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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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
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

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Plaintiff Michael D. Podolsky ("Plaintiff"), the duly appointed class representative in this adversary proceeding, hereby moves the Court pursuant to Federal Rule of Civil Procedure 23(e), as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, for an order granting final approval of the class action settlement in this adversary proceeding that resolves the claims on behalf of a class of approximately 4,450 customers who had purchased wine from Fox Ortega Enterprises dba Premier Cru ("Premier Cru"), and whose wine had been allocated to them in Premier Cru's inventory system. Premier Cru filed for voluntary bankruptcy on January 8, 2016. The settlement distributes to class members a share of the proceeds from the sale of the wine and also provides eligible class members an opportunity to redeem their bottles. Final approval of this settlement is proper given that it is fair, reasonable, and adequate to the class.

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(e) 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 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 (the "Trustee") overseeing the chapter 7 estate of Premier Cru.

3. Since then, notice of the settlement has been sent to approximately 4,450 class members by first class mail informing them of their rights under the settlement and their opportunity to object to or opt out of the settlement.

RELIEF REQUESTED

4. By this motion, Plaintiff requests that the Court grant final approval to the proposed settlement and dismiss the adversary proceeding.

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BASIS FOR RELIEF

5. Federal Rules of Civil Procedure, rule 23(e), as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, provides that a court may approve a class action settlement upon notice to the class and upon a finding after a hearing that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1), (2).

6. In the present case, the settlement is fair, reasonable, and adequate to the class. First, the settlement class continues to meet all the requirements of Rule 23 for certification of such a class. Second, the settlement is the product of arm's-length, informed negotiations. Third, there is no evidence of any fraud or collusion. Fourth, the settlement confers concrete benefits to class members despite significant litigation risks. Fifth, notice to the class was adequate and satisfied due process. Finally, class counsel, who are experienced class action litigators and experts in bankruptcy law, recommend approval of the settlement.

WHEREFORE, Plaintiff prays for entry of an order granting final approval of the proposed settlement agreement between the parties to this adversary proceeding.

Respectfully submitted,

Dated: June 15, 2016

MEYERS LAW GROUP, P.C.
CHAVEZ & GERTLER LLP

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

Attorneys for Plaintiff and the Settlement Class

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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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Date: July 27, 2016 Time: 10:00 a.m. Dept: Courtroom 220

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I. INTRODUCTION

Plaintiff Michael D. Podolsky ("Plaintiff") hereby respectfully requests, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure, that the Court grant final approval to the class action settlement in this matter reached between Plaintiff, on behalf of himself and all others similarly situated, and Defendant Michael G. Kasolas ("Defendant"), trustee of the chapter 7 estate of Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor"). That settlement resolves the claims of a class of approximately 4,450 of Debtor's customers to bottles of wines presently held in Debtor's inventory. More specifically, the settlement provides that class members will receive a portion of the proceeds from the sale of Debtor's inventory. Eligible class members will also be afforded an opportunity to redeem Segregated Bottles that will be excluded from the sale.

The Court preliminarily approved the settlement on June 1, 2016. (Dkt #15.) Since then, the notice program approved by the Court has been fully implemented by BMC Group. (Feil Decl. ¶¶ 3-10.) Nothing has changed to alter the Court's preliminary findings that the settlement is fair, reasonable, and adequate. Any objection to the settlement or the requested award of fees to Class Counsel would lack merit and will be separately addressed. The Court, therefore, should reaffirm its findings made in support of preliminary approval and grant final approval of the proposed settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

This adversary proceeding arises out of a dispute over the ownership of wine bottles in Debtor's inventory. Plaintiff contends that these bottles belong to class members. The Trustee, on the other hand, contends that the bottles belong to the Estate and that he is entitled to sell them. Given this dispute, Plaintiff filed this adversary proceeding as a class action to protect the interests of class members. The complaint seeks injunctive and declaratory relief to determine the class members' ownership interest in the bottles in dispute.

At the Court's suggestion, the parties mediated the case over two days with Bankruptcy Judge Dennis Montali—an experienced and well-regarded Bankruptcy Judge—in an effort to resolve this matter. Further negotiations followed, eventually resulting in a settlement agreement

that provides for class members to share in the proceeds from the sale of Debtor's inventory as well as an opportunity to redeem Segregated Bottles. The final settlement agreement is attached as Exhibit 1 to the declaration of Mark A. Chavez.

