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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU, Debtor.	**Case No. 16-40050-WJL** **Chapter 7** **A.P. No. 16-04033** **PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**
MICHAEL D. PODOLSKY, on behalf of himself and all others similarly situated, Plaintiff, vs. MICHAEL G. KASOLAS, Trustee, Defendant.	Date: July 27, 2016 Time: 10:00 a.m. Dept: Courtroom 220

Plaintiff Michael D. Podolsky ("Plaintiff"), the duly appointed class representative in this adversary proceeding, hereby submits this motion for the entry of an order preliminarily awarding class counsel attorneys' fees and costs in the amount of 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created under the settlement agreement in this case. Such an award is proper given that class counsel is entitled to an award of attorneys' fees and costs, and given that the amount requested is reasonable and appropriate.

JURISDICTION

1. This Court has jurisdiction to consider this motion pursuant to Bankruptcy Code sections 157 and 1334. The statutory predicate for this motion and the requested relief is Rule 23(h) of the Federal Rules of Civil Procedure, as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

2. On June 1, 2016, the Court preliminarily approved a settlement agreement (the "Settlement") resolving the claims in this adversary proceeding between Plaintiff Michael D. Podolsky on behalf of himself and all others similarly situated against Michael G. Kasolas, the court-appointed Trustee overseeing the estate of Fox Ortega Enterprises, Inc. dba Premier Cru.

3. That Settlement allows class counsel to seek an award of attorneys' fees and costs, subject to the Court's approval, in an amount not to exceed 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed[1] subfunds to be created under the Settlement from the sale of the wine inventory of the estate of Fox Ortega Enterprises, Inc., dba Premier Cru, the debtor herein ("Debtor").

RELIEF REQUESTED

4. By this motion, Plaintiff seeks the entry of an order preliminarily finding that Meyers Law Group, P.C. and Chavez & Gertler LLP, as class counsel ("Class Counsel"), are entitled to an award of attorneys' fees and costs and that the amount requested—25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created

[1] All capitalized terms, unless otherwise defined herein, are intended to have the meanings ascribed to them in the Settlement.

under the Settlement from the sale of the Debtor's wine inventory—is reasonable and appropriate.

BASIS FOR RELIEF

5. Federal Rules of Civil Procedure, Rule 23(h), as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." It is well established that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *accord Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

6. As an initial matter, the amount requested is presumptively reasonable. Moreover, the amount requested is reasonable because the settlement was negotiated at arms' length and there is no evidence of any collusion or fraud, and because of the contingent nature of the litigation, the complexity and risks inherent in this litigation, the results achieved, and the additional work class counsel will have to perform to implement the settlement, including responding to numerous inquiries made by class members, and preparing for and attending the hearings on this motion and Plaintiff's motion for final approval.

WHEREFORE, Plaintiff prays for entry of an order granting the motion and preliminarily awarding class counsel the requested amount of attorneys' fees and costs setting a further hearing to finalize the award.

Respectfully submitted,

Dated: June 15, 2016

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By: */s/ Mark A. Chavez*
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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU, Debtor.	**Case No. 16-40050-WJL** **Chapter 7** **A.P. No. 16-04033**
MICHAEL D. PODOLSKY, on behalf of himself and all others similarly situated, Plaintiff, vs. MICHAEL G. KASOLAS, Trustee, Defendant.	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN AWARD ATTORNEYS' FEES AND COSTS** Date: July 27, 2016 Time: 10:00 a.m. Dept: Courtroom 220

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I. INTRODUCTION

Plaintiff Michael D. Podolsky ("Plaintiff") hereby moves the Court for an order preliminarily awarding Meyers Law Group, P.C. and Chavez & Gertler LLP, as class counsel ("Class Counsel"), attorneys' fees and costs in the amount of 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed[1] subfunds to be created from the sale of the wine inventory of the estate of the debtor herein, Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor"), as set out in the Settlement, which this Court preliminarily approved on June 1, 2016. At this stage, the sale price of the wine inventory and dollar amount of the subfunds have not been determined. Consequently, Plaintiff seeks an order preliminarily approving a maximum award of attorneys' fees and costs subject to subsequent downward adjustments and final award at a subsequent hearing.

The target sale price for the wine inventory is $5 million. However, for the purpose of this motion and the Court's determination of the reasonableness of a maximum award of attorneys' fees and costs, Plaintiff assumes that the sale price will be around $6.6 million such that the total amount for distribution to the class will be $2.6 million. Under this scenario, the requested 25% award of attorneys' fees and costs would be $650,000, though Class Counsel expects the ultimate fee to be less. (Chavez Decl. ¶ 16.)

This award would be entirely appropriate in the present case. The Ninth Circuit has established 25% as the "benchmark" for an award of fees; an award in this amount, therefore, is presumptively reasonable. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002) (benchmark award in Ninth Circuit is 25%); *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."). Such an award is particularly appropriate here because the settlement was negotiated at arms' length and there is no evidence of any collusion or fraud. Moreover, a 25% award would be fair and reasonable given the contingent nature of the litigation, the

[1] All capitalized terms, unless otherwise defined herein, are intended to have the meanings ascribed to them in the Stipulation of Settlement (the "Settlement") under which the parties herein have settled this class action.

complexity and risks inherent in this litigation, the results achieved, and the additional work class counsel will have to perform to implement the settlement, including responding to numerous inquiries made by class members, and preparing for and attending the hearings on this motion and Plaintiff's motion for final approval. Under all the circumstances, the requested award is reasonable and appropriate. Plaintiff, therefore, respectfully submits that the Court should grant the motion.

II. STATEMENT OF THE CASE

Plaintiff is one of 4,450 individuals who purchased wine from the Debtor. When the Debtor filed a voluntary petition for bankruptcy on January 8, 2016, it had 78,787 bottles of wine in its inventory. After Plaintiff received notice that the trustee—Michael G. Kasolas ("Trustee")—appointed to manage Premier Cru's estate was seeking authority to sell some of Premier Cru's inventory, Plaintiff filed the present adversary proceeding against Trustee on behalf of himself and all others similarly situated seeking to determine the ownership and equitable interest in the wine bottles held by Premier Cru.

At the Court's encouragement, the parties mediated the case with the Honorable Dennis Montali, an experienced and well-regarded Bankruptcy Judge. After extensive negotiations, including two full days of in-person mediation, together with weeks of calls, correspondence and exchanges of documentation, the parties reached a tentative settlement that was subsequently reduced to the Settlement that this Court preliminarily approved on June 1, 2016. Under the terms of the Settlement, Class Counsel may seek an award of fees and costs of up to 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created from the sale of the Debtor's wine inventory.

III. ARGUMENT

A. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND COSTS

Federal Rules of Civil Procedure, Rule 23(h), as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, provides that "[i]n a certified class action, the court may

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award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h).

Under the common fund doctrine, class counsel are entitled to an award of reasonable attorneys' fees and costs from the funds recovered for a class in this matter. It is well established under both federal and California law that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *accord Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (recognizing that "a lawyer who recovers a common fund for the benefit of persons other than . . . his [or her] client is entitled to a reasonable attorney's fee from the fund as a whole"); *see also Quinn v. State of California*, 15 Cal. 3d 162, 167, 539 P.2d 761, 764 (1975) ("one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"); *Fletcher v. A. J. Indus., Inc.*, 266 Cal. App. 2d 313, 321, 72 Cal. Rptr. 146, 151 (1968) ("The California decisions are substantially uniform to the effect[fn] that a plaintiff who has successfully maintained a representative action is entitled to an award of attorneys' fees from a common fund."); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27, 97 Cal. Rptr. 2d 797, 803-04 (2000) (noting that common-fund doctrine is a "venerable exception to the general American rule disfavoring attorney fees in the absence of statutory or contractual authorization" and that the exception "is grounded in the historic power of equity to permit the trustee of a fund or property, or a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, *from the fund of property itself or directly from the other parties enjoying the benefit*." (emphasis original)).

This rule, known as the "common fund doctrine," is designed to prevent unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel. *See Paul, Johnson, Alston, & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989).

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As the Supreme Court has explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Boeing, 444 U.S. at 478; *see also Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

In the present case, Class Counsel have incurred attorneys' fees and costs creating a fund from which 4,450 class members stand to benefit. These class members should share in the cost of creating that fund, including the attorneys' compensation. The Court, therefore, should award Class Counsel those fees that the Court deems reasonable.[2]

B. IN THIS COMMON-FUND CASE, THE FEE SHOULD BE CALCULATED USING THE PERCENTAGE-OF-THE-FUND METHOD

In common-fund cases, under both federal and California law, "courts possess the 'discretion to apply either a lodestar method or the percentage-of-the-fund method in calculating a fee award.'" *Fraley v. Facebook, Inc.*, 2013 WL 4516806, at *2 (N.D. Cal. Aug. 26, 2013) (quoting *Fischel v. Equitable Life. Assur. Soc'y*, 307 F.3d 997, 1006 (9th Cir.2002)); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) (hereafter "*WPPSS*")) (same); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254, 110 Cal. Rptr. 2d 145, 169 (2001) (courts may use either "percentage of recovery method" or "lodestar/multiplier method" "for calculating attorney fees in civil class actions"). The choice "depends on the circumstances." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

The exercise of the Court's discretion should be guided by the weight of judicial authority expressing a preference for use of the percentage of the fund method in common fund cases. *Vizcaino*, 290 F.3d at 1050; *see also In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 307 (3rd Cir. 2005) ("the lodestar cross-check does not trump the primary reliance on the percentage of

[2] Any question regarding class counsel's entitlement to fees is resolved by paragraph 20 of the settlement agreement, which provides that class counsel are entitled to an award of reasonable attorneys' fees and costs. (Settlement ¶ 20, Chavez Decl. Ex. 1.)

common fund method"); *Lopez v. Youngblood*, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2, 2011) ("the percentage of the available fund analysis is the preferred approach in class action fee requests"); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1122 (C.D. Cal. Apr. 1, 2008) ("[a] lodestar cross-check is not required in this circuit"). As the Ninth Circuit has held, "the primary basis of the fee award remains the percentage method." *Vizcaino*, 290 F.3d at 1050. This is particularly true where the "class benefit can be monetized with a reasonable degree of certainty." *Johansson-Dohrmann v. Cbr Systems, Inc.*, 2013 WL 3864341, at *8 (S.D. Cal. Jul. 24, 2013); *Bolton v. U.S. Nursing Corp.*, 2013 WL 5700403, at *5 (N.D. Cal. Oct. 18, 2013). Courts rely on the percentage-of-the-fund method in common-fund cases, such as this one, because it "more closely aligns the interests of the counsel and the class [in that] class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner." *Lopez v. Youngblood*, 2011 WL 10483569, at *3. As the D.C. Circuit pointed out in *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993), the lodestar approach "encourages significant elements of inefficiency" by giving attorneys an "incentive to spend as many hours as possible" and "a strong incentive against early settlement." 1 F.3d at 1268-69. By contrast, the percentage approach "more accurately reflects the economics of litigation practice" and "the monetary amount of the victory is often the true measure of success, and therefore it is most efficient that it influence the fee award." *Id.* at 1269; *see also Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) ("percentage of the fund approach is the better reasoned in a common fund case"); *Craft*, 624 F. Supp. 2d at 1123 (same); *In re Oracle Securities Litig.*, 852 F. Supp. 1437, 1454 (N.D. Cal. 1994) (same).

