

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 WITH
CITIBANK, N.A.**

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 ("Kasolas" or "Trustee"), the chapter 7 trustee for the bankruptcy estate of Fox Ortega Enterprises Inc. ("Debtor"), has filed a motion under Federal Rule of Bankruptcy Procedure 9019 (the "Motion") for an order approving his settlement agreement with Citibank N.A. ("Transferee") based on the terms and merits as summarized below.

The Compromise Terms

Under the proposed settlement agreement, a copy of which is attached to the Declaration of Mark S. Bostick filed in support hereof, the Trustee will release the Transferee from all claims in exchange for its prompt payment of \$599,999.99.

Factual Background and Merits of Compromise

The Debtor filed its voluntary petition for relief under chapter 7 of the Bankruptcy Code on January 8, 2016 (the "Filing Date"). Kasolas is the duly appointed trustee in the case.

In the seven-year period prior to the Filing Date, the Debtor paid the personal credit card bills of John Fox, its president, and Abigail Fox, his spouse, in the aggregate sum of \$1,584,877.22. The Trustee made demand upon the Transferee for return of the funds in lieu of a suit to avoid the transfers under Cal Civil Code §3439 and Bankruptcy Code Section 544 (b). The parties entered into informal negotiations to resolve the dispute and reviewed the charges to analyze whether they were made for personal or business-related purposes. After that process, they each acknowledged (but did not agree) that the following allocation of credit card expenditures were within the range of reasonably likely findings after trial:

Business expenses:	\$839,336.70
Personal expenses:	\$534,035.57
Undetermined:	\$41,145.00
Interest and fees:	\$170,360.00

Based on these potential findings, the Trustee reduced his settlement demand to \$641,975.82 representing all personal expenditures, plus one-half of indeterminable expenditures, plus the pro-rata share of such expenditures to all expenditures less interest and fees - to interest and fees; i.e. 39.2% of

\$170,360.00, or \$66,795.25. After continued negotiations, the parties reached a settlement at \$599,999.99, representing 93.46 percent of the Trustee's modified demand.

The Trustee submits that the proposed compromise is fair and equitable and in the best interests of creditors and the estate under the factors set forth in *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), *cert denied*, 479 U.S. 854 (1986). While the Trustee does not concede that as a matter of law Citibank may necessarily avail itself of the indirect benefit rule as articulated under *Frontier Bank v. Brown (In re N. Merch., Inc.)* 371 F.3d 1056 (9th Cir. 2004), it is likely to, and given that, the maximum that the trustee is releasing under the settlement is a claim for the balance expended for interest and fees and undetermined charges, i.e. \$145,541.57, the prospects for recovery on which are uncertain. The settlement therefore avoids the risks, expense and delay of litigation and results in a recovery of more than 80 percent of the Trustee's claims.

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 26, 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: December 5, 2017
[Date of Mailing]

/s/ Mark S. Bostick
Mark S. Bostick (Bar No. 111241)
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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 WITH JAMES TANANBAUM**

- [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) (By BMC Group, Inc., Trustee's Noticing Agent)** 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.

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 December 5, 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:
(Service by First Class Mail)**

American Express Travel Rltd. Svcs. 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
Philip B. Gruell, DDS 1717 Santa Clara Ave. Alameda, CA 94501
Lawrence Wai-Man Hui Bennett G. Young, Esq.; Christina L. Chen, Esq. Jeffer Mangels Butler & Mitchell Two Embarcadero Center, 5th Floor San Francisco, CA 94111
Michael D. Thomson 3111 Welborn St. #1604 Dallas, TX 75219
Richard Schmidt 2500 Hospital Drive Mountain View, CA 94040

Nikolai Khabibulin c/o Michael VanNiel Banker and Hostetler 127 Public Square, #2000 Cleveland, OH 44114
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
Michael Collins c/o Gregory K. Jones Dykema Gossett LLP 333 S. Grand Ave. #2100 Los Angeles, CA 90071
Chun Yu Jonathan Polland Gordon & Polland LLP 235 Montgomery Street, Suite 701 San Francisco, CA 94104

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The United States Trustee:

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450 Golden Gate Ave, 5th Flr.
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San Francisco, CA 94102
(ECF Recipient)

Governmental Agencies Who Have Filed Claims – (Service by First Class Mail)

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.

Entries not in bold – Service by ECF Noticing

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