III. TERMS OF THE SETTLEMENT

The pertinent terms of the proposed settlement are summarized below.

A. CERTIFICATION OF A SETTLEMENT CLASS

The settlement provides for certification of a settlement class defined as "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." (Settlement Agreement, Chavez Decl., Exhibit 1 ("S.A."), ¶ 3(a).) The class consists of approximately 4,450 individuals that the Trustee has identified. (*See* Feil Decl. ¶¶ 5-6, 9.) The Court conditionally certified the class pending final approval on June 1, 2016. (Dkt. #15.) In conditionally certifying the class, the Court found that all of the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure were satisfied. (*Id.*) Nothing has chanced since then to warrant reconsideration of those findings.

B. THE BENEFITS CONFERRED ON THE CLASS

The settlement provides for the Trustee to negotiate a sale contract subject to overbids with one or more buyers in bulk of the wine bottles in Debtor's inventory, using his best efforts to obtain an aggregate, gross purchase price that is no less than $5 million (less the allocated prices of any bottles associated with class members who have opted out). (S.A. ¶ 15.) It also allows class members to redeem Segregated Bottles. (S.A. ¶ 11.) The proceeds from the sale will then be disbursed, first to pay the Trustee's administrative costs, and then to the Estate and class members in proportions that depend on the category—"Purchased," "Oversubscribed," "Segregated," and "Segregated Oversubscribed"—into which the individual bottles fall. (S.A. ¶ 16-18.) Each class member's share will be allocated in proportion to the original purchase price paid by each class member within the particular category. Factoring in all the variables and assuming a sale price of $4.5 million after the Trustee's costs are deducted, Plaintiff expects that the shares will total

approximately 15% of the original purchase price for "Oversubscribed" bottles, 30% for "Purchased" bottles, and 5% for Segregated Oversubscribed Bottles. (Chavez Decl. ¶ 6.) Such a distribution—which is based on the actual losses that class members have experienced or will experience—is a fair and reasonable way to compensate class members. Moreover, as discussed more fully below, the total settlement fund is appropriate given the risks associated with Plaintiff's claims. (Chavez Decl. ¶ 7.) In class counsel's judgment, the value of the settlement to the class is substantial and well within the range of reasonableness. (*Ibid*.)

C. SETTLEMENT ADMINISTRATION AND NOTICE

BMC Group has served as notice administrator in this case. (Feil Decl. ¶ 3.) As the notice administrator, BMC Group sent notices by first class mail to the last known mailing address for each class member identified in Debtor's records. (Feil Decl. ¶ 5-6.) Two class members that did not have any mailing address that could be found were emailed the notice instead. (Feil Decl. ¶¶ 5-6.) The notice—which the Court previously approved and which duly informs class members of the terms of the settlement, including the relief that class members will receive, the amount of the attorneys' fees to be requested, and the right to object to or opt out of the settlement—was sent on June 3, 2016.[1] (Feil Decl. ¶ 5.)

D. RIGHT TO OBJECT OR OPT OUT

Class members were given until July 5, 2016 (32 days) to object to or opt out of the settlement. That is sufficient.[2] *In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 203 (E.D. Pa. 2014) *petition dismissed sub nom. In re Nat. Football League Players Concussion Injury Litig.*, 775 F.3d 570 (3d Cir. 2014) ("It is well-settled that between 30 and 60 days is sufficient to allow class members to make their decisions to accept the settlement, object, or exclude themselves."); *accord Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 193 (S.D.N.Y. 2012) *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013) ("Courts have

[1] One notice was mailed on June 6, 2016 after the Trustee was able to identify a mailing address for a customer that was previously missing. (Feil Decl. ¶ 6.)

[2] Given that the Court certified the class as a Rule 23(b)(2) class, notice is not mandatory. Fed. R. Civ. P. 23(c)(2)(A) ("For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class."). Nonetheless, the parties agreed to provide notice here.

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held that opt out periods of less than 45 days satisfy due process, even where unsophisticated class members must make decisions regarding complex issues of law or fact.").