The percentage of the fund method is also preferred because it encourages early settlement of meritorious cases, and it "ensur[es] that competent counsel continue to be willing to undertake risky, complex, and novel litigation." Federal Judicial Center, *Manual for Complex Litigation*, § 14.121 (4th ed. 2004). For these reasons, "the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases." *Id.* In such cases, the lodestar calculation is relegated to the role of "merely a cross-check" at most. *Vizcaino*, 290 F.3d at 1050 & n.5 (noting drawbacks of lodestar approach). The lodestar approach is used

mainly in cases in which there is no common fund, such as "employment, civil rights and other injunctive relief class actions." *Hanlon*, 150 F.3d at 1029. In such cases, "there is no way to gauge the net value of the settlement or any percentage thereof." *Id.*; *see also In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (lodestar method appropriate when relief obtained "is primarily injunctive in nature and thus not easily monetized," whereas in common-fund cases "the benefit to the class is easily quantified").

In the present case, use of the percentage of the fund method would be entirely appropriate for a number of reasons. First, the settlement provides for the creation of a fund for the benefit of the class, the value of which is certain. Second, the parties to the settlement agreement have agreed that the fee award would be calculated as a percentage of the fund. *See Staton*, 327 F.3d at 972 (parties to class action settlement may agree that fees will be sought pursuant to common-fund principles, and district court would not err in deferring to such agreement); *see also Yeagley v. Wells Fargo & Co.*, 365 Fed. Appx. 886, 887 (9th Cir. 2010) ("parties can request in their settlement agreement that the district court award attorneys' fees using common-fund principles"). Third, class members were notified that counsel would seek an award based on a percentage of the settlement fund. Finally, courts have employed the percentage method in similar cases in which counsel's efforts have created a common fund. Accordingly, the Court should employ the percentage of the fund method in awarding class counsel their fees and costs. *See Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *4 (N.D. Cal. Feb. 16, 2011) (finding percentage-of-the-fund method "appropriate . . . given that the total amount of the settlement is a fixed amount of $6,900,000 without any reversionary payment to WFI"); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687829, at *1 (N.D. Cal. Apr. 22, 2010) (finding it "appropriate and fair" to calculate fee as a percentage of common, non-reversionary fund).

C. THE AMOUNT REQUESTED IS REASONABLE AND APPROPRIATE

Here, Plaintiff seeks an aggregate award of attorneys' fees and costs in the amount of 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created under the settlement agreement in this case. This amount is entirely fair and reasonable under all of the circumstances.

The Ninth Circuit has established 25% as the benchmark award in common fund cases. Such an award is presumptively reasonable. Moreover, the settlement was negotiated at arms' length and there is absolutely no evidence of any collusion or fraud. The requested fee also fits squarely within the percentage range of fees awarded in other cases. Finally, a lodestar crosscheck confirms that the fee is reasonable given the contingent nature of the fee, the complexity and risks inherent in this litigation, the results achieved, and the additional work class counsel will have to perform to implement the settlement, including preparing for and attending the hearings on this motion and the motion for final approval.

1. The Requested Percentage Is Presumptively Reasonable

The benchmark in the Ninth Circuit for awarding fees as a percent-of-the-fund is 25%. *Hanlon*, 150 F.3d at 1029 ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."). This benchmark is presumptively reasonable. *In re ECOtality, Inc. Sec. Litig.*, 2015 WL 5117618, at *4 (N.D. Cal. Aug. 28, 2015); *accord In re Bluetooth*, 654 F.3d at 942 (25% benchmark presumptively reasonable); *see also* Newberg on Class Actions § 15:104 (5th ed.) ("The Ninth Circuit directs its district courts using the percentage method to apply a benchmark approach that starts from the presumption that a 25% award is reasonable."). Indeed, given the difficulty of this litigation and the result achieved, an upward adjustment from the benchmark would be fully justified. *Vizcaino*, 290 F.3d at 1050 (affirming award of 28% of common fund); *Palmer v. Nigaglioni*, 508 Fed. Appx. 658, 658 (9th Cir. 2013) (affirming award of 28% of common fund); *Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *7 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) (awarding 33.3% of common fund); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33.3% of common fund); *see also In re Rite Aid*, 146 F. Supp. 2d at 735 (noting that in a study of 287 settlements ranging from less than $1 million to $450 million, "[t]he average attorney's fees percentage is shown as 31.71%, and the median turns out to be one-third").

In the present case, there is no reason to reduce the benchmark award. Nor is there anything that would rebut the presumptive reasonableness of a 25% award. Accordingly, there Court should preliminarily approve the requested award.

2. The Process of Negotiating the Settlement Was Appropriate

In discharging its duty to determine the fairness of an award of attorneys' fees and costs in a class action settlement, the Court's primary concern is to ensure that the negotiation process leading to the fee has "adequately protected the class from the possibility that class counsel were accepting an excessive fee at the expense of the class." *Staton*, 327 F.3d at 972 ; *see Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1329 (9th Cir. 1999).

In the present case, negotiations were entirely at arms'-length, were hard fought, and were overseen by an independent mediator. (Chavez Decl. ¶ 16.) Moreover, there is no evidence of any fraud or collusion. Plaintiff's counsel are well-respected and highly experienced in class action, consumer, and bankruptcy litigation. (*See* Chavez Decl. ¶¶ 2-15; Meyers Decl. ¶ 2.) This experience and skill gives rise to a presumption of the absence of fraud or collusion in negotiating the fee. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52-53, 75 Cal. Rptr. 3d 413, 423 (2008). Furthermore, any fees that are not awarded by the Court will not revert to the Trustee or the estate but are made available for distribution to the class. (Chavez Decl. ¶ 16.) This also reduces the likelihood that the parties colluded to confer benefits on each other at the class members' expense. *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 458 (C.D. Cal. 2014) (absence of a "kicker provision" reduces likelihood of collusion). In sum, there are simply no indicia of a collusive agreement. The Court, therefore, should grant the motion.

3. The Requested Award Is Comparable to Awards Approved by Other Courts in the Ninth Circuit

In determining the reasonableness of a fee request, courts consider "the range of fee awards out of common funds of comparable size." *Vizcaino*, 290 F.3d at 1049-50. "In light of the many cases in this circuit that have granted fee awards of 30% or more, the requested fee is well within the usual range of percentages awarded in similar cases." *Vedachalam*, 2013 WL 3941319 at *2; *see also In re Pacific Enterprises*, 47 F.3d at 379 (affirming fee award equal to 33% of fund); *Garner v. State Farm Ins.*, 2010 WL 1687829, at *3 (N.D. Cal. April 22, 2010) (awarding fee of 30% of the $15 million settlement fund); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,

1375 (N.D. Cal. Oct. 3, 1989) (32.8% fee); *Linney*, 1997 WL 450064, at *7 (33.3% fee); *In re Heritage Bond Litig*, 2005 WL 1594403, at *18 n.12 (C.D. Cal. Jun. 10, 2005) (noting that more than 200 federal cases have awarded fees higher than 30%); *In re Pacific Enterprises*, 47 F.3d at 379 (affirming award equal to 33% of common fund); *Vizcaino*, 290 F.3d at 1047 (28% fee award); *Brailsford v. Jackson Hewitt Inc.*, 2007 WL 1302978, at * 5 (N.D. Cal. May 3, 2007) (awarding 30% of settlement fund).

4. Although a Lodestar Crosscheck Is Unnecessary, such a Crosscheck Nonetheless Confirms that the Requested Percentage Is Reasonable

The Court need not undertake a lodestar crosscheck. *Craft*, 624 F. Supp. 2d at 1122 ("[a] lodestar cross-check is not required in this circuit"); *see also* Manual for Complex Litigation, § 14.121 ("At least one court has discontinued using the lodestar as a check on the reasonableness of percentage awards because of the lodestar method's perceived faults."); Newberg on Class Actions § 15:89 (5th ed.) (discussing study finding that only 53% of courts using the percent of the fund method utilized a cross-check). However, performing such a crosscheck can confirm whether the requested percentage is reasonable. The crosscheck "measures the lawyers' investment of time in the litigation" and "provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. In this context, a lodestar "crosscheck " is distinct from a full "lodestar analysis." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *15 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004). Accordingly, a crosscheck "need entail neither mathematical precision nor bean-counting." *In re Rite Aid*, 396 F.3d at 306. The Court, therefore, need not review actual billing records. *Ibid*.; *see also Johansson-Dohrmann*, 2013 WL 3864341, at *11 ("detailed time sheets are not necessary"); *Johnson v. General Mills, Inc.*, 2013 WL 3213832, at *6 n.3 (C.D. Cal. Jun. 17, 2013) (same). Otherwise, "the utility of the percentage method" would be "undermine[d]."[3] *See Linerboard*, 2004 WL 1221350 at *15. The ultimate goal is to reasonably compensate counsel for their efforts in creating the common fund. *See Paul, Johnson*, 886 F.2d at 271-72.

[3] Nonetheless, class counsel are fully prepared to provide their detailed time records upon request by the Court, if the Court desires to review them.

In the present case, Class Counsel have expended 464.7 hours on this case as of June 10, 2016, totaling $314,794.50 in fees.[4] (Chavez Decl. ¶ 41.) They will incur additional attorneys' fees in the future and will update their lodestar prior to any final award.

At present, the requested award of attorneys' fees would result in a multiplier of 2.05,[5] which is reasonable in the present case given the results achieved, the risks of litigation, the skill required and the quality of the work, the contingent nature of the fee, the financial burden carried by plaintiff, and awards made in similar cases. *Vizcaino*, 290 F.3d at 1048-50. In fact, courts have approved multipliers vastly exceeding this level. *Craft*, 624 F. Supp. 2d at 1125 (awarding 25% fee resulting in 5.2 multiplier and collecting cases with multipliers as high as 19.6); *see also Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (awarding multiplier of 15.6); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (awarding 5.3 multiplier as not being "atypical for similar fee-award cases"). Moreover, the final multiplier will necessarily be smaller given that the lodestar above is calculated solely through June 10, 2016 and does not account for all of the additional effort that will be necessary to prepare for the hearing on this motion or the motion for final approval, as well as the time that will be taken to respond to class member inquiries and generally administer the settlement. (Chavez Decl. ¶ 41.)

a) Class Counsel Achieved an All-Cash Settlement that Benefits the Entire Class

Courts applying the lodestar method as the primary method for determining a reasonable fee (rather than merely as a crosscheck, as in this case) consider the results achieved to be the most important factor. *In re Bluetooth*, 654 F.3d at 942; *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009).

[4] The lodestar was calculated using Class Counsel's usual and customary billing rates that were set in line with the prevailing rates for attorneys within the Bay Area with similar skills, qualifications, and experience, and which have been approved by other courts. (Chavez Decl. ¶¶ 22-23; Meyers Decl. ¶ 13.) Accordingly, the rates used are manifestly reasonable. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) ("the established standard when determining a reasonable hourly rate is the 'rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation'").

[5] Chavez Decl. ¶ 42.

In the present case, Plaintiff achieved all of the relief that he set out to obtain; nothing was left on the table. (Chavez Decl. ¶ 42.) The settlement that the Court preliminarily approved provides for the creation of a $2,342,976 million fund if the Trustee achieves a $6 million sale in which class members will share. (Chavez Decl. ¶ 16.) Proceeds from this fund will be distributed automatically, without a claims process. (*Id*.) None of this would have been possible absent the work that Plaintiff and class counsel performed in this case. (Chavez Decl. ¶ 42.)

b) Class Counsel Overcame Substantial Risks in the Litigation All on a Contingent Basis

"The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see also Vizcaino*, 290 F.3d at 1051 (upholding multiplier of 3.65 where "[c]lass counsel here have represented that they would not have taken this case other than on a contingency basis."].) In this context, courts routinely enhance the lodestar given that it "[i]is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *WPPSS*, 19 F.3d at 1299.

