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

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

Case No. 16-40050-WJL

Chapter 7

**DECLARATION OF MARK S. BOSTICK IN
SUPPORT OF SECOND INTERIM
APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF
COUNSEL FOR TRUSTEE**

Date: December 20, 2017

Time: 2:00 p.m.

Place: Courtroom 220
1300 Clay Street
Oakland, CA

Judge: The Hon. William J. Lafferty III

21
22 I, Mark S. Bostick, declare as follows:

23 1. I am a partner with the law firm of Wendel, Rosen, Black and Dean, LLP
24 (“Wendel”), attorneys for Michael G. Kasolas, trustee in the above-captioned case. If called upon
25 to testify regarding the facts set forth herein, I would competently testify to those facts based upon
26 my own personal knowledge, except for those matters based upon my belief, which I believe to be
27 true.
28

1 2. I submit this declaration in support of Wendel's *Second Interim Application for*
2 *Compensation and Reimbursement of Expenses of Counsel for Trustee* (the "Application") with
3 respect to its request for allowance of contingency fees.

4 3. Attached hereto as **Exhibit A** is a list of all recoveries on avoidance claims
5 obtained under settlement agreements entered into on or before November 15, 2017 (the "Claim
6 Ledger").

7 4. For privacy purposes, the identity of each settling transferee party is represented by
8 a number in the left hand column; the second column from the left shows the amount of the
9 transfer subject to the trustee's claim; the third column shows the type of avoidance claim; and the
10 fourth column shows the settlement amount recovered.

11 5. My office negotiated with the transferees in each one of the settlements listed and
12 to the best of my knowledge all of the facts asserted in the Claim Ledger are true and accurate.

13 6. The Claim Ledger shows that the trustee has obtained recoveries of \$1,075,939.36
14 on fraudulent transfer claims and \$541,864.88 on preference claims.¹

15 7. Wendel's attorneys and paralegals working on the contingency matters record their
16 time rendered on a contemporaneous basis, billing in point-one hour increments, describing the
17 discrete task performed, categorizing services as either "fraudulent transfer," "preference" or
18 "general," or in sub-categories thereof, as though the matter were billed on an hourly basis.

19 8. I have reviewed Wendel's billing records maintained in the ordinary course of its
20 business and maintained by its accounting department and based thereon have determined that
21 from November 1, 2016, through November 15, 2017, Wendel's attorneys and paralegals have
22 billed a total of 845.90 hours on contingency matters with a total dollar value, based on its regular
23 hourly rates, of \$417,009.50.

24
25 _____
26 ¹ Three of the recoveries listed on the Claim Ledger remain contingent as of the date of this
27 application. The payment due dates on Recovery No. 7 for \$63,547.48 and on Recovery No. 10
28 for \$41,960.00 have been extended to December 8, 2017; Recovery No. 15 for \$150,000.00
remains subject to court approval, with the motion to approve compromise having been served on
November 22, 2017.

1 9. Wendel’s accounting records show that from November 1, 2016, through
 2 November 15, 2017, its attorneys and paralegals billed: 181.5 hours on fraudulent transfer matters
 3 for an hourly rate value of \$149,489.50; and 367.2 hours on preference claim matters for an hourly
 4 rate value of \$190,925.50; 297.2 hours on other related matters for an hourly rate value of
 5 \$79,799.00; and 35.2 hours on European wine claims for an hourly rate value of \$17,580.00.

6 10. The following table accurately summarizes the trustee’s avoidance recoveries and
 7 Wendel’s time spent on avoidance claim related matters:
 8

Type of Claim	Amount Recovered	Time Incurred	Hourly Rate Value
Fraudulent Transfers	\$1,075,939.36	181.5	\$149,489.50
Preferences	\$541,864.88	367.2	\$190,925.50
General Contingency		297.2	\$76,594.50
Total	\$1,617,804.24	845.9	\$417,009.50

15 11. Under Wendel’s First Interim Application for Compensation, its attorneys billed
 16 26.8 hours on avoidance claim matters and 3.2 hours on Ponzi-claim related matters and was
 17 allowed fees thereon in the sum of \$14,751.00.

18 12. Under the Order Approving Supplemental Application for Employment of Counsel
 19 for Trustee on Contingency Basis, Wendel is entitled to compensation for services relating to the
 20 recovered avoidance claims as follows: 30 percent of gross recoveries before suit is filed and 33.3
 21 percent on gross recoveries after suit is filed. [See Paragraph 7 of Supplemental Application (Doc
 22 #512)].

23 13. In this instance, there is only one claim that was recovered after suit was filed: that
 24 was of the claim associated with Recovery No 15 as reflected on Exhibit A for \$150,000.00.