E. REDUCTION OF CLAIMS

The settlement provides that any proofs of claims by class members other than those who have requested to be excluded from the class shall be reduced to the extent of payments received under the settlement and that any class member other than those who have requested to be excluded from the class shall be deemed to have withdrawn a proof of claim in its entirety if the class member does not reduce such claim on or before October 31, 2016.[3] (S.A. ¶ 28.) The class notice contained an explicit reference to the release provisions, and class members were fully informed as to the claims they will be releasing if they did not opt out.

F. ATTORNEYS' FEES AND COSTS

Class counsel filed their motion for an award of attorneys' fees and costs on June 15, 2016 along with this motion, well before the deadline for submitting requests for exclusion or objections. That motion is noticed so that it will be heard concurrently with the present motion.

IV. ARGUMENT

It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Service Comm. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. It is beyond question that "there is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 945, 950 (9th Cir. 1976); *see also Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

Approval of a tentative class action settlement is a matter within the sound discretion of the court. *See, e.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The

[3] The Trustee will also release any claims and causes of action against class members to the extent those claims or causes of action arise from or are related to the alleged rights or interest, or the creation of such rights or interests, in any bottles of wine that are the subject of the settlement. (S.A. ¶ 27.)

"universally applied standard is whether the settlement is fundamentally fair, adequate, and reasonable.'" *Id.* (quoting *Officers for Justice*, 688 F.2d at 625.) A settlement is fair, adequate, and reasonable when "the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." Fed. Jud. Center, *Manual for Complex Litigation* (4th ed.) § 21.6.

The Ninth Circuit has set forth factors to be considered and balanced in evaluating the fairness of a class action settlement, including

> the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Officers for Justice, 688 F.2d at 625; *accord Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). The importance of any one of these factors "will depend upon and be dictated by the nature of the claims advanced, the types of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, at 625.

In exercising its discretion, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. In this context, "the settlement or fairness hearing is not be turned into a trial or rehearsal for trial on the merits." *Ibid*. "Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Ibid*. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what *might* have been achieved by the negotiators." *Ibid*. Moreover, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness," especially where, as here, the recommendations follow lengthy arm's-length and intensely fought

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negotiations overseen by a skilled and experienced mediator. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight"), *aff'd*, 661 F.2d 939 (9th Cir. 1981).

In the present case, these factors each commend final approval. The settlement is not only a fair, reasonable, and adequate resolution of the claims asserted, it represents a very favorable result for class members.

A. THE SETTLEMENT CLASS MEETS THE REQUIREMENTS OF RULE 23

The Court has already conditionally certified the settlement class and appointed Plaintiff as the class representative and class counsel to represent the settlement class members. (Dkt #15.) Nothing has changed to require reconsideration of the Court's extensive findings in support of that order. In this connection, the settlement class is still numerous; the monetary relief is still incidental to the resolution of Plaintiff's claims for injunctive and declaratory relief; common issues still predominate particularly in the settlement context, and a class action in the present circumstances is still manifestly superior to individual actions. Though some class members with Segregated Bottles may object that certifying the class in this case is improper without creating a subclass of the Segregated Bottle owners, there is no inherent conflict between the Segregated Bottle owners and any other class member so as to warrant a subclass.

As an initial matter, for a conflict to warrant a subclass, it must be more than "merely speculative or hypothetical." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th Cir. 2015). "Only conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement." *Id.* (quoting *Newberg on Class Actions* § 3.58 (5th ed.)). A conflict is fundamental where some class members claim to have been harmed by the same behavior that benefits other class members, or where the issue goes to the heart of the litigation. Newberg on Class Actions § 7.31 (5th ed.). "In the absence of conflicts between members of the Settlement Class, subclasses are neither necessary, useful, nor appropriate here." *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20,*

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2010, 910 F. Supp. 2d 891, 918 (E.D. La. 2012), *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014).

In the present case, the record demonstrates that there is no conflict—potential or otherwise. After all, counsel for one of the most active Segregated Bottle owners has conceded on the record that the relief provided under the settlement to Segregated Bottle owners is fair, reasonable, and adequate. Owners of Segregated Bottles cannot credibly argue that any harm or prejudice has inured to their rights. Moreover, as the Court itself recognized during the hearings on the motion for preliminary approval, no class member under the settlement benefits at the expense of any another class member, even Segregated Bottle owners. Accordingly, there is no basis to contend that there is any conflict.