Class counsel performed their work on this case on a purely contingent basis. (Chavez Decl. ¶ 17; Meyers Decl. ¶ 7.) Moreover, the case embodied substantial risk that left open the very real possibility that the class would not have recovered anything. As the Court is aware, this dispute involved complex and novel issues of commercial and bankruptcy law, the litigation of which would be costly, time-consuming, and risky for all parties. Moreover, there was a substantial risk that, due to the high cost of storing the remaining bottles and administering the estate, class members would not be able to collect additional funds even if they prevailed at trial. *See Seiffer v. Topsy's Int'l, Inc.*, 70 F.R.D. 622, 630 (D. Kan. 1976) ("Collectibility of a judgment is also a factor bearing on the reasonableness and adequacy of a settlement when considered in relation to the defendants' ability to withstand a greater one."); *Howington v. Ghourdjian*, 208 F. Supp. 2d 892, 894 (N.D. Ill. 2002) ("collectability of possible judgment" is factor in considering

reasonableness of settlement). The requested award, therefore, is appropriate given the risks and the contingent nature of the representation.

c) Class Counsel Are Skilled

The "prosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). This is particularly true when the class action intermingles with bankruptcy law.

In the present case, class counsel expertly steered this adversary proceeding to a quick and efficient resolution on terms that provide substantial relief to the entire class. Class counsel's prosecution of this action achieved a successful result with far less effort than might be expected. This further supports the requested award.

d) The Multiplier Will Be Less Than Multipliers Awarded in Other Cases

In *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, the court awarded a fee amounting to 25% of the common fund, which resulted in a 5.2 multiplier. Though the court noted that such a multiplier was on the high end, it concluded that there was "ample authority for such awards resulting in multipliers in this range or higher." 624 F. Supp. 2d at 1125; *see also Vizcaino*, 290 F.3d at 1051 & n.6 (noting most common fund cases result in multiplier between 1.0 and 4.0 and approving 3.65 multiplier "to reflect the risk of non-payment in common fund cases"). In this context, "[m]ultipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation." *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995); *accord Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988), *aff'd sub nom. Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990) (finding that "range of lodestar multiples in large and complicated class actions runs from a low of 2.26 . . . to a high of 4.5 . . . [with] [m]ost lodestar multiples awarded in cases like this . . . between 3 and 4"). Such multipliers have also been awarded in cases that were "neither legally nor factually complex" in which "discovery was virtually nonexistent" and that were resolved quickly. *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 735, 742 (3d Cir. 2001) (approving lodestar multiplier of 2.99).

A 2.05 multiplier is well within the range of awards approved by other courts and eminently reasonable in light of the factors discussed above. This conclusion remains true even though the case was settled quickly. *See In re Cendant Corp.*, 243 F.3d at 742. The Court, therefore, should approve the requested award. As Judge Davies from the Central District of California has noted, where "the fee was negotiated at arms' length with sophisticated defendants by the attorneys who were intimately familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained for the class . . . the Court [should be] reluctant to interpose its judgment as to the amount of attorneys' fees in the place of the amount negotiated." *In re First Capital Holdings Corp. Fin. Products Sec. Litig.*, 1992 WL 226321, at *4 (C.D. Cal. Jun. 10, 1992).

IV. CONCLUSION

For all the foregoing reasons, the Court should grant Plaintiff's motion and preliminarily award class counsel attorneys' fees and costs in the amount of 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created under the settlement agreement in this case and set a further hearing to determine the final award of attorneys' fees and costs.

Respectfully submitted,

Dated: June 15, 2016

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CHAVEZ & GERTLER LLP

By: */s/ Mark A. Chavez*
Mark A. Chavez

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU, Debtor.	**Case No. 16-40050-WJL** **Chapter 7** **A.P. No. 16-04033**
MICHAEL D. PODOLSKY, on behalf of himself and all others similarly situated, Plaintiff, vs. MICHAEL G. KASOLAS, Trustee, Defendant.	**DECLARATION OF MARK A. CHAVEZ IN SUPPORT OF MOTION FOR AWARD ATTORNEYS' FEES AND COSTS** Date: July 27, 2016 Time: 10:00 a.m. Dept: Courtroom 220

I, Mark A. Chavez, declare as follows:

1. I am one of the attorneys representing the settlement class in this action. I have been actively involved in this matter since inception and participated in the negotiation of the proposed settlement. I have personal knowledge of the facts set forth in this declaration and, if called to testify, I could and would testify competently to the matters stated herein.

PERSONAL BACKGROUND AND EXPERIENCE

2. I have extensive experience representing consumers and other plaintiffs in complex civil litigation in federal and state courts. Moreover, I have particular expertise in handling class actions. I make this declaration in support of Plaintiff's motion for award of attorney's fees and costs filed herewith.

3. I received my B.A. *summa cum laude* from the University of the Americas in 1975 and my J.D. from Stanford Law School in 1979. In the fall of 1978, I served as a Judicial Extern for the Honorable Mathew O. Tobriner, then Senior Associate Justice of the California Supreme Court. After graduating from law school, I joined the Civil Division of the United States Department of Justice in Washington, D.C., through the Attorney General's Honors Program. I was subsequently employed with the law firm of Pillsbury, Madison & Sutro in San Francisco, California as an associate, and was a partner in the law firm of Farrow, Bramson, Chavez & Baskin in Walnut Creek, California. For 22 years, I have been a partner in the law firm of Chavez & Gertler LLP in Mill Valley, California handling class action litigation on behalf of plaintiffs.

4. I am a member in good standing of the California State Bar and the bars of United States District Courts for the Northern, Eastern, Central and Southern Districts of California. In connection with individual cases, I have been admitted to appear before the United States District Courts for the District of Arizona, the District of Colorado, the District of Columbia, the Middle District of Florida, the Southern District of Florida, the District of Idaho, the Northern District of Illinois, the District of Massachusetts, the District of New Jersey, the Eastern District of New York, the Eastern District of Pennsylvania and the Western District of Washington. I have also been admitted pro hac vice and have appeared before state trial courts in Alabama, Arizona, Florida, Missouri, Nevada, Ohio, Washington, and West Virginia.

5. I am admitted to practice before the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit, the District of Columbia Circuit and the Eleventh Circuit. I have argued appeals before the United States Court of Appeals, the California Supreme Court and the California Court of Appeals. The published appellate opinions in my cases include the following:

(a) In re Tobacco Cases II (2007) 41 Cal.4th 1257

(b) Olszeweski v. ScrippsHealth, (2003) 30 Cal.4th 798;

(c) Washington Mutual Bank v. Superior Court, (2001) 24 Cal.4th 906;

(d) Linder v. Thrifty Oil Co., (2000) 23 Cal.4th 429 (argued as counsel for amicus);

(e) AICCO, Inc. v. Insurance Co. of North America, (2001) 90 Cal.App.4th 579 (argued as counsel for amicus);

(f) Norwest Mortgage, Inc. v. Superior Court, (1999) 72 Cal.App.4th;

(g) Rowland v. U.S. Dist. Court for Northern Dist. of California, 849 F.2d 380 (9th Cir. 1988);

(h) Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986); and

(i) Gardiner v. Sea-Land Service, Inc., 786 F.2d 943 (9th Cir. 1986).

6. In the course of my career, I have handled a number of other significant cases at the trial court level, including the following:

(a) Karahalios v. National Federal of Federal Employee, Local 1263, 489 U.S. 527 (1989) - action involving the scope of federal court jurisdiction over federal labor matters;

(b) United States v. PATCO, 524 F.Supp. 160 (D.D.C. 1981) - action to enjoin the air traffic controllers from engaging in a nationwide strike; and,

(c) United Presbyterian Church v. Reagan, et al., 738 F.2d 1375 (D.C. Cir. 1984) - action challenging the constitutionality of President Reagan's Executive Order redefining the scope of permissible intelligence activities by the CIA, NSA and FBI.

7. Throughout my career, I have been actively involved in a number of organizations seeking to promote the interests of consumers through public interest litigation. I was a founding

member of the Stanford Public Interest Law Foundation in 1978 and in 1993 was one of three original members named honorary members of its Board of Directors in recognition of the extent and duration of our support for the organization. For several years, I was a member of the Board of Directors of the San Francisco Trial Lawyers Association. I am also a former member of the Board of Governors of the Consumer Attorneys of California (formerly California Trial Lawyers Association), Disability Rights Advocates and the Public Justice Foundation. In 1993, I and seven other consumer attorneys from across the country founded the National Association of Consumer Advocates. The National Association of Consumer Advocates is a non-profit corporation formed in response to the belief that an organization of private and public sector attorneys, legal services attorneys, law professors and students, whose primary practice or interests involve the protection and representation of consumers, was needed. Its mission is to promote justice for all consumers by maintaining a forum for information-sharing among consumer advocates across the country and to serve as a voice for its members as well as consumers in the ongoing struggle to curb unfair and abusive business practices. It currently has approximately 1,600 members. I have served as Co-Chair of the National Association of Consumer Advocates and was a member of its Board of Directors for eight years. In addition, I was a member of the Board of Directors of the National Consumer Law Center for 10 years and currently serve on its Partners Council.

8. I currently serve as Chair of the Board of Directors of the Public Citizen Foundation in Washington, D.C. and I am a member of the Board of Directors of Legal Services for Children in San Francisco, California.

9. I lecture frequently on various class action and consumer law issues. As an invited speaker, I have given presentations on class action matters at the American Bar Association's Class Action Institute, the American Association for Justice's Class Action Symposium, and the Practicing Law Institute's Consumer Financial Services Litigation Program. I have also spoken at annual conventions of the American Bar Association, the National Consumer Rights Litigation Conference, the annual convention of the State Bar of California, the annual convention of the Consumer Attorneys of California, the California Bankers Association Conference, and the

Banking Litigation Seminar of the Association of the Bar of the City of New York. My most recent speaking engagements include the following:

(a) "Living on the Fault Line: Class Action Issues in California," American Bar Association's Thirteenth Annual National Institute on Class Actions, San Francisco, California, November 20, 2009

(b) "IPO, Hydrogen Peroxide, and the Evolving Standards of Proof for Class Certification", AAJ 2010 Annual Convention, Vancouver, Canada, July 13, 2010

(c) "Fighting Back Against The Big Business Agenda", Consumer Rights Litigation Conference, Chicago, Illinois, November 5, 2011

(d) "Federal Preemption: Endangered Species After Dodd-Frank and Clearing House", Financial Services Litigation in the Era of Dodd- Frank, Phoenix, Arizona, November 11, 2011

(e) "Wal-Mart v. Dukes – How Much of a Hazard to Class Certification in Financial Services Cases?", American Bar Association Consumer Finance Subcommittee Winter Meeting, Park City, Utah, January 9, 2012

(f) "The Impact of Wal-Mart v. Dukes on the Class Certification Calculus", CAOC/SFTLA Sixth Annual Class Action Seminar, San Francisco, California, February 28, 2012

(g) "The Implications of Downsizing Class Actions: Multi-District Litigation, Co-Counseling, Coordination," The Impact Fund's Tenth Annual Class Action Conference, Berkeley, California, March 2, 2012

(h) "The Future of Class Actions," Bridgeport's Twelfth Annual Class Action Conference, Los Angeles, California, April 20, 2012.

(i) "Ethical Issues in Representing Multiple Plaintiffs," California Employment Lawyers Association 11th Annual Advanced Wage and Hour Seminar, Los Angeles, California, April 17, 2015.

10. I am a former member of the Editorial Board of the Consumer Financial Services Law Report and previously served on the Editorial Board of Class Action Reports for over 10 years. I have also written and published a number of articles on class action and consumer law issues, including: "The George Court Issues Surprising Endorsement of Class Action Device in Linder v. Thrifty Oil," FORUM, January/February 2001, at 12 and "Kraus, Cortez and Future Battlegrounds In Representative Actions Under the Unfair Competition Law," FORUM, July/August 2000, at 33 (co-authored with Alan M. Mansfield). I also co-authored (with Kim Card) an article entitled "Recent Developments In California Law On Class Certification Issues,"

for the Consumer Attorneys of California 35th Annual Tahoe Seminar Consumer Remedies Program, at which I was a speaker, and an article entitled "California's Unfair Competition Law – The Structure and Use of Business and Professions Code §17200," for the Practicing Law Institute's Consumer Financial Services Litigation 2008 Program. In addition, I prepared an article entitled "The MDL Process" for presentations before the National Consumer Rights Litigation Conference and the Practicing Law Institute's Consumer Financial Services Litigation Program.

