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8 Attorneys for Michael G. Kasolas, Trustee

9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 In re  
13 FOX ORTEGA ENTERPRISES, INC., dba  
14 PREMIER CRU

15 Debtor.

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF  
APPLICATION FOR ORDER  
AUTHORIZING EMPLOYMENT OF  
DIAMOND McCARTHY LLP AS  
SPECIAL LITIGATION COUNSEL FOR  
CHAPTER 7 TRUSTEE**

16 I, Kathy Bazoian Phelps, declare:

17 1. The matters stated herein are true and correct and are within my personal  
18 knowledge or information provided to me by other attorneys or employees of Diamond McCarthy,  
19 LLP and if called upon to testify as a witness, I could and would testify competently thereto.

20 2. I am an attorney duly licensed to practice before the courts of the State of  
21 California and the United States District Court for the Northern District of California. I am a  
22 partner of the law firm of Diamond McCarthy LLP ("Diamond McCarthy"), and as such am  
23 authorized to make this Declaration on behalf of Diamond McCarthy. I specialize in insolvency,  
24 bankruptcy, fiduciary representation and bankruptcy litigation.  
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1           3.       This Declaration is made in support of the *Application For Order Authorizing*  
2 *Employment Of Diamond McCarthy LLP As Special Litigation Counsel for Chapter 7 Trustee* (the  
3 “Application”), filed contemporaneously herewith. The Application is filed by Michael G.  
4 Kasolas, the Chapter 7 Trustee (the "Trustee") appointed in the bankruptcy case of Fox Ortega  
5 Enterprises Inc. dba Premier Cru (“Premier Cru” or the “Debtor”).

6           4.       The Trustee advised that he wishes to employ special litigation counsel to  
7 investigate potential claims on behalf of the Debtor’s estate (the “Estate”) and to advise the  
8 Trustee with respect to the various legal considerations and decisions that will arise in connection  
9 with the investigation and prosecution of such claims. Diamond McCarthy has been reviewing the  
10 Debtor’s background as reflected in the Court’s docket; reviewing available material; and  
11 investigating the claims in connection with a possible engagement.

12           5.       The details regarding the qualification of Diamond McCarthy are provided in the  
13 application in addition to Diamond McCarthy’s website [www.diamondmccarthy.com](http://www.diamondmccarthy.com). It is  
14 anticipated that I will serve as the lead counsel in this engagement. I have more than 25 years of  
15 experience as a lawyer in bankruptcy law, fiduciary representation and fraud litigation, as well as  
16 serving as a fiduciary myself. My practice largely includes representing trustees and receivers, and  
17 representation of litigants and parties in interest in bankruptcy and receivership cases and other  
18 insolvency proceedings. I am particularly knowledgeable about the administration of Ponzi  
19 scheme cases and has extensive litigation experience in a claims arising in these types of cases,  
20 including fraudulent transfer litigation. I am the co-author of *The Ponzi Book: A Legal Resource*  
21 *for Unraveling Ponzi Schemes*. My detailed Biography is attached hereto as **Exhibit “1.”**

22           6.       The duties to be performed by Diamond McCarthy in this matter include:

- 23                   a)       Investigation of the Estate's potential litigation claims against  
24                               transferees of net winner fraudulent transfers claims;  
25                   b)       Negotiating a resolution of, or filing and prosecuting potential  
26                               claims (“Contingent Litigation Claims”), if any such claims are  
27                               filed;  
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1 c) Making court appearances on behalf of the Trustee if required or  
2 warranted as part of its special litigation counsel role; and

3 7. Subject to this Court's approval, Diamond McCarthy will be employed on a  
4 contingency basis under 11 U.S.C. §328(a), subject to the terms and conditions specified below  
5 and approval by the Court.

6 8. Except for the potential reimbursement of out of pocket expenses as described  
7 below, Diamond McCarthy will be compensated for its services only when the Trustee obtains a  
8 Recovery,<sup>1</sup> either through settlement, judgment, reduction or elimination of claims against the  
9 Estate, or otherwise.