Notably, this case is not like *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), or other cases in which it was deemed that intra-class conflicts mandated the creation of subclasses. In *Amchem*, the class at issue mixed present and future claimants in a single class. These claimants all had divergent interests, with present claimants hoping for a generous and immediate payment while future claimants preferring the preservation of an ample fund for the future.

By contrast, every class member in the present case has the same interest in obtaining a current benefit for their purchases. Moreover, obtaining that benefit does not come at the expense of any other class member. There simply is no conflict among class members in this case.

The fact that Segregated Bottle owners may have claims that are stronger than others, or that some class members may recover more under the settlement than others, does not alter this conclusion. As an initial matter, "if subclassing is required for each material legal or economic difference that distinguishes class members, the Balkanization of the class action is threatened." John C. Coffee Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L.Rev. 370, 398 (2000). The different treatment of Segregated Bottle owners in the settlement is simply of no consequence given that the differences, "developed through arms-length negotiation, are rationally related to the relative strengths and merits of similarly situated claims." *In re Oil Spill*, 910 F. Supp. 2d at 917; *see also In re Deepwater Horizon*, 739 F.3d 790, 813 (5th Cir. 2014), *cert. denied sub nom. BP Expl. & Prod.*

Inc. v. Lake Eugenie Land & Dev., Inc., 135 S. Ct. 754, 190 L. Ed. 2d 641 (2014) ("there is no need to create subclasses to accommodate every instance of 'differently weighted interests'"); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 272 (3d Cir. 2009) (allocation plan that created subgroups based on the extent of injury "did not create de facto subclasses among the class members but merely created a structure for ensuring that reimbursement is tied to the extent of damages incurred on certain policies of insurance"); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999) (argument "that a conflict of interest requiring subdivision is created when some class members receive more than other class members in a settlement . . . is untenable"); *accord In re Pet Food Products Liab. Litig.*, 629 F.3d 333, 347 (3d Cir. 2010) ("The fact that the settlement fund allocates a larger percentage of the settlement to class members with Injury Claims does not demonstrate a conflict between groups. Instead, the different allocations reflect the relative value of the different claims."). As stated in Newberg, "[c]ourts generally reject the argument that an intra-class conflict exists when divergent theories of liability would benefit different groups within the class." Newberg on Class Actions § 3:62 (5th ed.).

Moreover, class counsel in the present case adequately and effectively advocated on behalf of all class members. (Chavez Decl. ¶ 4.) Creating a subclass, therefore, is neither necessary nor required. *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011) (affirming certification despite contention that diverging interests required the creation of subclasses where class counsel had vigorously advocated on behalf of all class members).

Finally, the settlement does not bind class members without first providing them an opportunity to opt out. The rationale underlying *Amchem*, therefore, is missing. Indeed, the ability for Segregated Bottle owners to opt out of the settlement moots any need to create a subclass in their favor. *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 745 (2d Cir. 1992), *opinion modified on reh'g*, 993 F.2d 7 (2d Cir. 1993) ("[O]ur insistence on subclasses to reflect the adverse interests of the subgroups affected by the Settlement is premised on the Trial Courts' use of Rule 23(b)(1)(B) on a mandatory non-opt-out basis. If, on remand, the existing Settlement, or some revision of it, can be achieved under Rule 23(b)(3) with objectors permitted to opt out, we would not require the health claimant beneficiaries to be subdivided into subclasses.").

In sum, there is no conflict that precludes certification of the class as defined in the settlement agreement without a subclass. In the absence of any conflict, Plaintiff remains an adequate representative with claims that are typical.[4] Accordingly, the Court should reaffirm the findings it made in the order granting preliminary approval of the settlement and certify the class defined above for settlement purposes.