11. In the 36 years that I have been practicing law, I have spent the vast majority of my career litigating class action cases. I have had extensive experience handling such actions in both the federal and state courts. In April 2000, I successfully argued Linder v. Thrifty Oil, (2000) 23 Cal.4th 429 before the California Supreme Court, on behalf of amicus the Consumer Attorneys of California. Linder was the first decision on class certification issues decided by the California Supreme Court in nearly two decades. I was co-counsel for the plaintiff class in Washington Mutual Bank, F.A. v. Superior Court, (2001) 24 Cal.4th 906, in which the California Supreme Court defined the rules governing certification of nationwide classes in California. In addition, I was lead counsel for the plaintiffs and argued before the California Supreme Court in Olszeweski v. ScrippsHealth, (2003) 30 Cal.4th 798. I was also co-counsel for the plaintiff class in In re Tobacco Cases II (2007) 41 Cal.4th 1257.

12. In the course of my career, I have also served as lead or co-lead counsel in over 120 other class actions in federal and state court. I have extensive experience and expertise handling consumer class actions in federal and state court. Although most class actions settle prior to trial, I acted as co-counsel for the plaintiff class in a two-month federal court class action trial at which 65 witnesses testified and over 1,000 exhibits were introduced. I was also lead counsel for the plaintiff class in a successful class action trial in California state court.

13. I have extensive experience and expertise in the field of consumer financial services litigation. For six years, I was the Co-Chair of the Practicing Law Institute's Consumer Financial Services Litigation Program in New York and San Francisco. I have been appointed lead or co-lead counsel for plaintiff classes in over 70 class actions filed against banks, credit card

companies, automobile finance lenders and credit unions. I have successfully prosecuted consumer financial services class actions in state and federal courts around the country over the past 28 years including Richardson v. Wells Fargo Auto Finance Inc., San Francisco Superior Court, Case No. CGC-08-481662 ($232 million settlement achieved after the filing of motion of summary judgment), Smith v. General Motors Acceptance Corporation, Case No. 776152 (Santa Clara County Superior Court) ($105 million settlement achieved after trial); and In Re Transouth Cases, (Santa Clara County Superior Court) ($76 million settlement).

14. Unlike many plaintiffs' attorneys, I also have had substantial experience representing defendants in large scale class actions. I defended such cases both while I was with the United States Department of Justice and while in private practice. For example, I previously served as lead or co-counsel for the defendants in the following class actions:

(a) Alexandra v. Alamo (Alameda Sup. Ct. No. 640832-9) - statewide class action challenging the price of collision damage waivers sold by a car rental company.

(b) Nosse, et al. v. Volkswagen of America, Inc. (S.F. Sup. Ct. No. 780024) - statewide class action suit seeking damages allegedly resulting from a defective part in 1974-1979 Volkswagen manufactured vehicles.

(c) Bernice Turbeville v. William Casey and Central Intelligence Agency (E.D. Va. Civil Action No. 81-1058-A) - nationwide class action alleging sex discrimination in promotion, training and overseas assignments of the CIA's female operations officers.

15. I and my firm have received a number of honors and awards for our work. I have been A-V rated by Martindale-Hubbell for 20 years. In 1994, I was selected to deliver the opening address at the National Consumer Rights Litigation Conference in recognition of my work on behalf of consumers challenging force placed insurances charges by lenders around the country. My firm was named Law Firm of the Year by the Los Angeles Center for Law & Justice in 2001. I have been selected as a Northern California Super Lawyer by Law & Politics and San Francisco Magazine on eight occasions. In 2006, I received the Champion of Justice Award from the Bar Association of San Francisco. My firm received the Equal Justice Award from the Law Foundation of Silicon Valley in 2007. In March 2012, I received the Guardian of Justice Award

from Bay Area Legal Aid. I received the Consumer Attorney of the Year Award from the National Association of Consumer Advocates in November 2013.

THE SETTLEMENT NEGOTIATIONS

16. With the Trustee's motion to liquidate Premier Cru's inventory pending and with the filing of the present adversary action, the Court strongly recommended to the parties that they mediate in order to resolve the claims to Premiuer Cru's inventory in as just a manner as possible. The parties mediated the case with the Honorable Dennis Montali in May 2016. At the mediation, the parties came to agreement regarding the material terms of a settlement after hard-fought arms'-length negotiations. In relevant part, the parties agreed that class counsel could seek up to 25% of the Segregated, Purchased, Oversubscribed, and Segregated Oversubscribed subfunds to be created under the settlement agreement in this case subject to the Court's approval. A true and correct copy of the settlement agreement that the Court approved on June 1, 2016 is attached as Exhibit 1. Though at this stage, the sale price of the wine inventory and dollar amount of the subfunds have not been determined (the target sale price for the wine inventory is $5 million), to provide the Court with a sense of the magnitude of the award, we estimated the fee that would be awarded should the sale price be around $6.6 million such that the total amount for distribution to the class will be $2.6 million. Under this scenario, the requested 25% award of attorneys' fees and costs would be $650,000, though Class Counsel expects the ultimate fee to be less. Under the terms of the settlement, any fees that are not awarded by the Court do not revert to the trustee or the estate but are made available for distribution to the class.

CHAVEZ & GERTLER'S ATTORNEYS' FEES AND COSTS

17. Chavez & Gertler LLP takes cases on a contingent fee basis. Because we do not have regularly paying clients, we rely on awards for attorneys' fees and costs in order to continue our work for the advancement of plaintiff's rights. Our firm has received no compensation for our time or expenses invested in this case, and if we do not prevail, we will receive no compensation whatsoever, and will sustain a significant financial loss. Although we have confidence in the claims we have advanced, there is always a risk in every case taken on contingency that the case may ultimately prove to be unsuccessful, whether because issues of law or fact are later decided

adversely to the plaintiff, because the facts cannot be proven, because of a procedural issue, or for any other number of reasons. Thus, Chavez & Gertler LLP has prosecuted this litigation up to this point, and has been completely at risk throughout the case that it would not ultimately receive any compensation. Because the firm devoted its time and resources to this matter, as a small firm, it has forgone other legal work for which it most likely would have been compensated. In the face of these obstacles, it is the possibility of recovering a substantial and fully compensatory fee award at the conclusion of a successful case that creates the necessary incentive for private attorneys such as myself to provide representation. That is why it is an established and standard practice for attorneys who provide representation on a contingent basis to be awarded compensation in an amount greater than the standard hourly rate for pay-by-the-hour cases.

18. This case, in particular, embodied even greater risk than usual. The claims and defenses in this case raise a large number of complex legal issues in a very fluid area of practice. Class counsel took a substantial risk that they would not prevail on these issues and thus would not recover a full fee. Included in this risk was the very real possibility that the class would not have recovered anything. As the Court is aware, this dispute involved difficult and novel issues of commercial and bankruptcy law, the litigation of which would be costly, time-consuming, and risky for all parties. Moreover, there was a substantial risk that, due to the high cost of storing the remaining bottles and administering the estate, class members would not be able to collect additional funds even if they prevailed at trial.

19. As of June 10, 2016, Chavez & Gertler has expended 229.1 hours prosecuting and resolving the class claims in this case, which amounts to $174,982.50 in fees based on our 2016 rates. A summary of the hours and billing rates for the individuals from my firm for whom we seek to be compensated is attached to this declaration as Exhibit 2. That exhibit shows the breakdown of the hours, billing rate, and fees by each of the legal professionals involved in this litigation from initial investigation through June 10, 2016, the majority of which was necessarily spent negotiating the settlement in this adversary proceeding, obtaining preliminary approval of the proposed settlement, managing and overseeing the notice process, responding to class member inquiries, working with the settlement administrator, and preparing the present motion for fees

and the motion for final approval. The amount of fees set forth in Exhibit 2 does not include the work preparing for and attending the hearing on the motions for fees and final approval and does not include any of the work we will inevitably be required to perform going forward until the ultimate conclusion of this litigation, including responding to the numerous inquiries about the settlement that we will undoubtedly receive from class members, or potentially handling any controversies that, though not anticipated, may arise regarding the administration of the settlement.

20. In my professional opinion, all of the work summarized on Exhibit 2 was reasonable, appropriate, and necessary to achieving and implementing the favorable terms of settlement reached on behalf of the class. The number of hours expended by the attorneys to achieve the results in this case was reasonable, and in my opinion, the attorneys worked efficiently and avoided duplication of effort. In this connection, I made a conscious effort to allocate work according to level of experience and specific skills, relative to the task at hand. For instance, I assigned much of the briefing in this case to Dan Gildor, a partner at my firm who has extensive experience litigating class actions and handling fee motions and the approval process efficiently and effectively. I also assigned responsibility for handling most class member inquiries to Sam Cheadle, as associate in my firm.

21. Personally, I often did not bill my own time that otherwise could have been legitimately billed. For instance, I did not bill the time that I took reviewing every email in the case. I could have legitimately billed that time, but elected not to because reviewing the emails required only a few minutes or less. I also instructed the attorneys at my firm to avoid excessive conferencing and duplication of effort, though some overlap was necessary and helpful in the work we performed. I tried to measure that against the important goal of efficiency and attempted to strike a balance. I communicated regularly with Mr. Meyers to monitor and coordinate the work so that the same efficiencies could be achieved across the entire team.

22. The rates used to calculate our attorneys' fees in this case are our current 2016 rates. My partner and I periodically establish hourly rates for all billable personnel in my firm. We set the rates based on our regular and on-going monitoring of prevailing market rates in the

San Francisco Bay Area for attorneys of comparable skill, experience, and qualifications. In doing so, we consult with experts on attorneys' fees issues. We also obtain information concerning market rates from other attorneys in the area who perform comparable litigation, including the prosecution or defense of complex and/or class action litigation, from conversations with attorneys who are involved in fee litigation, from reviewing fee applications that are submitted in other cases (which report the billing rates of attorneys practicing in other firms), and the orders approving or disapproving them. We set the billing rates for our firm to be consistent with the prevailing market rates in the private sector in the Bay Area for attorneys of comparable skill, qualifications and experience, but not at the higher or most aggressive end of the spectrum despite our belief that our work product and efficiency and general quality of representation is at the upper end of that continuum.

23. The appropriateness of my firm's billing rates is supported by past orders approving them. Chavez & Gertler has been awarded its customary hourly rates in connection with numerous fee applications. For instance, our 2015 rates were approved in *Wraith v. Juvenon Inc.*, San Mateo Superior Court No. CIV 522912, wherein the Court held that "[t]he hourly rates claimed by Class Counsel are reasonable and appropriate and consistent with the rates charged in the San Francisco Bay Area for attorneys with similar qualifications, skills and experience." Our 2015 rates were also approved by the United States District Court for the Northern District of California in *Minns v. ACES*, No. 13-CV-03249-SI and in *Ponce v. Sims Groups USA Corp.*, No. 14-CV-903 NC, as well as by the California Superior Court in and for Alameda County in *Noble v. Greenberg Traurig*, Alameda County Superior Court No. RG11593201. Our 2014 rates were approved in *Jones v. Armanino LLP*, Alameda Superior Court No. RG13-684105, *Freeman v. On Assignment Staffing Services, Inc.*, Alameda County Superior Court No. RG12652237, and *Vazquez Flores v. Neal C. Tenen, A Law Corporation, et al.*, Sacramento County Superior Court Case No. 34-2012-00118707. Our 2013 rates were approved by the United States District Court for the Northern District of California in *Bolton v. U.S. Nursing*, No. 12-4466 LB, and by the California Superior Courts in *Moss-Clark v. New Way Services, Inc.*, Contra Costa County

Superior Court No. 12-01391 and *Mejia v. Prologix Distribution Services (West) Inc.*, Alameda County Superior Court No. RG12640974.