10 9. The Contingency Fee shall be paid as follows:

11 a) In the event the Trustee receives a Recovery pursuant to a settlement,  
12 judgment or otherwise at any time before Commencement of Trial,<sup>2</sup>  
13 Diamond McCarthy shall be entitled to (1) forty percent (40%) of all Gross  
14 Recoveries of the amounts received by the Trustee until a total of \$1.5  
15 million is received; (2) thirty-three and one-third percent (33⅓) of all Gross  
16 Recoveries received after the first \$1.5 million are received until Gross  
17

18 <sup>1</sup> "Recoveries" or "Recovery," means any and all monetary payments or other valuable property  
19 received by the Estate arising, pertaining to or resulting from the pursuit of the Contingency  
20 Litigation Claims. For the purposes of calculating the appropriate contingency fee, a Recovery is  
21 "received" when the Estate takes possession or control of any Recovery. Recoveries, or Recovery  
22 shall include the value received by the Estate from the disallowance of any claims resulting from  
23 resolution of Contingency Litigation Claims. For the purposes of determining the value received  
24 by the Estate from the disallowance of any claims resulting from resolution of Contingency  
25 Litigation Claims, the value shall be equal to the percentage of the pro rata distribution to  
26 unsecured creditors by the Estate applied to the amount of the disallowed claim at the time of any  
27 interim and/or final distributions to unsecured creditors, and the Firm shall be paid that amount of  
28 the Firm's contingency fee due to the disallowance of any claims at the time of any interim and/or  
final distribution to unsecured creditors.

<sup>2</sup> "Commencement of Trial" shall mean the first scheduled day of any bench trial, jury trial or  
arbitration set by the court or arbitrator(s) in any lawsuit, legal action, contested proceeding or  
arbitration filed by the Firm on the Trustee's or Estate's behalf, even if that first scheduled trial or  
arbitration date is continued or rescheduled to a later date.

1 Recoveries in the amount of \$3 million (\$3,000,000) are received; and (3)  
2 twenty-five percent (25%) of all Gross Recoveries of amounts received that  
3 total more than \$3 million.

4  
5 b) After the Commencement of Trial, Diamond McCarthy shall be entitled to a  
6 contingency fee in the amount of (1) forty percent (40%) of all Gross  
7 Recoveries of the amounts received by the Receiver or Receivership until a  
8 total of \$3 million (\$3,000,000.00) is received and (2) thirty-three and one-  
9 third percent (33⅓ %) of all Gross Recoveries received after the first \$3  
10 million are received.

11  
12 c) The Trustee will pay from the Estate all necessary out of pocket expenses  
13 incurred in connection with the Contingency Fee Claims and Contingency  
14 Litigation, which expenses can be paid on an interim basis by the Trustee so  
15 long as there are sufficient funds available in the Estate, but with such  
16 expenses ultimately subject to Bankruptcy Court approval and allowance or  
17 disallowance pursuant to 11 U.S.C. §§ 330(a)(1)(B) and 331, the local rules  
18 for the Bankruptcy Court and United States Trustee Guidelines. Diamond  
19 McCarthy will maintain records of the costs and expenses incurred in  
20 connection with its legal services and shall comply with the United States  
21 Bankruptcy Court for the Northern District of California Guidelines for  
22 Compensation of Reimbursement of Professional and Trustees. The Firm  
23 will request the Trustee's approval prior to incurring any individual expense  
24 greater than \$5,000 (including pre-suit expenses and post-suit expenses for,  
25 *inter alia*, expert witnesses, jury consultants, demonstrative evidence  
26 consultants, photocopying, scanning, digitizing and document  
27 imaging/coding, postage, facsimiles, long-distance telephone calls, travel,  
28 delivery, computerized research, deposition and court reporting transcript

1 and other fees, videography fees and costs) (the "Expenses") with the  
2 understanding that all Expenses ultimately must be approved by the  
3 Bankruptcy Court on an interim or final basis..

4  
5 10. Diamond McCarthy is not obligated to file or prosecute any Contingent Litigation  
6 Claim unless in its discretion it concludes that any such Contingent Litigation Claim is factually  
7 and legally supportable and is economically viable for the firm to pursue. Diamond McCarthy has  
8 the option to seek Court approval to terminate this agreement if the firm in good faith concludes  
9 that there are no viable claims for the Trustee to pursue on behalf of the Estate.