B. THE SETTLEMENT IS THE PRODUCT OF ARM'S-LENGTH, INFORMED NEGOTIATIONS

In the present case, the settlement negotiations were presided over by Bankruptcy Judge Dennis Montali. The parties were also represented by experienced counsel who were well informed regarding the strengths and weaknesses of the asserted claims. Accordingly, the settlement was the product of arm's-length negotiations. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (holding that settlement was the product of arm's-length negotiations where "[e]xperienced counsel on both sides, each with a comprehensive understanding of the strengths and weaknesses of each party's respective claims and defenses, negotiated this settlement over an extended period of time"); *accord Garner v. State Farm Mut. Auto. Ins. Co*., 2010 WL 1687832, at *13 (N.D. Cal. Apr. 22, 2010).

Although no formal discovery was conducted, Plaintiff and his counsel undertook a sufficient investigation to enable them and the Court to make a well-informed decision about the settlement. In this context, the Trustee and a knowledgeable former Premier Cru employee, Mr. Nishi, provided detailed factual information in connection with the mediation. Plaintiff was also a

[4] To be adequate simply requires that there not be any antagonism between the class representative and the absent class members and that they all share an interest. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) ("Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees."). Typicality, likewise, only requires that class members and the plaintiffs have the same or similar injury and whether the action is based on conduct that is not unique to the named plaintiff. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) ("The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'"). Absent conflict, both requirements are readily satisfied. *Guarantee Ins. Agency Co. v. Mid-Cont'l Realty Corp.*, 57 F.R.D. 555, 565-66 (N.D. Ill. 1972) ("Absent any conflict between the interests of the representative and other purchasers, and absent any indication that the representative will not aggressively conduct the litigation, fair and adequate protection of the class may be assumed.").

long-time Premier Cru customer and is familiar with the relevant contract terms and conditions. Further investigation would not likely have revealed any additional information that would materially affect the settlement. In sum, all counsel were sufficiently informed and were well situated to evaluate the costs and benefits of proceeding with, as opposed to settling, this case. The decision to settle the case, and the judgment that the settlement is in the best interests of the class, therefore, warrant deference. *Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs."); *accord IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 597 (E.D. Mich. 2006) ("The judgment of the parties' counsel that the settlement is in the best interest of the settling parties 'is entitled to significant weight, and supports the fairness of the class settlement.'"); *Austin v. Pennsylvania Dept. of Corr.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995).

C. NOTICE TO THE SETTLEMENT CLASS WAS ADEQUATE AND SATISFIED DUE PROCESS

The notice provided to the settlement class was adequate and satisfied both Rule 23 and due process. Rule 23(e)(1) only requires that the best notice practicable—rather than actual notice—be provided. *Siber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994). "Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009); Fed. R. Civ. P. 23(e)(1).

In granting preliminary approval, this Court approved the notice plan set forth in the settlement and summarized above. That plan has been fully executed. (Feil Decl. ¶¶ 4-10.) Accordingly, all notice and due process requirements have been satisfied.

D. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE CONSIDERING THE BENEFITS CONFERRED, THE VALUE OF THE CASE, AND SIGNIFICANT LITIGATION RISKS

The strengths and weaknesses of Plaintiff's case, as well as the risks, expense, complexity and likely duration of further litigation, all weigh in favor of approval of the settlement. This case, like every class action, involves uncertainty on the merits. The parties' settlement resolves that inherent uncertainty. For this reason, settlements are thus strongly favored by the courts,

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particularly in class actions such as this one. *See Van Bronkhorst*, 529 F.2d at 950; *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1997).

Though Plaintiff was confident that he and the class would prevail on their claims, a finding of liability is far from certain and would likely have required extensive litigation to achieve. As the Court is aware, this dispute involves 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.[5] Plaintiff and class counsel, therefore, had to discount the value of the claims at the mediation due to the considerable risks involved with proceeding with the litigation.

Notwithstanding the risks, Plaintiff was nonetheless able to achieve a settlement that provides concrete financial benefits to class members. It also allows eligible class members to redeem Segregated Bottles. Though the settlement amounts to only a portion of the value of the judgment that Plaintiff could have obtained had he litigated the claims through trial and prevailed on those claims (all without the wine essentially turning into vinegar as the Trustee would no longer be able to afford to store the wine in a climate-controlled environment), that is not a proper indicator of whether a settlement is fair and reasonable. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); *White v. Experian Information Solutions, Inc.*, 803 F. Supp. 2d 1086, 1098 (C.D. Cal. 2011) (rejecting contention that settlement is not fair and reasonable even though it was asserted that settlement amounted to a 99% discount over full value of claims); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd sub nom. Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990) ("A settlement can be

[5] "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." *Seiffer v. Topsy's Int'l, Inc.*, 70 F.R.D. 622, 630 (D. Kan. 1976); *accord Howington v. Ghourdjian*, 208 F. Supp. 2d 892, 894 (N.D. Ill. 2002) ("collectability of possible judgment" is factor in considering reasonableness of settlement).