24. As of June 10, 2016, Chavez & Gertler has incurred $387.35 in costs consisting of travel and computer research costs. A true and correct summary of the costs my firm has incurred in this case through June 10, 2016 is attached hereto as Exhibit 3.

ATTORNEY QUALIFICATIONS AND CONTRIBUTIONS

25. As reflected above, the current hourly rate for my legal services, which is well within the prevailing range for attorneys of my credentials and experience, is $825. As of June 10, 2016, I spent 127.9 hours on this case.

26. The qualifications and experience of the other Chavez & Gertler attorneys who contributed to this case are set forth below.

Nance Becker

27. Ms. Becker received her B.A. in economics and environmental studies from S.U.N.Y. Binghamton, Harpur College in 1978 and graduated with honors from Stanford Law School in 1981. She is admitted to all of the U.S. District Courts in California, the Ninth Circuit Court of Appeals and the United States Court of Claims, and I have appeared before the California Supreme Court, California Courts of Appeal, and appellate courts in Washington and Utah.

28. After working as an associate at Morrison & Foerster, Ms. Becker joined and became a partner at Rogers, Joseph, O'Donnell & Quinn (now known as Rogers Joseph), where she specialized in complex motions and represented a variety of large and small corporations in a commercial litigation involving unfair competition, wrongful termination, insurance coverage, and contract disputes. She then joined and became a partner at Banchero & Lasater (now The Banchero Law Firm) where she represented plaintiffs and defendants in a range of civil matters including unfair business practices, contract and insurance coverage disputes, fraud in connection with accounting and investments, environmental issues, and plaintiff personal injury. Ms. Becker's work at Banchero & Lasater included second-chairing a seven-week trial involving the Brown & Bryant Arvin Superfund site (E.D. Cal. Nos. CV-F-92-5068, 96-6226, 96-6228), a

dispute involving important issues of arranger liability and whether liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") is divisible and may be apportioned. The divisibility issue was resolved in the client's favor as a matter of first impression by the U.S. Supreme Court in Burlington Northern & Santa Fe Ry Co. v. United States (2009) 556 U.S. 599.

29. In 2006 Ms. Becker worked as an appellate attorney on behalf of plaintiffs in asbestos and other toxic tort cases. During that time she briefed and analyzed at least twenty appellate cases and argued before the courts of appeal in California, Washington, and Utah. She joined Chavez & Gertler in 2007 and later became a partner in the firm.

30. Since joining Chavez & Gertler, Ms. Becker's practice has been devoted exclusively to the litigation of class action cases on behalf of consumers and other vulnerable groups. She has co-counseled on several significant disability discrimination cases, including Smith v. Hotels.com, Alameda Superior Court No. RG07327029, in which plaintiffs sued to compel one of the largest online travel services to make changes to its reservation system so that individuals with disabilities could research and reserve lodgings with the accommodations they need, and Celano v. Marriott, N.D. Cal. No. C-05-4004-PJH, in which plaintiffs successfully sued to compel Marriott International, Inc., owner and operator of dozens of public golf courses throughout the United States, to provide accessible motorized golf carts for the use of players with mobility disabilities. She worked on and contributed to the successful settlement of about a dozen lawsuits involving lenders' failure to comply with the strict notice provisions of the Rees-Levering Automobile Sale and Finance Act, enacted to ensure full and complete disclosures to consumers following the repossession of their vehicles to maximize their opportunity to redeem and reinstate their loans. She has also worked on a number of cases challenging discriminatory lending practices by major financial institutions; remedying systematic violations of San Francisco's rent control laws; and enforcing the Fair Credit Reporting Act. One of those cases, Roe v. Intellicorp Records, Inc., N.D. Ohio Case No. 1:12-cv-02288, a consolidated action that involved inaccurate criminal background check reporting and about 547,000 class members, recently settled for $18.6 million, along with an agreement by the defendant to materially change

its business practices and to provide additional benefits and services. This result is one of the largest reported settlements in cases involving the Fair Credit Reporting Act.

31. In May and June, 2014, Ms. Becker and Chavez & Gertler partner Jonathan E. Gertler co-counseled the bench trial of Villanueva v. Fidelity National Title Company, Santa Clara Superior Court Case No. 1-10-CV-173356, in which they represented a class of over 500,000 consumers charged illegal escrow fees. As a result of the successful prosecution of the case, Ms. Becker and Mr. Gertler were nominated Trial Lawyers of the Year by San Francisco Trial Lawyers Association.

32. Ms. Becker has spent 39.9 hours on this case through June 10, 2016. She researched the implications of filing a class adversary proceeding in bankruptcy court and had primary responsibility for drafting the class action allegations of the complaint and the prelim approval motion. She also attended the preliminary approval hearing and assisted with the drafting of various settlement documents.

33. Ms. Becker's 2016 hourly rate is $725 per hour, which is well within the prevailing range for attorneys of her credentials and experience.

Dan L. Gildor

34. Mr. Gildor is a partner at my firm. In addition to his class action experience, Mr. Gildor has very substantial expertise in information technology and computer systems. Mr. Gildor has spent 57.8 hours on the case through June 10, 2016 assisting me in drafting the class notice and with the papers filed in support of the motion for preliminary approval such as my declaration. Mr. Gildor also took the lead in drafting the motion for fees as well as the motion for final approval.

35. Mr. Gildor graduated from the University of California at Berkeley School of Law (Boalt Hall), Order of the Coif, in 2002. Mr. Gildor has more than nine years of experience as a litigator at both trial court and appellate levels. He has participated in various cases that resulted in published opinions including *Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613 and *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866. He has also been published twice on environmental law matters

in the Ecology Law Quarterly. Before joining my firm, Mr. Gildor was a staff attorney at a number of public interest environmental organizations such as the Natural Resources Defense Council, the Save Our Springs Alliance, and the Environmental Law Foundation. Mr. Gildor's legal experience includes clerking for the United States Department of Justice, Earthjustice, and the law firms of Pillsbury Winthrop and Shute, Mihaly and Weinberger LLP. After law school, Mr. Gildor clerked for the Honorable Barbara J. Rothstein in the United States District Court Judge for the Western District of Washington. Mr. Gildor has a Master's Degree from Stanford University and a Bachelor of Science degree from MIT. Mr. Gildor has extensive computer programming experience and, among his other responsibilities, prepares and reviews expert damages modeling for our cases.

36. Mr. Gildor's 2016 hourly rate is $675 per hour, which is well within the prevailing range for attorneys of his credentials and experience.

Sam Cheadle

37. Mr. Cheadle has been an associate at Chavez & Gertler since November 2012. Mr. Cheadle spent 3.5 hours on this case addressing and responding to class member questions regarding the settlement.

38. Mr. Cheadle received his B.A., with high honors, from the University of California at Santa Barbara in 2005 and J.D. from the George Washington University Law School in 2009, with honors. Before he came to work at Chavez & Gertler, Mr. Cheadle was an Associate at the firm Sedgwick, Detert, Moran & Arnold LLP, where he practiced construction law on behalf of developers, general contractors and specialty subcontractors as well as representing sureties involving contract and commercial bonds. Mr. Cheadle also spent one year practicing immigration law, representing refugees applying for asylum in the United States through the nonprofit The East Bay Sanctuary Covenant. Mr. Cheadle clerked for the U.S. Environmental Protection Agency's Region 9 Office of General Counsel and the U.S. Department of Justice's Environmental Enforcement Section. Mr. Cheadle has been published in the American Bar Association's Public Contract Law Journal.

39. Mr. Cheadle's 2016 hourly rate is $435, which is well within the prevailing range for attorneys of his credentials and experience.

THE RESULTS ACHIEVED AND THE REASONABLENESS OF THE FEE REQUEST

40. Overall, the results obtained in the case were the product of 464.7 hours as of June 10, 2016. This time was spent resolving the claims in this case: mediating the claims, negotiating the settlement, reducing the term sheet to a final agreement, drafting an eight-page class notice, obtaining preliminary approval, responding to class member inquiries, working with the settlement administrator, and preparing the present motion for award of fees and the motion for final approval. All of this work has been necessary in order to effect the outcome in this case. I believe that all of this work was reasonable and necessary.

41. All told, class counsel's lodestar as of June 10, 2016 is $314,794.50, with costs of $3,815.73. In my opinion, these fees and costs are reasonable and have been necessary to the prosecution of this case. Moreover, these amounts do not reflect the work we will do preparing for and appearing at the final approval hearing, responding to class member inquiries; assisting class members with problems that may arise from their settlement awards; coordinating with defense counsel and the settlement administrator during implementation; and communicating with the Court when necessary.

42. In my opinion, an award of 25% of the amount recovered by class members is wholly appropriate in the present case given the considerable contingent risk involved in this case and the result achieved. Such an award would result in roughly a 2.05 multiplier looking only at class counsel's lodestar through June 10, 2016 and provided that the inventory is sold for $6 million. A multiplier in this range is appropriate in the present case under all of the circumstances. The case settled quickly, efficiently, on terms that provide substantive and substantial relief for the class, all with far less effort than might be expected. Finally, the result achieved is excellent. Plaintiff achieved all of the relief that he set out to obtain; nothing was left on the table.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 15th day of June, 2016 at Mill Valley, California.

/s/ Mark A. Chavez
Mark A. Chavez

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (this "Stipulation") is entered into as of May 23, 2016 by and among: (a) MICHAEL G. KASOLAS, as trustee ("Trustee") of the chapter 7 estate (the "Estate") of Fox Ortega Enterprises, Inc., formerly doing business as Premier Cru ("Debtor"); and (b) MICHAEL PODOLSKY, as plaintiff ("Plaintiff") in the Class Action, as defined below.

RECITALS

A. On January 8, 2016 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of California, Oakland Division (the "Court"), commencing case no. 16-40050-WJL (the "Chapter 7 Case").

B. Thereafter, on January 8, 2016, Trustee was appointed as the trustee of the Debtor's chapter 7 estate.

C. Prior to the Petition Date, Debtor was in the business of buying and selling bottles of wine.

D. As of the Petition Date and as of the date of execution of this Stipulation, in excess of 76,000 bottles of wine were held in the Debtor's warehouse located in Berkeley, California (the "Warehouse").

E. As of the Petition Date, certain of those bottles, but not all of the bottles, had been "Allocated" by Debtor, meaning that as of that date, there was a code entry in the Debtor's computer inventory system associating a wine by variety and vintage that was in the Warehouse, with a particular purchaser or particular purchasers.

F. Each of the bottles presently in the Warehouse are within one of the following categories:

(1) "New Bottles," meaning any bottles received by Debtor within 90 days preceding the Petition Date, including a container shipment of bottles received by the Debtor as of November 12, 2015.

(2) "Purchased Bottles," meaning bottles in the Warehouse that had been Allocated to specific customers' orders, or for which specific customers otherwise received notification of order fulfillment, other than New Bottles, with no competing purchasers.

(3) "Oversubscribed Bottles," meaning bottles in the Warehouse corresponding to specific orders, other than New Bottles, that had been Allocated to more purchasers than bottles.

(4) "Unassigned Bottles," meaning bottles in the Warehouse that were

not Purchased Bottles, Oversubscribed Bottles, Segregated Bottles or New Bottles.

(5) "Segregated Bottles," meaning Purchased Bottles, and any other bottles that, although not Allocated, had been designated for shipping to a particular customer without any competing purchasers, that were pulled off the shelves and segregated for delivery or pickup as of the Petition Date.

(6) "Segregated Oversubscribed Bottles," meaning Oversubscribed Bottles that were pulled off the shelves and segregated for delivery or pickup as of the Petition Date.