10 11. The contingency fee terms outlined above are the result of arm's length  
11 negotiations between the Trustee and Diamond McCarthy. The provisions reducing Diamond  
12 McCarthy's contingency fee percentage for pre-trial settlements and recoveries are all designed to  
13 provide the highest recovery possible to the Estate and its creditors and ensure the contingency fee  
14 paid is commensurate with the risk and costs borne by Diamond McCarthy and the results  
15 obtained. The Trustee submits that the proposed contingency fee terms set forth above are fair,  
16 reasonable and in the best interest of the Estate and its creditors.

17 12. The following schedule sets forth the current normal and customary hourly rates of  
18 the Diamond McCarthy attorneys most likely to render services in this case, which rates are  
19 subject to periodic increase:

Kathy Bazoian Phelps	Partner	\$625
Jon Maxwell Beatty	Partner	\$495
Michael Yoder	Partner	\$495
	Associate	\$270 - \$320

23 13. In addition to Diamond McCarthy's professional fees, its billing statements will  
24 include expenses for reasonable and necessary third party and staff services employed in the  
25 course of its representation of the Trustee, as well as expenses incurred with respect to long-  
26 distance telephone calls, postage, messenger services, photocopying, filing fees, computerized  
27 legal research, and facsimile transmission. These expenses are separately itemized on Diamond  
28

1 McCarthy's statements at scheduled rates based on the service involved and out-of-pocket  
2 disbursements incurred. Diamond McCarthy will record these expenses in a manner and at a rate  
3 that is consistent with charges generally made to Diamond McCarthy's other clients. No expense  
4 charges will be assessed for word processing or secretarial overtime in Diamond McCarthy's  
5 representation of the Trustee. Diamond McCarthy will seek approval for reimbursement of such  
6 expenses in accordance with the contingent fee terms outlined above.

7 14. Diamond McCarthy understands and agrees that it must keep accurate records of its  
8 time and the hourly legal fees incurred, but does not intend for the purposes of this contingent fee  
9 agreement to keep those records in the detail required for professionals whose employment and  
10 compensation is governed by 11 U.S.C. §330. Diamond McCarthy will comply with the United  
11 States Bankruptcy Court for the Northern District of California Guidelines for Compensation of  
12 Reimbursement of Professional and Trustees.

13 15. In conformity with Bankruptcy Code sections 330 and 331, if there are sufficient  
14 fund available to the Estate, Diamond McCarthy intends to file interim applications for allowance  
15 of fees and reimbursement of costs advanced as and when appropriate under the Bankruptcy  
16 Rules, the Local Rules and this Court's orders.

17 16. At the conclusion of the Bankruptcy Case, Diamond McCarthy will file an  
18 appropriate application seeking final allowance of all fees and costs, regardless of whether interim  
19 compensation has been paid. Upon allowance of such fees and costs, the Estate will cause to be  
20 paid to Diamond McCarthy the difference between the amounts allowed and any interim  
21 compensation paid.

22 17. Diamond McCarthy has not shared or agreed to share any compensation related to  
23 the services to be rendered as special litigation counsel for the Committee with any other person,  
24 except as among Diamond McCarthy firm members and/or employees.

25 18. Diamond McCarthy maintains a computerized database of its client matters. In  
26 connection with the proposed retention of Diamond McCarthy by the Trustee, Diamond McCarthy  
27 performed an internal conflicts search to ensure that Diamond McCarthy does not have a conflict  
28 of interest that would prohibit it from representing the Trustee in this matter. Specifically,



1 Diamond McCarthy has researched its client database to determine whether it had any relationship  
2 with the following:

- 3 a) The Debtor;
- 4 b) Parties identified by the Trustee as having received transfers from  
5 the Debtor within 7 years prior to the Petition Date;
- 6 c) The officers, directors and interest holders of the Debtors listed on  
7 the Debtors' SOFAs.

8 19. As Diamond McCarthy becomes aware of new parties-in-interest being involved in  
9 the Bankruptcy Case, Diamond McCarthy will file supplemental declarations as needed to update  
10 the disclosures made herein.

11 20. Diamond McCarthy has not shared or agreed to share any compensation related to  
12 the services to be rendered as special litigation counsel for the Committee with any other person,  
13 except as among Diamond McCarthy firm members and/or employees.

