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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 MICHAEL G.
KASOLAS IN SUPPORT OF
APPLICATION FOR ORDER
AUTHORIZING PAYMENT OF
ADMINISTRATIVE FEES AND EXPENSES
INCURRED TO ADMINISTER CLASS
SETTLEMENT AND AUTHORIZING
PAYMENT OF PREVIOUSLY ALLOWED
PROFESSIONAL FEES**

Date: July 12, 2017
Time: 2:00 p.m.
Place: 1300 Clay Street
Courtroom: 220
Oakland, CA 94612

I, Michael G. Kasolas, declare:

1. I am the duly appointed and acting trustee of the above-captioned chapter 7 bankruptcy estate. The following facts are true of my own personal knowledge and if called upon to do so, I would and could competently testify thereto, except as to those matters that are alleged upon information and belief and as to those matters, I believe them to be true.

1. The debtor's case was commenced by its voluntary filing of a petition for relief

1 under chapter 7 on January 8, 2016.

2 2. On July 29, 2016, this Court entered an order in Adversary Proceeding No. 16-
3 04033 (*Podolsky v. Kasolas*) and in the main case approving the Stipulation of Settlement [Doc
4 #316-1] (“Stipulation”) between over 4,000 creditors claiming ownership rights in over 78,000
5 bottles of wine held at the debtor’s warehouse and the trustee. A true and correct copy of the
6 Stipulation is attached hereto as **Exhibit A**.

7 3. On September 2, 2016, an order was entered authorizing me to sell the debtor’s
8 wine inventory to Spectrum Wine Auctions (“Spectrum”) and to disburse the proceeds thereof
9 according to the terms and formulae set forth in the Stipulation [Doc No. 397] (the “Sale Order”).

10 4. The sale to Spectrum was completed on or about January 23, 2017, yielding net
11 proceeds, after allowed adjustments, in the total sum of \$3,449,396.00 (the “Proceeds”).¹ I filed
12 my Report of Sale on February 7, 2017 [Doc. No. 513].

13 5. I administered the Stipulation according to the bottle-by-bottle formulae set forth in
14 the Stipulation by [1] deducting “Administrative Deductions” as defined under the Stipulation and
15 as approved by class counsel; [2] distributing the net Proceeds between the estate and the class; [3]
16 deducting 25% of the Proceeds distributed to the class to be held for class counsel’s fees and
17 expenses as provided under the Stipulation; [4] allocating the balance of class Proceeds among
18 each sub-class; determining all claims of each class member against each subclass based on
19 criteria set forth in the Stipulation.

20 6. On March 9, 2017, I served a Notice of Proposed Distribution to Class Members
21 (the “Notice”) as required under the Stipulation, which set forth the amount of Proceeds, the
22 amount of the administrative deductions, the Proceeds allocated between the class and the estate,
23 the amount allocated for class counsel and each sub-class, the aggregate amount of claims against
24 each sub-class, the dividend each sub-class will yield, and the total amount proposed to be
25

26 _____
27 ¹ These proceeds include sale proceeds from recovered from bottles allocated to Ross Bott, who
28 was the sole class member opting out the Stipulation of Settlement. The trustee’s compromise
with Bott was approved by order entered on October 25, 2016 [Doc. No. 438].

distributed to each class member and the documentary basis therefor.² A copy of the sample form of Notice served on all class members is attached hereto as **Exhibit B**.³

7. The Notice provided, pursuant to ¶19 of the Stipulation, that any class member wishing to object to the proposed distribution was required to file an objection or request for arbitration within 21 days of service of the Notice or its right to object would be deemed waived and forever barred.

8. No timely objection or request for arbitration was filed or served in response to the Notice.

9. On or about April 28, 2017, I disbursed \$982,025.00 to class members according to the formulae and terms of the Stipulation and as provided in the Notice.

10. This application seeks authority to disburse payments from the administrative deductions to the administrative claimants specified in the Stipulation for their time and expenses incurred as follows:

Claimant	Time	Fees	Expenses	Total
Michael G. Kasolas	128.00+	\$55,000.00	0.00	\$55,000.00
BMC Group, Inc.	115.10	\$9,794.00	\$12,270.13	\$22,064.13
Brian Nishi	149.60	\$18,700.00	0.00	\$18,700.00

11. Attached hereto as **Exhibit C** are true and correct copies of my time records pertaining to class administration services. As indicated on my time records, I spent 128.00 hours administering the class settlement at the rate of \$450.00 per hour for total fees of \$57,600.00 in fees. Pursuant to paragraph 16(b) of the Stipulation, the amount of my fees and expenses that may be treated as Administrative Deductions is limited to \$55,000.00 and my request is limited to that amount.

12. I submitted these time records for approval to Class Counsel as part of my

² The Notice specified the distribution amount to the particular class member receiving the Notice.

³ Each Notice was custom-tailored to each class member.

1 Statement of Administrative Deductions Under Section 16 of the Stipulation of Settlement, which
2 was approved by Class Counsel on February 27, 2017 (the “Statement of Administrative
3 Deductions”). A true and correct copy of the Statement of Administrative Deductions as approved
4 by Class Counsel is attached hereto as **Exhibit D**.

5 13. On April 12, 2017, the secured claim of Community Bank of the Bay in the amount
6 of about \$1,300,000.00 was paid in full from the sale proceeds of 1011 University Avenue,
7 Berkeley, California, on which the bank held a cross-collateralized deeds of trust.⁴

8 14. On or about May 16, 2017, I paid Advance Restaurant Finance (“ARF”)
9 \$70,000.00 in full satisfaction of its secured claim for about \$150,000.00 pursuant an order
10 approving compromise entered on May 9, 2017 (Docket No. 550).

11 15. As a consequence of these events, there are currently no liens or encumbrances
12 asserted against the assets of the estate of which I am aware.

13 16. I am currently holding \$1,638,952.95 in proceeds of property of the estate. I have
14 disbursed \$2,437,964.52, including \$1,309,367.00 to the class and class counsel, pursuant to prior
15 Court orders.

16 17. Of the funds I currently hold, about \$462,000.00 derive from avoidance claim
17 settlements.

18 18. With the exception of certain wine held overseas, all tangible assets of the estate
19 have been liquidated.

20 19. Other assets of the estate include the debtor’s customer list and avoidance claims.
21 While it is still premature to estimate the net value of the estate’ unliquidated avoidance claims, I
22 am informed that their value could range from Three to Eight Million Dollars.

23
24
25
26
27 ⁴ The real property formerly leased by the debtor was owned and sold by 1011 University LLC, a
28 former affiliate of the debtor, to the City of Berkeley for \$6,650,000.

Michael G. Kasolas