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satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.").

Here, what matters most in evaluating the settlement is that it provides class members with an efficient and expeditious way to resolve their claims against the Estate in a way that avoids wasting the Estate's remaining resources or the wine itself. *See White*, at 1098; *see also Kakani v. Oracle Corp.*, No. C06-06493 WHA, 2007 WL 1793774, at *7 (N.D. Cal. June 19, 2007). In sum, Plaintiff and class counsel concluded that the settlement, which assures class members immediate compensation, is in the class' best interest. (Chavez Decl. ¶ 7; Meyers Decl. ¶¶ 8-9.)

E. THE RECOMMENDATIONS OF EXPERIENCED CLASS COUNSEL FAVOR APPROVAL OF THE SETTLEMENT

The opinion and recommendations of counsel who are most closely acquainted with the facts of the underlying litigation are entitled to "[g]reat weight" in considering whether to approve a proposed class action settlement. *DIRECTV*, 221 F.R.D. at 528. In this case, experienced and capable counsel who have been actively involved in complex federal civil litigation have weighed all of the factors and concluded that the settlement is a favorable result that is in the best interest of the class; they strongly recommend its approval. (Chavez Decl. ¶ 7; *see also* Meyers Decl. ¶ 9.) Where, as here, the settlement is the product of serious, informed and non-collusive negotiations,[6] the Court "should be hesitant to substitute its own judgment for that of counsel." *DIRECTV*, at 528; *see also Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) ("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement."); *Ellis*, 87 F.R.D. at 18 ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").

[6] As noted in Plaintiff's motion for preliminary approval, there is absolutely no evidence of fraud or collusion in this case. As an initial matter, class counsel's experience and skill gives rise to a presumption that fraud or collusion are absent. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52-53, 75 Cal. Rptr. 3d 413, 423 (2008). Moreover, any fees and costs 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 Decl. ¶ 8.) 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).

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V. CONCLUSION

For all the foregoing reasons, the Court should grant final approval to the proposed settlement. That settlement represents a fair, reasonable, and adequate resolution of class members' claims, and is recommended by the named plaintiff and experienced class counsel.

Respectfully submitted,

Dated: June 15, 2016

MEYERS LAW GROUP, P.C.
CHAVEZ & GERTLER LLP

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

Attorneys for Plaintiff and the Settlement Class

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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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT** 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. My qualifications and experience have been set out previously in my declaration filed in this case on May 23, 2016 in support of the motion for preliminary approval, docket number 9-2, as well as the declaration filed on June 15, 2016 in support of the motion for an award of attorneys' fees and costs. I hereby incorporate the qualifications and experience from those declarations herein.

CASE BACKGROUND

3. As alleged in the complaint in this case, Plaintiff purchased bottles of wine from Fox Ortega Enterprises dba Premier Cru ("Debtor") over the course of several years. After the Debtor filed its chapter 7 petition on January 8, 2016, the court-appointed trustee of the estate—Michael Kasolas ("Trustee")—filed a motion to sell certain wine that remained in Premier Cru's possession as of the bankruptcy petition. In that motion, Trustee asserted ownership of the bottles of wine in Debtor's possession and sought the authority to sell those bottles without any recognition or protection of any ownership or equitable interests of customers who ordered and paid for the bottles of wine. Despite a written demand by Plaintiff for the Trustee to recognize his ownership of certain bottles of wine, the Trustee responded orally through his counsel that he disputes and denies that Plaintiff or any other of Debtor's customers has any legal, equitable, or beneficial interest of any kind in the bottles of wine.