14 21. To the best of Diamond McCarthy's knowledge, information and belief, Diamond  
15 McCarthy has no interest materially adverse to (a) the Debtor's estate, (b) the target defendants, or  
16 (c) of any class of the Debtor's creditors, either by reason of any direct or indirect relationship to,  
17 or connection with, the Debtor or for any other reason.

18 22. Diamond McCarthy does not have any known connections, if any, with the Debtor,  
19 the Debtor's creditors, and other known parties-in-interest. The firm has run through its internal  
20 conflict system the names of each potential defendant, the Debtor and its principal. To the extent  
21 that any new names are discovered throughout the course of the representation, Diamond  
22 McCarthy will run those names through its system as well to ensure that no conflict exists.  
23 Diamond McCarthy will continue to review its files in connection with this Application to make  
24 further disclosures as warranted. Diamond McCarthy believes it is a disinterested person within  
25 the meaning of Bankruptcy Code section 101(14), other than as to those matters disclosed herein.

26 23. To the best of Diamond McCarthy's knowledge, none of the attorneys comprising  
27 or employed by Diamond McCarthy are related to any judge of the United States Bankruptcy  
28

1 Court for the Northern District of California, the United States Trustee or any person employed in  
2 the Office of the United States Trustee.

3 I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct. Executed on this 18th day of September 2017, at Los Angeles,  
5 California.

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7 By /s/ Kathy Bazoian Phelps  
8 KATHY BASOIAN PHELPS  
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# EXHIBIT 1



DIAMOND MCCARTHY LLP

## Biography of Kathy Bazoian Phelps

Kathy Bazoian Phelps  
Diamond McCarthy LLP  
1999 Avenue of the Stars, 11th Floor  
Los Angeles CA 90067  
310-651-2997 (office)  
310-488-4883 (cell)  
[kphelps@diamondmccarthy.com](mailto:kphelps@diamondmccarthy.com)  
[www.theponzibook.com](http://www.theponzibook.com)  
[www.ponzi-proof.com](http://www.ponzi-proof.com)  
[www.theponzischemeblog.com](http://www.theponzischemeblog.com)  
[www.kathybphelpsmediator.com](http://www.kathybphelpsmediator.com)



Kathy Bazoian Phelps has more than 25 years of experience as a lawyer in bankruptcy law, fiduciary representation and fraud litigation, as well as serving as a fiduciary herself. Kathy's practice includes representing trustees and receivers, serving as a Chapter 11 trustee, representation of litigants and parties in interest in bankruptcy and receivership cases and other insolvency proceedings. She is particularly knowledgeable about the administration of Ponzi scheme cases and has extensive litigation experience in a claims arising in these types of cases.

Kathy has lectured widely and written on bankruptcy and receivership matters, with a focus on Ponzi schemes. Her book entitled *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*, co-authored with Hon. Steven Rhodes, has garnered national and international attention as the authoritative work on Ponzi scheme law.

In addition to her roles as lawyer, speaker and author, Kathy also serves as a mediator and is currently on the Bankruptcy Mediation Panel for the Central District of California.

### Work Experience

- Diamond McCarthy LLP in Los Angeles California, Partner: 2013 to present.
- Danning, Gill, Diamond & Kollitz, LLP in Los Angeles California, Partner since 1999: 1991 – 2013.

### Primary Publications

- *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. co-authored with Hon. Steven Rhodes (Ret.) (LexisNexis® 2012)
- *Fraud and Forensics: Piercing Through the Deception in a Commercial Fraud Case*, co-author (American Bankruptcy Institute 2015)
- *Ponzi-Proof Your Investments: An Investor's Guide to Avoiding Ponzi Schemes and Other Fraudulent Scams* (IRR Publishing 2013)

- *The Depths Of Deepening Insolvency: Damage Exposure For Officers, Directors and Others*, co-authored with Prof. Jack F. Williams (American Bankruptcy Institute 2013)
- Author of *The Ponzi Scheme Blog* at [www.theponzischemeblog.com](http://www.theponzischemeblog.com)