G. On March 29, 2016, Trustee filed a motion seeking authority under Section 363(b) of the Bankruptcy Code to sell Segregated Bottles and Segregated Oversubscribed Bottles, and by implication, to determine that all such bottles, and all other bottles in the Warehouse, were property of the Estate (the "Sale Motion").

H. Opposition to the Sale Motion was filed by multiple former customers of Debtor, challenging Trustee's ownership and right to sell bottles in the Warehouse. Those oppositions were filed by, among others, Robert P. Morris, Lee Q. Shim, T. Szen Low and William Witte (collectively, the "Participating Customers"), and by Plaintiff. In each of the objections, the objectors disputed Trustee's ownership and ability to sell bottles in the Warehouse.

I. On April 27, 2016, Plaintiff filed a class action complaint (the "Complaint") against Trustee, initiating an adversary proceeding entitled *Michael D. Podolsky, on behalf of himself and all others similarly situated vs. Michael G. Kasolas, Trustee*, A.P. no. 16-04033 (the "Class Action").

J. In the Complaint, Plaintiff seeks, *inter alia*, declaratory and injunctive relief pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure ("FRCP," made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure ("FRBP")), on behalf of himself and those similarly situated, to determine the ownership and equitable interests in Purchased Bottles and Oversubscribed Bottles. Trustee has not yet answered the Complaint, and pursuant to the terms set forth below, the Class Action will be resolved without the necessity of an answer.

K. The Sale Motion was heard by the Court on May 2 and 9, 2016, and thereafter taken under submission by the Court. At the encouragement of the Court, Trustee, Participating Customers, Plaintiff and others then engaged in mediation, with the Honorable Dennis Montali acting as mediator.

L. After extensive negotiations in mediation, Trustee, Participating Customers and Plaintiff reached a tentative settlement of the Sale Motion and the Class Action, in the form of a term sheet (the "Term Sheet"), subject to documentation.

M. Trustee and Plaintiff (collectively, the "Parties") now wish to resolve all claims and disputes between them with respect to the Sale Motion and the Class Action, in accordance with the following terms and conditions:

STIPULATION

NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE, COVENANT AND STIPULATE, FOR ADEQUATE CONSIDERATION HEREBY RECEIVED AND ACKNOWLEDGED, as follows:

1. Recitals Incorporated. Each of the facts set forth in the foregoing recitals is known to the Parties to be true and correct, and each such recital is incorporated herein.

2. Condition to Effectiveness. The effectiveness of this Stipulation is conditioned upon Final Court Approval, as defined below, and each of the Parties agrees to use his, her or its reasonable best efforts to obtain such approval as promptly as possible.

3. Certification of Class and Class Counsel. The Parties hereby stipulate and agree to the certification of the following class (the "Class") and its counsel ("Class Counsel"):

(a) The Class shall consist of all persons who at any time (a) ordered wine from Debtor, (b) paid for their purchase(s), (c) received written notification from Debtor that their order(s) had been filled, or were otherwise Allocated a bottle of wine, and (d) whose wine remains in the custody and control of Trustee at the Warehouse.

(b) The Class Counsel shall consist of Meyers Law Group, P.C. and Chavez & Gertler LLP.

4. Preliminary Court Approval. As soon as practicable following full execution of this Stipulation, the Parties shall seek, on an *ex parte* basis, an order (the "Preliminary Approval Order") of the Court providing the following relief:

(a) Preliminary certification of the Class Action and the Class;

(b) Preliminary approval of the appointment of Class Counsel; and

(c) Approval of the form and timing of the notices described in paragraph 8 herein.

5. Motion for Certification and Approval of Class Settlement. As soon as practicable following full execution of this Stipulation, Class Counsel shall file a motion in the Court (the "Final Approval Motion") seeking approval of this Stipulation, approval of notice, and final certification of the Class, pursuant to FRCP Rules 7023(c), (e) and (g).

6. Rule 9019 Motion. As soon as practicable following full execution of this Stipulation, Trustee shall file a motion in the Court (the "Rule 9019 Motion") seeking approval of this Stipulation as a compromise under FRBP Rule 9019.

7. Section 363 Motion. As soon as practicable following full execution of this Stipulation, Trustee shall file a motion in the Court (the "Section 363 Motion") seeking approval of the sale of wine bottles as described herein, pursuant to the provisions of Section 363(b) of the Bankruptcy Code.

8. Notices to Class Members and Creditors. Subject to approval by the Court pursuant to the Preliminary Approval Order, Trustee shall promptly cause its noticing agent (the "Noticing Agent") to serve notice (the "Class Notice") of the Final Approval Motion upon all Class members, and to service notice of the Rule 9019 Motion and the Section 363 Motion upon all creditors of the Estate. With respect to the Class Notice in particular:

(a) The Class Notice shall be substantially in the form of the notice attached hereto as **Exhibit "A,"** and shall be approved in advance by Class Counsel; and

(b) The Class Notice shall direct Class members to a website maintained by Trustee wherein Class members may obtain estimates of such members' distributions under this Stipulation, on a category-by-category basis.

9. Settlement Website. Trustee shall maintain a website at www.BMCGroup.com/PremierCru on which this Stipulation shall be posted. The website shall also provide to Class members a method to access their order information and verify whether they can redeem any bottles, including a listing of the bottles that they can redeem, if any.

10. Final Court Approval. The Parties shall schedule a hearing before the Court for consideration of the Class Settlement Motion, the Rule 9019 Motion and the Section 363 Motion, as soon as practicable, after allowing no less than 30 days' notice of a deadline for objections or Opt-Outs (as defined below), together with an opportunity for the Parties to respond in writing to any such objections. At that hearing, the Parties will seek an order of the Court (the "Final Court Approval") granting such motions.

11. Redemption of Segregated Bottles. Any Class member holding an interest in a Segregated Bottle may redeem that bottle (a "Redeemed Bottle"), at such member's own shipping expense and with payment of any applicable sales taxes and a reasonable handling fee paid to the Bulk Buyers, *provided* that such class member timely performs each the following actions:

(a) Within 30 days of mailing the Class Notice, that class member's written election to redeem the bottle is received by Trustee, together with that class member's payment to Trustee an amount equal to 20% of the price originally paid by that person to purchase the Redeemed Bottle, together with the sales taxes; and

(b) Prior to August 31, 2016, that class member shall have caused the Redeemed Bottle to have been shipped from the Warehouse or the premises of the Bulk Buyers (as defined below), as the case may be, and shall have paid all necessary shipping charges and the handling fee identified above.

In the event that any Class member fails to timely satisfy the deadline set forth in paragraph 11(b) as to a particular Redeemed Bottle, absent the consent of the Bulk Buyers and the Trustee, that Class member's right to the Redeemed Bottle shall be deemed forfeited and assigned to Trustee, and such Class member shall have no right to reimbursement of funds paid pursuant to paragraph 11(a). Trustee shall dispose of any forfeited Redeemed Bottles in his discretion, and any sale proceeds therefrom shall be deposited into the Segregated Subfund, as defined below.

If a Class member redeems a Redeemed Bottle, an amount equal to 80% of the original purchase price paid by that member for the bottle shall be deducted from that class member's proof of claim. Any Class member who has redeemed a Redeemed Bottle and does not amend his or her proof of claim in the Chapter 7 Case to reduce such claim in accordance with this paragraph on or before October 31, 2016 shall be deemed to have withdrawn such proof of claim in its entirety.

12. Opt-Out Bottles. Class members may exclude themselves from the Class by timely notifying the Trustee in writing (the "Opt-Out Notification") of their intent to do so, and must comply with each of the following requirements:

(a) The Opt-Out Notification must be received by the Trustee no later than 30 days following the mailing of the Class Notice.

(b) In order to be effective, an Opt-Out Notification must be made in writing and contain (1) the Class member's name, (2) his or her address, and (3) a dated signature, along with (4) a written statement that the Class Member has reviewed the Class Notice and wishes to be excluded from the Class.

(c) If a question is raised about the authenticity of a signed Opt-Out Notification, the Trustee will have the right to demand additional proof of the Class member's identity.

(d) A person who has effectively opted out of the Class will not participate in or be bound by this Stipulation. A Class member who does not effectively opt out will automatically remain a participating Class member and be bound by all terms and conditions of the Stipulation.

(e) In the event that any person effectively opts out of the Class, any Purchased Bottles, Oversubscribed Bottles or New Bottles that have been Allocated to that person (collectively, the "Opt-Out Bottles") shall be excluded from this Stipulation and the sale of bottles contemplated herein.

13. Objections to Stipulation. Class members may object to approval of this Stipulation by filing an objection with the Court and serving the objection on the Parties

within 30 days following the date of mailing of the Class Notice. The objection must include (1) the Class member's name, (2) the grounds for the objection, (3) a statement of whether the Class member intends to appear at the final approval hearing, (4) a list of any documents or witnesses that support the objection, and (5) a dated signature. Only those Class members who have not submitted an Opt-Out Notification may object to this Stipulation.

14. Discretionary Cap on Opt-Out Bottles. In the event that the original purchase prices of Opt-Out Bottles, in the aggregate, exceeds the percentage of total purchase prices of bottles in the Warehouse that is set forth and confirmed in an exchange of confidential emails between Trustee's counsel and Plaintiff's counsel dated May 31, 2016, Trustee shall have the option, in his sole discretion, to terminate this Stipulation, *provided* that written notice of such option is received by all Parties within seven (7) business days following the deadline for timely opt-outs under the terms of the Class Notice.

15. Sale of Wine Bottles. Subject to entry of the Final Court Approval, Trustee shall negotiate a sale contract subject to overbids with one or more buyers in bulk of the wine bottles in the Warehouse (collectively, the "Bulk Buyers"), upon the following terms and subject to overbids at auction:

(a) Trustee shall use his best efforts to obtain an aggregate, gross purchase price that is no less than $5,000,000, less the allocated prices of Opt-out Bottles.

(b) The sale or sales shall include all bottles in the Warehouse other than Opt-out Bottles and Redeemed Bottles. The sale price or prices shall be broken down by the Bulk Buyers on a bottle-by-bottle basis and by category (i.e., Purchased Bottles, Segregated Bottles, Oversubscribed Bottles, Segregated Oversubscribed Bottles, Unassigned Bottles and New Bottles).

(c) The purchase price shall be deposited into an account maintained only for such purpose (the "Proceeds Account"). The Proceeds Account shall be held in trust by the Trustee for the Estate and the Class, and shall be disposed of only as provided in this Stipulation and upon an order of the Court.

16. Trustee's Administrative Costs. Trustee shall disburse from the Proceeds Account to an account of the Estate an amount equal to the sum of the following (the "Trustee Administrative Deductions"):

(a) Trustee's direct administrative costs (not including any fees of Trustee or his counsel) in preserving the bottles in the Warehouse, and related documentation, to date, up to maximum amount of the sum of $100,000;

(b) Fees and costs incurred by Trustee to administer this Stipulation, including those of the Trustee (but not to exceed the amount of $55,000), Brian Nishi, BMC or any other persons necessary to implement this Stipulation,

including but not limited to data analysis and activities in the Warehouse related to the sale of wine;

(c) the Noticing Agent's charges in implementation of the noticing required by this Stipulation, including any notice or motion related to Bankruptcy Rule 9019, Bankruptcy Code Section 363 or any notices relating to claim determinations or distributions; and

(d) any expenses incurred by Trustee after July 31, 2016 to preserve the bottles, including rent of the Warehouse, not to exceed $10,000 per month.

17. Disposition of Sale Proceeds. After deducting the Trustee Administrative Deductions, Trustee shall disburse all other funds within the Proceeds Account as follows (with each subfund bearing its aliquot burden of the Trustee Administrative Deductions):

(a) Proceeds resulting from sale of Segregated Bottles shall be deposited into an account identified as the "Segregated Subfund."

