

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 AND OPPORTUNITY FOR  
HEARING ON MOTION FOR ORDER  
APPROVING COMPROMISE WITH EAST  
WEST BANK**

TO: THE TWENTY LARGEST CREDITORS, PARTIES REQUESTING SPECIAL NOTICE, THE U.S. TRUSTEE, THE DEBTOR AND OTHER INTERESTED PARTIES:

**PLEASE TAKE NOTICE THAT** Michael G. Kasolas (“Kasolas” or “Trustee”), the chapter 7 trustee for the bankruptcy estate of above-captioned debtor (“Debtor”), has filed a motion under Bankruptcy Rule 9019 (the “Motion”) for an order approving his compromise with East West Bank. The Motion is based on the facts and merits summarized below.

**The Compromise Terms**

Under the proposed compromise, the trustee will release East West Bank from all claims in exchange for its payment of \$397,733.44 plus its waiver of all claims against the Debtor’s estate.

**Factual Background and Merits of Compromise**

On January 8, 2016, the Debtor filed its voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the Filing Date”). Kasolas is the duly appointed trustee in the case.

From December 2010 through December 2015, the Debtor paid East West Bank monthly payments totaling \$479,196.91 (the “Transfers”) on account of a mortgage note owed by John Fox, the Debtor’s chief executive officer, secured by his residence. The Trustee contends that he may avoid the Transfers are avoidable under 11 U.S.C. §548(a) and Cal Civil Code §3439 et seq. East West Bank disputes the Trustee’s contentions.

The Trustee submits that the proposed compromise is fair and equitable and in the best interests of creditors and the estate under the factors set forth in *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986), because: (1) it enables the estate to recover 90% of the Transfers made within 4 years of the Filing Date plus about 50% of the Transfers made within 5-7 years before the Filing Date, for a total blended average of 83% recovery on all Transfers made within 7 years of the Filing Date - without requiring further litigation expense, risk or delay; (2) the 17% difference between the claim and the settlement amount could well be less than the cost to litigate the claim; (3) the settlement eliminates any delay or risk of non-recovery.

**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 states:

*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 (i.e. by May 15, 2017.*

*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 must be served on the undersigned and filed with the Clerk of the United States Bankruptcy Court, Northern District of California, Oakland Division, 1300 Clay Street, Room 300, Oakland, CA 94612, or in the case via Pacer.

**PLEASE TAKE FURTHER NOTICE** that the Motion and supporting declaration of Mark S. Bostick together with a copy of the parties' settlement agreement are filed and may be obtained from the Bankruptcy Court Clerk, through Pacer at <https://ecf.canb.uscourts.gov/>, or upon request from the undersigned.

Dated: April 24, 2016  
[Date of Mailing]

/s/ Mark S. Bostick  
Mark S. Bostick (Bar No. 111241)  
WENDEL, ROSEN, BLACK & DEAN, LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036  
Tel: (510) 834-6600  
Email: [mbostick@wendel.com](mailto:mbostick@wendel.com)  
Attorneys for Michael G. Kasolas, Trustee

**CERTIFICATE OF SERVICE**

I, Jeanne Rose, 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 AND OPPORTUNITY FOR HEARING ON MOTION FOR  
ORDER APPROVING COMPROMISE WITH EAST WEST BANK**

**[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 April 24, 2017, at Oakland, California.

\_\_\_\_\_  
*/s/ Jeanne Rose*  
JEANNE ROSE

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., 20<sup>th</sup> Flr.  
San Francisco, CA 94104  
(ECF Recipient)

**The United States Trustee:**

Margaret H. McGee  
Office of the U.S. Trustee  
450 Golden Gate Ave, 5<sup>th</sup> 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](mailto:sfinestone@pobox.com)

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

[pjterry@cmprlaw.com](mailto:pjterry@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](mailto:iain@macfern.com)

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

[mgwtrustee@mgwtrustee.com](mailto:mgwtrustee@mgwtrustee.com)

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

[byoung@jmbm.com](mailto: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](mailto: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](mailto: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](mailto:Maggie.mcgee@usdoj.gov)

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

[tstolp@rmslawyers.com](mailto:tstolp@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](mailto: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](mailto: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](mailto: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](mailto:dmiller@steinlubin.com)

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

[Eandphorn@comcast.net](mailto: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](mailto:ecf@daryalaw.com)

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

[mjsimon@simonlaw.com](mailto: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

[notices@bkservicing.com](mailto:notices@bkservicing.com)

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

[lzeman@fyklaw.com](mailto: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](mailto: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](mailto: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 – Service by ECF Noticing

017558.0052\4476965.1

Case: 16-40050 Doc#: 539 Filed: 04/24/17 Entered: 04/24/17 12:28:47 Page 9 of 10

Luis So  
3128 Geary Blvd.  
San Francisco, CA 94118

[bjones55@gmail.com](mailto: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](mailto:mmeyers@meyerslawgroup.com)  
Merle C. Meyers, Esq.  
Meyers Law Group, P.C.  
44 Montgomery St., #1010  
San Francisco, CA 94104

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

[ekreditor@fyklaw.com](mailto: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](mailto:mark@chavezgertler.com)  
[nance@chavezgertler.com](mailto:nance@chavezgertler.com)  
Podolsky+Class Action  
c/o Mark A. Chavez/Nance F. Becker  
42 Miller Ave.  
Mill Valley, CA 94941

[ecfc anb@aldridgepitelcom](mailto:ecfc anb@aldridgepitelcom)  
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](mailto:mtnhdwy@charter.net)  
Craig M. Congdon  
PO Box 120602  
Big Bear Lake, CA 92315

[lseidman@diamondmccarthy.com](mailto:lseidman@diamondmccarthy.com)  
Lon J. Seidman, Esq.  
Diamond McCarthy LLP  
489 Fifth Ave., 21<sup>st</sup> Flr.  
New York, NY 10017

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

[bmaram@sheppardmullin.com](mailto:bmaram@sheppardmullin.com)  
Chrisafis Nicola  
c/o J. Barrett Marum  
Sheppard, Mullin, et al.  
501 W. Broadway, 19<sup>th</sup> Flr.  
San Diego, CA 92101-3598

[jkim@kellerbenvenuti.com](mailto: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](mailto:kpope@downeybrand.com)  
Albert Nassi  
c/o Kelly L. Pope, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> 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](mailto:darren.goldstein@flastergreenberg.com)  
Darren H. Goldstein  
Flaster/Greenberg PC  
1810 Chapel Avenue W.  
Cherry Hill, NJ 08002

[jessecacosta@gmail.com](mailto: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](mailto: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](mailto:lyun@sheppardmullin.com)  
Chrisafis Nicola  
c/o Lisa S. Yun  
Sheppard, Mullin, et al.  
501 W. Broadway, 19<sup>th</sup> Flr.  
San Diego, CA 92101-3598

[klumplaw@gmail.com](mailto:klumplaw@gmail.com)  
Pedro Solis Camara  
c/o Gina R. Klump, Esq.  
17 Keller Street  
Petaluma, CA 94952

[jim@elkship.com](mailto:jim@elkship.com)  
Malik Hasan, M.D.  
c/o James A. Shepherd, Esq.  
Elkington Shepherd LLP  
409 – 13<sup>th</sup> Street, 10<sup>th</sup> Flr.  
Oakland, CA 94612

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

Case 16-40050 - Doc# 539 Filed 04/24/17 Entered: 04/24/17 12:28:47 Page 10 of 10