25 14. Accordingly, the calculation for Wendel’s contingency fee in this application is as
 26 follows:

$$\begin{aligned}
 &\$1,467,804.24 \times 30\% = \$440,341.27 \\
 &+ \$150,000.00 \times 33.33\% = \$49,995.00 \\
 \hline
 &\text{Total: } \$490,336.27
 \end{aligned}$$

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15. Based on my knowledge of the case as trustee's lead counsel, I believe that the trustee may recover an additional \$2,500,000.00 to \$6,000,000.00 in avoidance claims and that absent protracted litigation, the case should be ready to close by mid-2019.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on November 29, 2017 at Oakland, California.

/s/ Mark S. Bostick
Mark S. Bostick

EXHIBIT A

FOX ORTEGA ENTERPRISES, INC., DBA PREMIER CRU
Case No. 16-40050-WJL

AVOIDABLE TRANSFERS – SETTLEMENTS

(As of 11-15-17)

FRAUDULENT TRANSFERS

	TRANSFEEE	Amount Transferred		Type of Transfer	Settlement Amount Received
1.		\$98,893.95		Fraudulent Transfer	\$78,324.00
2.		\$116,824.12		Fraudulent Transfer	\$84,673.10
3.		\$78,251.91		Fraudulent Transfer	\$62,600.80
4.		\$230,371.60		Fraudulent Transfer	\$180,000.00
5.		\$479,196.91		Fraudulent Transfer	\$397,733.44
6.		\$73,531.98		Fraudulent Transfer	\$61,031.54
7.		\$80,552.37		Fraudulent transfer	\$63,547.48
8.		\$87,312.86		Fraudulent Transfer	\$61,118.40
9.		\$40,525.00		Fraudulent Transfer	\$25,000.00
10.		\$55,947.47		Fraudulent Transfer	\$41,960.60
11.		\$24,007.44		Fraudulent Transfer	\$7,500.00
12.		\$15,000.00		Fraudulent Transfer	\$12,450.00
	TOTAL				\$1,075,939.36

PREFERENTIAL TRANSFERS

	Transferee	Transfer Amount		Type of Transfer	Settlement Amount
13.		\$17,195.78		Cash Transfer	\$13,000.00
14.		\$32,204.92		Cash Transfer	\$26,730.08
15.		\$259,083.40		Cash Transfer	\$150,000.00
16.		\$11,665.00		Cash Transfer	\$5,833.00
17.		6,799.76		Cash Transfer	\$3,399.88

18.		\$95,490.35		Shipment	\$45,000.00
19.		\$54,279.00		Shipment	\$27,139.50
20.		\$18,220.58		Shipment	\$9111.29
21.		\$42,481.64		Shipment	\$16,000.00
22.		\$39,058.31		Shipment	\$7,967.00
23.		\$27,588.90		Shipment	9,188.00

24.		\$27,240.28		Shipment	\$12,258.00
25.		\$23,383.66		Shipment	\$11,691.83
26.		\$15,090.32		Shipment	\$7,545.16
27.		\$13,994.00		Shipment	\$6,997.00
28.		\$12,966.72		Shipment	\$3,873.00
29.		\$12,929.42		Shipment	\$6,464.71
30.		\$11,849.00		Shipment	\$5,924.50
31.		\$10,224.95		Shipment	\$4,600.00
32.		\$10,092.06		Shipment	\$5,046.03
33.		\$10,089.82		Shipment	\$5,044.91
34.		\$8,103.50		Shipment	\$2,000.00
35.		\$7,632.54		Shipment	\$3,816.27
36.		\$7,931.79		Shipment	\$3,250.00
37.		\$8,559.24		Shipment	\$3,750.00
38.		\$8,988.73		Shipment	\$3,250.00
39.		\$11,165.00		Shipment	\$5,582.50

40.		\$69,913.75		Shipment and Credit	\$13,500.00
41.		\$52,640.46		Shipment and Credit	\$32,000.00
42.		\$21,365.55		Shipment and Credit	\$9,639.00
43.		\$20,552.29		Shipment and Credit	\$13,358.98
44.		\$20,677.43		Shipment and Credit	\$15,000.00
45.		\$14,170.30		Shipment and Credit	\$7,000.00
46.		\$10,392.42		Shipment and Credit	\$6,235.45
47.		\$26,863.46		Shipment and Credit	\$11,000.00
48.		\$41,144.75		Shipments and Credit	\$15,000.00
49.		\$8,468.79		Shipments and Credits	\$8,468.79
50.		\$9,143.28		Shipments and Credits	\$6,200.00
					\$541,864.886

FRAUDULENT TRANSFERS	\$1,075,939.36
PREFERENTIAL TRANSFERS	\$541,864.886
GRAND TOTAL	\$1,617,804.24