

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

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

**APPLICATION FOR ORDER FOR
PRODUCTION OF RECORDS AND
APPEARANCE AT EXAMINATION FOR
BURTON PROPP, CPA, PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004**

TO: THE HONORABLE WILLIAM J. LAFFERTY, III, THE DEBTOR, THE UNITED STATES TRUSTEE, AND BURTON PROPP, CPA:

Michael G. Kasolas, the duly appointed and acting trustee ("Trustee") of the estate of Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor"), hereby applies for an order under Bankruptcy Rule 2004 directing Burton Propp, CPA ("Propp"), to appear for examination under oath before a notary public and to produce the documents identified in the attached **Exhibit A**.

The examination is necessary to enable the Trustee to obtain information relating to the following facts and circumstances:

- a) Propp was the Debtor's accountant;
- b) Propp has delayed forwarding copies of the Debtor's tax returns to the Trustee;
- c) Propp is related to a person who received over \$50,000.00 from the sale of real property of the estate located at 1011 University Ave., Berkeley, CA; and

1 d) Propp may have information about the way in which the Debtor or John Fox
2 concealed their fraud from creditors.

3 WHEREFORE, the Trustee requests that an order be entered directing Propp to appear for
4 examination at the law offices of Wendel, Rosen, Black & Dean LLP, 1111 Broadway, 24th Floor,
5 Oakland, California 94607, not less than 10 days from the date he is served with a subpoena and to
6 produce the documents as described in the order granting this application.

7 DATED: May 4, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

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9 By: /s/ Mark S. Bostick

10 Mark S. Bostick
11 Attorneys for Trustee
12 Michael G. Kasolas
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EXHIBIT A
(DOCUMENT PRODUCTION)

Pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure, Burton Propp, CPA (“Propp”) is directed to produce for inspection and copying at Wendel, Rosen, Black & Dean, LLP, 1111 Broadway, 24th Floor, Oakland, California 94607 the following documents and other tangible things described below.

DEFINITIONS

A. As used herein, the term “DOCUMENTS” includes all “writings” as that term is defined in the Federal Rules of Evidence, Rule 1001, as follows:

“WRITING” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

Without limitation to the foregoing, the term WRITING shall also include all correspondence, including email correspondence, and notes, including written notes and computer notes.

Without limitation to the foregoing, the term “DOCUMENTS” shall also include all data stored in electronic form, and shall also include any copy that differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or other variations.

B. As used herein, the term “PREMIER CRU” refers to the debtor, Fox Ortega Enterprises, Inc., and its officers, directors and agents, including John Fox, Hector Ortega and Saul Gevertz.

C. As used herein, the term TRUSTEE refers to Michael G. Kasolas, trustee of the PREMIER CRU bankruptcy estate.

D. As used herein, the term “ANY” includes the term “ALL” and vice versa.

E. As used herein, the terms “YOU” or “YOUR” shall mean Burton Propp or any entity or person holding property for the benefit of Burton Propp.

INSTRUCTIONS

1. YOU must furnish ALL DOCUMENTS within YOUR personal custody and control, as well as those that are reasonably available to YOU, including DOCUMENTS and information in the possession of YOUR attorneys, agents, employees, representatives and investigators.

2. If YOU cannot respond in full, respond as completely as possible. Incomplete responses must be accompanied by an explanation of reasons why YOU are unable to respond completely and a statement of whatever DOCUMENTS YOU do possess with respect to each request.

3. DOCUMENTS should be produced in the original files, folders, binders, or other containers in which the DOCUMENTS are maintained in the ordinary course of business.

4. If ANY DOCUMENT falling within ANY of the categories set forth below is excluded from production on the grounds of an objection or privilege, YOU shall include a list of the DOCUMENTS so withheld from production, identifying each DOCUMENT by date, name, title and address of sender and the address, name and title of every other PERSON to whom a copy of the DOCUMENT was sent, the general character of the DOCUMENT and the grounds on which you believe the DOCUMENT to be exempt from production.

5. If at ANY time YOU relinquished possession, custody or control of ANY DOCUMENT falling within ANY category set forth below, or destroyed ANY DOCUMENT then YOU shall identify each destroyed DOCUMENT and as to existing DOCUMENTS YOU shall identify the persons who currently have custody, possession or control of them.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1: ALL DOCUMENTS between YOU and PREMIER CRU relating to its conduct, liabilities, assets and transactions.

REQUEST NO. 2: ALL drafts of federal and state tax returns and ALL filed federal and state tax returns for PREMIER CRU from 1990 - 2017, that you have not previously provided to the TRUSTEE.

1 **REQUEST NO. 3.** ALL DOCUMENTS provided to YOU by John Fox or PREMIER
2 CRU for YOUR use in preparing PREMIER CRU'S federal and state tax returns for each tax year
3 from 1990 – 2017.

4 **REQUEST NO. 4:** ALL DOCUMENTS relating to YOUR working notes and
5 comments used for YOUR preparation of PREMIER CRU's federal and state tax returns for the
6 years 1990 - 2017.

7 **REQUEST NO. 5.** ALL engagement letters between YOU and PREMIER CRU.

8 **REQUEST NO. 6:** ALL DOCUMENTS or records in YOUR possession pertaining to
9 PREMIER CRU'S business affairs and transactions.

10 **REQUEST NO. 7:** ALL other DOCUMENTS or records in YOUR possession
11 pertaining to PREMIER CRU.

12 **REQUEST NO. 8:** ALL DOCUMENTS relating to any transfers of property, including
13 cash or cash equivalents, by or between YOU or YOUR family members and PREMIER CRU or
14 its affiliates.
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CERTIFICATE OF SERVICE

I, Jeanne Rose, declare:

I am a citizen of the United States and am employed in the County of Alameda. I am over the age of 18 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 out below, I caused to be served the following document(s):

**APPLICATION FOR ORDER FOR PRODUCTION OF RECORDS
AND APPEARANCE AT EXAMINATION FOR BURTON PROPP, CPA,
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

**[PROPOSED] ORDER AUTHORIZING EXAMINATION AND PRODUCTION OF
RECORDS OF BURTON PROPP, CPA, PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

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.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 4, 2017, at Oakland, California.

/s/ Jeanne Rose
JEANNE ROSE

Burton Propp, CPA
1939 Harrison St
Oakland, California 94612

Office of the United States Trustee
450 Golden Gate Ave., 5th Floor
Suite 05-0153
San Francisco, CA 94102

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