

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 ON
PREFERENCE CLAIM**

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

PLEASE TAKE NOTICE THAT Michael G. Kasolas ("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 James Tananbaum ("Transferee"). The Motion is based on the settlement terms and merits summarized below.

The Compromise Terms

Under the proposed compromise, the trustee will release the Transferee from all claims in exchange for his payment of \$150,000.00 plus waiver of any claim he may assert against the Debtor's estate.

Factual Background and Merits of Compromise

Within 90 days prior to the filing of the Debtor's bankruptcy petition on January 8, 2016, the Debtor transferred refunds in the aggregate amount of \$259,083.40 to the Transferee (the "Transfers"). The trustee sued to recover the Transfers as avoidable preferences (Adv. Pro. 17-4031). The Transferee raised numerous defenses, including challenges to the prima facie case which would bring the base amount of the claim down to \$235,118.23

The Trustee submits that the proposed compromise is fair and equitable and in the best interests creditors under the factors set forth under *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986), because results in a 63.7% recovery on the adjusted base claim without further cost, risk or delay and it resolves disputed claims and defenses and, importantly, without affecting other potential claims of the estate.

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:

1. 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;

2. 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;

3. 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;

4. 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, within 21 days of the mailing of this notice (December 13, 2017).

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, or upon request from the undersigned.

Dated: November 22, 2017
[Date of Mailing]

/s/ Mark S. Bostick
Mark S. Bostick (Bar No. 111241)
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Email: 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 ON PREFERENCE CLAIM**

[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 November 22, 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. Srves. 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
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Michael D. Thomson 3111 Welborn St. #1604 Dallas, TX 75219
Richard Schmidt 2500 Hospital Drive Mountain View, CA 94040

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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
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The United States Trustee:

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San Francisco, CA 94102
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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

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Request for Special Notice

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

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