(b) Proceeds resulting from sale of Purchased Bottles that are not Segregated Bottles shall be deposited into an account identified as the "Purchased Subfund."

(c) Proceeds resulting from sale of Oversubscribed Bottles other than Segregated Oversubscribed Bottles shall be deposited into an account identified as the "Oversubscribed Subfund."

(d) Proceeds resulting from sale of Unassigned Bottles and New Bottles shall be deposited into an account identified as the "Unassigned Subfund."

(e) Proceeds resulting from sale of Segregated Oversubscribed Bottles shall be deposited into an account identified as the "Segregated Oversubscribed Subfund."

18. Disposition of Subfunds. The subfunds created pursuant to paragraph 17 herein shall be administered by Trustee as follows:

(a) Disposition of Segregated Subfund. The Segregated Subfund shall be distributed by Trustee as follows:

(i) 20% to Estate.

(ii) 80% to customers whose orders correspond to Segregated Bottles other than Redeemed Bottles, less Class Counsel's approved fees and costs pursuant to paragraph 20 herein..

(b) Disposition of Purchased Subfund. The Purchased Subfund shall be distributed by Trustee as follows:

(i) 50% to Estate.

(ii) 50% to customers whose orders correspond to Purchased Bottles that are not Segregated Bottles, less Class Counsel's approved fees and costs pursuant to paragraph 20 herein.

(c) Disposition of Oversubscribed Subfund. The Oversubscribed Subfund shall be distributed by Trustee as follows:

(i) 50% to Estate.

(ii) 50% to customers whose orders correspond to Oversubscribed Bottles, less Class Counsel's approved fees and costs pursuant to paragraph 20 herein.

(d) Disposition of Segregated Oversubscribed Subfund. The Segregated Oversubscribed Subfund shall be distributed by Trustee as follows:

(i) 40% to Estate.

(ii) 10% to customers in whose names the Segregated Oversubscribed Bottles were segregated for delivery or pickup, less Class Counsel's approved fees and costs pursuant to paragraph 20 herein..

(iii) 50% to customers who were Allocated Segregated Oversubscribed Bottles, less Class Counsel's approved fees and costs pursuant to paragraph 20 herein..

(e) Disposition of Unassigned Subfund. The Unassigned Subfund shall be distributed to the Estate.

19. Final Determination of Distributions. The Trustee shall determine the amounts he proposes to distribute to each Class member in accordance with the terms of this Stipulation within 45 days following the completion of the sale of substantially all of the bottles to be sold under the terms hereof, and he shall post his determinations on the www.BMCGroup.com/PremierCru website and notify Class members and Class Counsel of such posting. Any Class member or Class Counsel who objects to the Trustee's determination of proposed distributions must file a written objection in the Bankruptcy Court in the Debtor's chapter 7 case, and serve the same upon the Trustee and Class Counsel, together with any supporting evidence, no later than 21 days following the Trustee's notification. Any objection not timely filed and served shall be deemed waived and forever barred. The Trustee shall consider any timely objections and confer with the objectors and Class Counsel over the objections. After doing so and making any adjustments that the Trustee concludes are appropriate, within 21 days following the deadline for objections, the Trustee shall schedule a binding arbitration to resolve any remaining unresolved objections. In such arbitration, all remaining objectors, the Trustee and Class Counsel shall be entitled to participate, in person only. The arbitrator shall be an independent person mutually selected by Trustee and Class Counsel, the arbitration

shall occur in the San Francisco Bay Area. The objecting parties shall pay half of the arbitrator's advance retainer, and at the conclusion of the arbitration, all of the arbitrator's fees shall be borne by the losing parties jointly and severally. Failure of the objecting parties to timely pay their collective 50% portion of the arbitrator's advance retainer shall be deemed a waiver of the objectors' challenges to the Trustee's decisions. The decision of the arbitrator shall be final and binding, with no right of appeal or other challenge. No Class member shall have any claim against the Trustee, the Plaintiff, Brian Nishi or any agents, representatives or counsel of such Parties, relating to or arising from the Trustee's determinations, the distributions to Class members, or any other act or omission in the implementation of this Stipulation.

20. Counsel Fees. The Parties understand and acknowledge that Class Counsel are entitled to an award of attorneys' fees and costs, and that subject to approval by the Bankruptcy Court, such counsel shall seek an award of fees and costs, and applications therefor shall be filed and served no later than 14 days after the entry of the Preliminary Approval Order:

(a) Class Counsel shall seek fees and costs equal in the aggregate up to 25% of the Segregated Subfund, the Purchased Subfund, the Oversubscribed Subfund and the Segregated Oversubscribed Subfund recovered for Class members under paragraphs 18 (a)(ii), (b)(ii), (c)(ii), (d)(ii) and (d)(iii) herein.

(b) The finality and effectiveness of this Stipulation will not be conditioned on any ruling by the Court concerning the approval of any attorneys' fees and expenses of Class Counsel. No order or proceeding relating to a request for approval of attorneys' fees and expenses of Class Counsel or any appeal from any order relating thereto or reversal or modification thereof, will operate to delay or terminate the Stipulation, or to affect or delay its effectiveness.

(c) Nothing herein shall impair, prejudice or otherwise affect any Class member's right and opportunity to object to the reasonableness of fees and expenses requested by Class Counsel, *provided* that any person who has opted out of the Class shall not have any right or standing to make such an objection.

21. Disposition of Class Action. The Class Action shall be dismissed with prejudice through the entry of the Final Approval Order.

22. Court's Continuing Jurisdiction. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Stipulation and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing this Stipulation and all orders and judgments entered in connection therewith.

23. Allocations among Customers. Proceeds in subfunds shall be allocated among customers in proportion to the original purchase prices paid by those customers to Debtor for the bottles within the category (e.g., Segregated, Oversubscribed, etc.).

24. Assignment of Ownership. Subject to entry of the Final Approval Order, the Class, on behalf of all of its members, hereby assigns to Trustee, without representation or warranty, all claims of ownership, beneficial interest and/or other rights to any bottles of wine in the Warehouse, other than as expressly preserved or created in this Stipulation. Without limiting the foregoing, the Class, on behalf of all of its members, acknowledges and agrees that Trustee may sell all such bottles (other than Opt-out Bottles) and distribute the proceeds thereof in accordance with the terms of this Stipulation.

25. Settlement Checks Negotiable for 90 Days. Any checks paid to Class members pursuant to this Stipulation shall remain valid and negotiable for ninety (90) days from the date of their issuance, and shall thereafter automatically be canceled if not cashed within that time. At that time, the Class member's right to payment will be deemed null and void and of no further force and effect although the individual will remain a Class member bound by the judgment entered in the case.

(a) Final Report by Administrator. Within thirty (30) days after all disbursements have been made by Trustee and all checks have been negotiated or voided, the Trustee shall file with the Bankruptcy Court a declaration providing a final report on the disbursements of all funds.

26. Distribution of Remaining Funds. Any portion of the funds to be distributed to Class members that are not distributed for any reason, including any returned checks or checks that are undeliverable or otherwise not cashed, will be redistributed by Trustee proportionately to Class members whose checks were cashed, in accordance with the distributive scheme set forth in paragraph 18 above, *provided*, however, that if the total amount of funds that could not be distributed is $25,000 or less, Trustee may, at his discretion, deem the uncashed checks to be property of the Estate, and distribute funds to the Estate accordingly. Any check paid to Class members from a second distribution shall remain valid and negotiable for 30 days only.

27. Partial Release of Claims. Trustee hereby releases all claims and causes of action, including without limitation any avoidance actions under Sections 544 *et seq.* of the Bankruptcy Code, against Class members solely to the extent that those claims or causes of action arise from or are related to such members' alleged rights or interests, or the creation of such rights or interests, in any bottles of wine that are the subject of this Stipulation.

28. Reduction of Proof of Claim. Class members' proofs of claims against the Estate shall be reduced to the extent of payments received under this Stipulation. Any Class member who receives a distribution under this Stipulation and does not amend his or her proof of claim in the Chapter 7 Case to reduce such claim in accordance with this paragraph on or before October 31, 2016 shall be deemed to have withdrawn such proof of claim in its entirety.

29. Governing Law. This Stipulation shall be construed in accordance with the laws of the State of California, without regard to its conflict of laws principles.

30. Construction. This Stipulation shall not be construed more strictly against either of the Parties merely by virtue of the fact that the majority of the document has been prepared by one of the Parties or his or her counsel, it being recognized that each of the Parties has contributed substantially and materially to the preparation of this Stipulation.

31. Consideration. Each of the Parties acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by any of the other parties hereto in entering into this Stipulation.

32. Entire Agreement. The Parties each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Stipulation, which represents a complete integration of all prior and contemporaneous agreements and understandings of the Parties. Without limiting the generality of the foregoing, the Parties agree that the Term Sheet is fully replaced and superseded by this Stipulation except as provided herein, and upon full execution of this Stipulation, the Term Sheet shall have no further force or effect.

33. Benefit. Except as provided herein, this Stipulation shall be binding upon and shall inure to the benefit of the Parties, and their respective successors, assigns, grantees, heirs, executors, personal representatives, and administrators.

34. Counterparts. It is understood and agreed that this Stipulation may be executed in several counterparts and may be transmitted by electronic mail or by original signature, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one, and the same Stipulation, even though all of the parties hereto may not have executed the same counterpart of this Stipulation.

35. Authority. Each of the Parties represents that it has all necessary right, power and authority to enter into and perform this Stipulation under all applicable laws, and that upon execution, this Stipulation shall be binding on such party in accordance with its terms.

36. Notices. Except as otherwise provided, all notices, requests and demands hereunder shall be: (a) made to either party hereto at its address set forth below or to such other address as any party hereto may designate by written notice to the other parties in accordance with this provision; and (b) deemed to have been given or made: if by hand, immediately upon delivery; if by electronic mail, immediately upon receipt; if by overnight delivery service, one day after dispatch; and if by first class or certified mail, five (5) days after mailing. Any one such form of notice shall be sufficient for all purposes of this Stipulation.

To the Trustee:

Michael G. Kasolas, Trustee
P.O. Box 26650
San Francisco, CA 94126

Telephone: (415) 504-1926
Email: trustee@kasolas.net

With a copy to:

Mark S. Bostick, Esq.
Tracy Green, Esq.
Elizabeth Berke-Dreyfuss, Esq.
WENDEL, ROSEN, BLACK & DEAN LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
Telephone: (510) 834-6600
Facsimile: (510) 834-1928
Email: mbostick@wendel.com
tgreen@wendel.com
edreyfuss@wendel.com

To the Plaintiff:

Michael D. Podolsky, Plaintiff
c/o Merle C. Meyers, Esq.
Kathy Quon Bryant, Esq.
Michele Thompson, Esq.
MEYERS LAW GROUP, P.C.
44 Montgomery Street, Suite 1010
San Francisco, CA 94941
Telephone: (415) 362-7500
Facsimile: (415) 362-7515
Email: mmeyers@meyerslawgroup.com
kquonbryant@meyerslawgroup.com
mthompson@meyerslawgroup.com

And:

Mark A. Chavez, Esq.
Nance F. Becker, Esq.
CHAVEZ & GERTLER LLP
42 Miller Avenue
Mill Valley, CA 94941
Telephone: (415) 381-5599
Facsimile: (415) 381-5572
Email: mark@chavezgertler.com
nance@chavezgertler.com

37. No Assignment. Each of the Parties represents and warrants to the others that he, she or it has not assigned any authority to enter into this Stipulation, or to dispose

of any of the claims set forth herein, to third parties, and that the releases of those claims, as set forth above, are fully effective and comprehensive, according to their terms.

38. Further Assurances. Each of the Parties agrees to execute such documents, and take such actions, as may be reasonably requested by other Parties after the full execution of this Stipulation in order to effectuate the terms of this Stipulation.