#### **Memberships and Positions**

- Editor in Chief of *Receivership News*, 2012 to present
- California Receivers Forum, Los Angeles/Orange County Chapter, Board of Directors, 2010 to present
- National Association of Federal Equity Receivers, Board of Directors, 2012 – 2014, October 2016 to present.
- National Association of Federal Equity Receivers, Co-Chair, Conference Committee, 2012 to present
- National Association of Federal Equity Receivers, Co-Chair, Judicial Outreach Committee, 2016 to present
- National Association of Federal Equity Receivers, Co-Chair, Nominating Committee, 2016 to present
- American Bankruptcy Institute, Board of Directors, 2017 to present
- American Bankruptcy Institute, Co-Chair of Commercial Fraud Committee, April 2015 to April 2017
- American Bankruptcy Institute, Special Task Chair of Commercial Fraud Committee, 2013-2015
- Member, International Chamber of Commerce FraudNet global network, 2012-2015, [www.icc-fraudnet.org](http://www.icc-fraudnet.org)
- American Bar Association, White Collar Crime, Asset Forfeiture and Business Bankruptcy Subcommittee focused on parallel insolvency and criminal proceedings, 2012 to present
- National Association of Bankruptcy Trustees, Member
- Association of Insolvency and Restructuring Advisors, Member
- Armenian Bar Association, Member
- Los Angeles Bankruptcy Forum, Member
- Los Angeles County Bar Association, Member
- Beverly Hills Bar Association, Member

#### **Recent Awards and Distinctions**

- American College of Bankruptcy, Fellow, Inducted into the 27<sup>th</sup> Class, March 2016

- American Bankruptcy Institute, Committee Member of the Year, April 2016
- The International Who's Who of Asset Recovery Lawyers, 2013 - 2016
- Super Lawyers, 2007, 2009, 2010, 2013, 2014, 2015, 2016, 2017
- Super Lawyers Top Women 2016, 2017

### **Representative Cases**

- Local litigation counsel for federal equity receiver requested by Commodities Futures Trading Commission in Hunter Wise Commodities LLC.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Capital Cove Bancorp, LLC, in which Kathy is lead counsel in unraveling the fraudulent scheme and liquidating the assets of the company and its affiliates.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Secured Capital Investments, in which Kathy is lead counsel in advising the receiver on operational issues and assisting with the administration of assets, the sale of properties nationwide, and the claims process for the defrauded victims.
- Chapter 11 trustee of Sonya D. International, Inc., Hazlaha LLC and Sonya Dakar, where Kathy served as trustee and ran the operations of a skin care clinic, investigated the business operations and inter-company transfers, and facilitated a complex settlement which resulted in payment in full to creditors.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Diversified Lending Group, Inc., in a \$250 million Ponzi scheme case, where Kathy supervised the winding down of the business, the reconstruction of missing and incomplete records, the analysis and tracing of investor funds, the liquidation and recovery on various investments made by the debtor, and the prosecution of litigation to recovery funds for the benefit of the investors and creditors.
- Counsel for federal equity receiver in First Time Credit Solutions, Inc. requested by the Federal Trade Commission, in a credit repair business engaged in allegedly fraudulent activity.
- Counsel for group of defrauded investors in alleged Ponzi scheme bankruptcy case of Vincent Singh and Perfect Financial Corp., defending them against the chapter 7 trustee's fraudulent transfer, preference and usury claims.
- Counsel for state court appointed receiver in Unicorp, Inc., a fraud litigation matter, reconstructing missing records and tracing over \$9 million of funds removed by the defendant prior to the receiver's appointment.
- Counsel for chapter 11 and chapter 7 trustees in a multitude of bankruptcy cases, handling:
  - operating going concern businesses
  - winding down various types of businesses
  - tracing funds in Ponzi and other fraudulent schemes
  - selling real estate
  - prosecuting fraudulent conveyance and preference litigation
  - addressing countless administrative issues arising in those cases

**Bar Admissions**

- State Bar California, 1991
- United States District Court, Central District of California, 1991
- United States District Court, Southern District of California, 2011
- United States District Court, Eastern District of California, 2011
- United States District Court, Northern District of California, 2012
- United States District Court, Western District of Michigan, 2010

**Educational Background**

Pomona College (B.A. 1988)

University of California at Los Angeles (J.D. 1991)

**Interests**

Kathy's personal interests and accomplishments include extensive travel and the study of the Chinese Mandarin language.