of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by the attorneys performing such services and shall not be limited to "reasonable attorneys' fees" as defined in any federal or state statute or rule of court.

13. Jurisdiction and Interpretation. The Bankruptcy Court retains exclusive jurisdiction over this Agreement's compliance, enforcement and interpretation, including the power to fix and award attorney's fees in accordance with Paragraph 12. Agreement provisions have been fully negotiated by the Parties and no statute or rule of interpretation requiring strict construction against the contract's drafter shall apply to this Agreement. East West Bank waives any and all interpretive presumptions that may otherwise be applied to or against the party drafting this agreement, including Section 1654 of the California Civil Code. This Agreement shall be interpreted and governed by and under the laws of the State of California and pursuant to applicable provisions of the United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure and Bankruptcy Local Rules.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which once a counterpart has been signed and delivered by each of the Parties will be deemed a duplicate original. Copies of executed originals shall be deemed an original for all purposes.

15. Severability. In the event any provision of this Agreement is held to be void, voidable or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

16. Warranties. Each party hereto represents and warrants that (a) such party has read and understands this Agreement; (b) such party has had this Agreement fully explained to that party by its counsel; (c) such party is fully aware of the contents of this Agreement and its legal effect, including, without limitation the meaning and effect of the waiver of any statutory

provisions, decisional law, regulations, orders or otherwise that would preclude such party's release from extending to matters that such party did not know or suspect to exist in its favor at the time of executing this Agreement; (d) such party has entered into this Agreement without threat, duress, coercion, or undue influence, and without reliance on the representation of any other party; and (e) such party is duly authorized to enter into this Agreement.

17. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent by electronic mail and United States mail or by personal delivery (by overnight courier or otherwise), and addressed as follows:

If to Trustee:

Michael G. Kasolas
Trustee of the Chapter 7 Bankruptcy Estate of Fox
Ortega Enterprises, Inc.
P.O. Box 26650
San Francisco, CA 94126
Tel: (415) 504-1926
Email: trustee@kasolas.net

With a copy to:

Mark S. Bostick, Esq.
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 04607
Tel: (510) 834-6600
Email: mbostick@wendel.com

If to East West Bank:

Echo Yang, Esq.
Senior Legal Counsel East West Bank
135 N. Los Robles Ave., 3rd Floor
Pasadena, CA 91101
Tel: (626) 768-6386
Echo.Yang@eastwestbank.com

18. Effective Date. This Agreement shall be effective and binding as of April 20, 2017.

19. Execution of Further Documents. From time to time, at the request of either party and without further consideration, at the sole expense of the party by whom the request is made, the Parties hereto hereby agree to execute and deliver any and all further documents and instruments, and to do all acts, as anyone of the Parties to this Agreement reasonably request, that may be necessary or appropriate to fully implement and carry out the provisions of this Agreement.

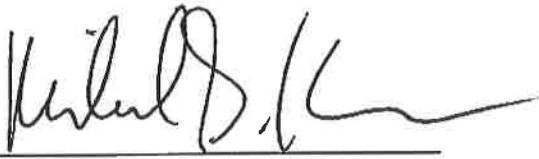
20. Expenses. The Parties will bear their own attorneys' fees, expenses and costs incurred with respect to (1) the Transfers, (2) the preparation of this Agreement, and (3) any other matters which transpired prior to the date of execution of this Agreement, including, but not limited to any fee, cost, or expense arising out of or related to the disputes between the Parties.

21. Title and Captions. Titles and captions contained in this Agreement are inserted for convenience and reference, and may not be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions.

IN WITNESS WHEREOF, the Parties and each of them have executed this Agreement intending to be fully and legally bound by its terms, effective as of the Effective Date.

AGREED:

Dated: 4/20/17


MICHAEL G. KASOLAS

Trustee of the Chapter 7 Bankruptcy Estate of Fox Ortega Enterprises, Inc.

Dated: _____

EAST WEST BANK

By: _____

Echo Yang, Esq.
Attorney for East West Bank

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IN WITNESS WHEREOF, the Parties and each of them have executed this Agreement intending to be fully and legally bound by its terms, effective as of the Effective Date.

AGREED:

Dated: _____

MICHAEL G. KASOLAS

Trustee of the Chapter 7 Bankruptcy Estate of Fox Ortega Enterprises, Inc.

Dated: 4/21/2017

EAST WEST BANK

By: _____

Echo Yang
Echo Yang, Esq.

Attorney for East West Bank