39. Counsel. The Parties each acknowledges that they have each had the opportunity to consult with counsel of their own choice concerning the matters covered hereby and have received such counsel and information as each of them deem necessary for them to make a reasoned and thoughtful decision to execute this Stipulation.

40. Nonsubstantive Modifications. At any time prior to Final Court Approval, Trustee and Plaintiff, through their respective counsel, may jointly modify the terms of this Stipulation, provided that such modification shall not alter any substantive provision herein, and shall affect only administrative or procedural matters.

41. Time is of Essence. Time is of the essence in this Stipulation, and each deadline stated herein may be strictly enforced.

[SIGNATURES ARE SET FORTH ON THE FOLLOWING PAGE]

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WHEREFORE, the Parties have executed this Stipulation upon the terms and conditions set forth above.

MICHAEL G. KASOLAS, Trustee

MICHAEL D. PODOLSKY, Plaintiff

WENDEL, ROSEN, BLACK & DEAN LLP

By: _____
Mark S. Bostick, Esq.
Counsel for Trustee

MEYERS LAW GROUP, P.C.

By: _____
Merle C. Meyers, Esq.
Class Counsel

CHAVEZ & GERTLER LLP

By: Mark A Chavez
Mark A. Chavez, Esq.
Class Counsel

EXHIBIT 2

Attorney	Amount	Hourly Rate	Time Spent
Mark Chavez	$105,517.50	$825.00	127.90
Nance Becker	$28,927.50	$725.00	39.90
Dan Gildor	$39,015.00	$675.00	57.80
Sam Cheadle	$1,522.50	$435.00	3.50
Total	$174,982.50		229.10

EXHIBIT 3

CHAVEZ & GERTLER LLP
ATTORNEYS AT LAW

42 MILLER AVENUE
MILL VALLEY, CA 94941
TELEPHONE: (415) 381-5599
FACSIMILE: (415) 381-5572

June 13, 2016

SUMMARY OF CASE COSTS

Inception through June 10, 2016

Re: ***In re: Fox Ortega Enterprises, Inc., dba Premier Cru***
Podolsky v. Michael G. Kasolas, Trustee

COSTS INCURRED:

COMPUTER RESEARCH	$ 97.60
TRAVEL	$ 289.75
TOTAL:	$ 387.35

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Attorneys for Plaintiff and the Settlement Class

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU, Debtor.	Case No. 16-40050-WJL Chapter 7
MICHAEL D. PODOLSKY, on behalf of himself and all others similarly situated, Plaintiffs, vs. MICHAEL G. KASOLAS, Trustee, Defendant.	A.P. No. 16-04033 Date: July 27, 2016 Time: 10:00 a.m. Place: U.S. Bankruptcy Court 1300 Clay St., Ctrm. 220 Oakland, CA Judge: Hon. William J. Lafferty, III

DECLARATION OF MERLE C. MEYERS IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

I, MERLE C. MEYERS, declare:

1. I am an attorney licensed to practice law in all the courts of the State of California and am the principal of the law firm of Meyers Law Group, P.C. ("MLG"), co-counsel for plaintiff MICHAEL D. PODOLSKY, in his representative capacity in this class action ("Plaintiff") and the settlement class in this case. In such capacity, I am personally knowledgeable as to each of the facts stated herein, to which I could competently testify if called upon to do so in a court of law. I make this declaration in support of approval of the *Motion for Award of Attorneys' Fees And Costs*, filed concurrently herewith.

2. MLG is a law firm specializing in the practice of bankruptcy law, particularly in the context of chapters 7 and 11 of the United States Bankruptcy Code. The firm is consistently AV-rated by the Martindale Hubbell rating system. The services rendered by MLG on behalf of the class were performed by three attorneys within the firm: Kathy Quon Bryant, Michele Thompson and me. The following summarizes each such attorney's qualifications:

(a) I received my J.D. from the University of California at Davis in 1975, where I was Articles Editor of the U.C. Davis Law Review. Since 1978, I have specialized in the area of bankruptcy law, with an emphasis on chapter 11 debtor representation. I have handled scores of significant chapter 11 cases filed in the San Francisco Bay Area, as either the debtor's or equity holders' counsel, including Hexcel Corporation, John Breuner Company, Weibel Vineyards, Ironstone Group, Unicom Computer Corporation, Techmart Limited, StreamLogic Corporation,, Gabriel Technologies and KineMed, Inc., as well as major cases elsewhere, including the UpRight, Inc. chapter 11 case in Fresno, California, the Michael Hat Farming Company chapter 11 case in Sacramento, California, and the Silver Cinemas and Landmark Theatre chapter 11 cases in Delaware. I am regularly listed in editions of The Best Lawyers In America, published by Woodward/White, and was named by that publication the Best Lawyer of the Year in San Francisco in the category of Bankruptcy Litigation in 2015. I am also regularly rated AV, the highest rating, by Martindale-Hubbell.

(b) Kathy Quon Bryant is an associate of Meyers Law Group, P.C., and a member

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of the California State Bar since 2001. Ms. Quon Bryant received her B.A. in economics, *magna cum laude*, from Boston University in 1990, and her J.D. from the University of San Francisco in 2000, where she was a member of the Law Review and received CALI Awards for Excellence in Legal Writing, Telecommunications and Venture Capital Law. Before joining the firm, she was employed by another bankruptcy law firm, Goldberg, Stinnett, Meyers & Davis, P.C., since 2001, at which firm Ms. Quon Bryant regularly represented chapter 7 trustees in bankruptcy cases in the Bay Area. Ms. Quon Bryant also represents debtors, secured and unsecured creditors, and parties involved in adversary proceedings.

(c) Michele Thompson is an associate of Meyers Law Group, P.C., and a member of the California bar since 2006. Ms. Thompson received her B.A. in Journalism from California State University, San Francisco in 2002, and her J.D. from Golden Gate University in 2005, where she was an editor of the Golden Gate University Law Review and received Witkin and CALI awards for Academic Excellence. Since joining MLG in 2008, Ms. Thompson has handled a wide variety of bankruptcy and restructuring matters, including the representation of chapter 11 corporate debtors and high-net-worth individuals, chapter 7 trustees, creditors' committees, and a range of creditors and equity holders in various proceedings, as well as related adversary proceedings and out-of-court workouts.

3. Initially, on March 21, 2016, MLG was retained by Mr. Podolsky in his individual capacity, in order to represent him as a creditor in the above-captioned in bankruptcy proceedings. During this initial period, on March 29, 2016, MICHAEL G. KASOLAS, as trustee ("Defendant") of the chapter 7 estate of FOX ORTEGA ENTERPRISES, INC. DBA PREMIER CRU ("Debtor") filed a motion to sell certain wine that remained in the Debtor's possession as of the petition date (the "Sale Motion"). In the Sale Motion, the Trustee asserted ownership of the bottles of wine in the Debtor's possession and sought the authority to sell those bottles without provision for any ownership or equitable interests of customers who ordered and paid for the bottles of wine.

4. While the Sale Motion was pending, and due to the complexity and novelty of ownership or equitable interests of the bankruptcy estate's assets herein, and given the prospective cost of litigation that would outsize Mr. Podolsky's likely recoveries, MLG discussed with Mr.

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Podolsky and others the possibility of commencing a class action against the Defendant on behalf of former customers of the Debtor situated similarly to Mr. Podolsky, in lieu of multiple individual actions.

5. Ultimately, Mr. Podolsky agreed to become the Plaintiff in this action, and MLG engaged Chavez & Gertler LLP ("Co-Counsel"), with extensive class action experience, to act as co-counsel in the class action. On April 27, 2016, MLG, Mr. Podolsky and Co-Counsel entered into an engagement agreement to prosecute this class action. Among other terms of that agreement, MLG agreed that all charges and hours incurred after March 31, 2016 (when efforts toward preparation of a class action complaint commenced) would be the responsibility of the proposed Class and not of Mr. Podolsky individually.

6. On April 27, 2016, we filed the *Class Action Complaint For Declaratory, Equitable, And Injunctive Relief* (the "Complaint") against the Defendant in the above-referenced Bankruptcy Court.

7. We filed the Complaint in order to contest the Defendant's right to sell the wine in his possession and to protect the interests of proposed class members. We filed this case as a class action on a pure contingency fee basis. We did not do so lightly. We understood that in filing the Complaint, we assumed responsibility for prosecuting complex and risky claims for the class through to conclusion. We committed to doing so even though the litigation might take years to conclude and might be unsuccessful. In fact, given the novel and complicated issues involved in the case, it seemed very likely that unless settled, the class action would require substantial litigation efforts over an extended period of time. My firm has received no compensation for the time or expenses invested in this case, and if we do not prevail, we will receive no compensation whatsoever, and will sustain a significant financial loss.

8. Shortly after we filed the Complaint, the parties appeared before the Bankruptcy Court, on the Defendant's sale motion. After argument by counsel and questioning by the Court, the Court provided an extensive, preliminary analysis of the many legal issues that underlie the Defendant's sale motion and the Complaint herein, and then urged the parties to consider judicial mediation, given the likelihood of protracted litigation and difficulty and cost of maintaining the

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target of the litigation, warehoused wine bottles, for any extended period of time.

9. The parties, influenced by the Court's admonition, engaged in mediation before the Honorable Dennis Montali, a well-respected bankruptcy judge. The mediation lasted two full days of in-person meetings, plus many additional days of phone calls and exchanges of correspondence. Negotiations regarding the final terms of the settlement and of the final proposed settlement agreement took an additional 5-6 days. These negotiations were hard-fought and conducted at arms'-length throughout. Each side vigorously represented its clients during the negotiations and all of the settlement negotiations were overseen by Judge Montali.

10. Post-mediation, and after additional extensive negotiations, on May 23, 2016, the Parties entered into a *Stipulation of Settlement* (the "Stipulation") whereby all class claims would be fully settled, based on the terms therein. We appeared before the Court on May 25 and 27, 2016 to obtain preliminary class certification, and appointment of MLG and Co-Counsel as class counsel.

11. On June 1, 2016, after review and hearing of Stipulation, the Court entered its order conditionally certifying the class for settlement purposes. The Court also appointed MLG and Co-Counsel as settlement class counsel, as well as appointed the Plaintiff as the settlement class representative. The Court set a hearing for July 27, 2016 to determine whether the Stipulation meets the requirements for final approval.

12. In representing the class, from April 1, 2016 to June 10, 2016, MLG has expended the following hours of service (after reductions for billing judgment):

(a) For my time, 203.4 hours;

(b) For Ms. Quon Bryant's time, 9.0 hours; and

(c) For Ms. Thompson's time, 23.2 hours.

Additional time and costs are anticipated to be charged after June 10, 2016.

13. At the time of this engagement, the normal hourly rates charged by MLG for those attorneys' services were as follows: $620.00 per hour for my time, $440.00 for Ms. Quon Bryant's time, and $420.00 per hour for Ms. Thompson's time. Those rates have been approved on multiple occasions by Bankruptcy Courts in which MLG practices, and constituted the firm's lodestar rates at that time.

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14. In all, the hours charged by MLG from April 1, 2016 to June 10, 2016, result in a lodestar of $139,812.00.

15. In addition, MLG has incurred out-of-pocket costs in its representation of the class, to date, in the aggregate amount of $3,428.38. Those costs consist, generally, of filing fees, transcript fees, travel costs, postage, noticing costs and photocopying.

16. I believe that the services performed by MLG, for the hours stated above, were reasonable, appropriate, and necessary, and that they ultimately allowed the parties to enter into a Stipulation, as well seek Court approval for final settlement on behalf of the class. Moreover, the number of hours expended by the attorneys, to date, to achieve the results in this case is reasonable, and avoided duplication of effort.

17. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 14, 2016 at San Francisco, California.

/s/ Merle C. Meyers
MERLE C. MEYERS

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