4. Shortly after Plaintiff filed the present adversary proceeding with this Court, the parties, including Plaintiff, the Trustee, and various former customers of the Debtor, mediated the case with the Honorable Dennis Montali, a well-respected bankruptcy judge. The in-person mediation lasted two days, plus additional days of phone calls and exchanges of correspondence. Negotiations regarding the final terms of the settlement and of the final proposed settlement

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agreement took an additional 5-6 days. These negotiations were hard-fought and conducted at arm's-length throughout. Each side vigorously represented its clients during the negotiations and all of the settlement negotiations were overseen by Judge Montali. At the mediation, both sides advocated vigorously on behalf of their clients. Nothing was left on the table. There was absolutely no collusion in the negotiation of the settlement. At all times, co-counsel and I have advocated vigorously on behalf every class member equally without regard to the type of bottles they owned.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

5. Attached as Exhibit 1 is a true and correct copy of the settlement between the parties. Pursuant to the settlement, class members will share in the proceeds of the sale of Debtor's inventory. Certain class members will also be able to redeem Segregated Bottles.

6. Assuming a sale price of $4.5 million after the Trustee's costs are deducted, Plaintiff expects that the recovered shares will total about 15% of the original purchase price for "Oversubscribed" bottles and 30% for "Purchased" bottles, and 5% for "Oversubscribed, Segregated" bottles.

7. In my opinion as class counsel, the proposed settlement provides substantial benefits and fair value to the class. During negotiations, we had to discount the value of the claims given the substantial risk of not succeeding in the litigation. This case involves novel, complex and difficult legal issues. There is a very serious risk that, absent settlement, the litigation would be protracted and result in no recovery for the class. In negotiating the settlement we had to carefully weigh the risks of protracted litigation against the benefits of the proposed settlement. In my considered opinion, the proposed settlement strikes the right balance and is a reasonable compromise of hotly disputed claims. It assures class members concrete and certain benefits. I believe that the settlement is in the class' best interest, given the risks and uncertainties of litigation.

8. Plaintiff has separately filed a motion for an award of attorneys' fees and costs. In support of that motion, I have filed a separate declaration setting out the support for the fee award, which is to be paid from the settlement fund. As noted in that declaration, any fees that the Court

does not award does not revert to the Estate. Rather the reduction in the fees would be made available for distribution to the class.

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

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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, Esq.
Class Counsel

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU, Debtor.	Case No. 16-40050-WJL Chapter 7 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 TINAMARIE FEIL RE SERVICE OF NOTICES IN SUPPORT OF MOTION FOR FINAL APPROVAL

I, Tinamarie Feil, state as follows:

1. I am over eighteen years of age and I believe the statements contained herein are true based on my personal knowledge. My business address is c/o BMC Group, Inc., 3732 West 120th Street, Hawthorne, California 90250.

2. On February 22, 2016, the above captioned Court entered its Order Approving Employment of BMC Group, Inc. as Claims Agent and Website Assistant (Docket # 95 at 16-40050-WL).

3. BMC Group, at the co-direction of Wendel, Rosen, Black & Dean LLP, Attorneys for Michael G. Kasolas, Trustee ("Trustee Counsel"), and Chavez & Gertler LLP and Meyers Law Group, P.C. ("Class Counsel"), performed mail service of notices identified and described as follows:

Exhibit 1 NOTICE OF CLASS ACTION AND CLASS ACTION SETTLEMENT

Exhibit 2 CORRECTIVE NOTICE

4. On June 2, 2016, BMC Group received a list from Trustee identifying Class Members and their contact information ("Class Member List"). BMC Group was directed to review the Class Member List against the Chapter 7 Claims Register to identify those who filed Proofs of Claim.

5. On June 3, 2016, BMC Group served the Notice of Class Action and Class Action Settlement (the "Settlement Notice") via first-class U.S. mail, postage pre-paid, upon 4,820 Class Members. For those Class Members who filed Chapter 7 claims, the addresses shown on such Proofs of Claim were used for mail service. The names and addresses of Class Members as served exist in BMC Group's business records as Service List numbers 62400 and 62429. During preparation for mail service, BMC Group identified 3 parties on the Class Member List without mailing addresses and alerted Trustee and Class Counsel.

6. On June 6, 2016, Trustee provided an e-mail address for one, and mailing addresses for remaining two, class members whose mailing addresses were missing. BMC Group performed service of the Settlement Notice via e-mail and first-class U.S. Mail, postage pre-paid, respectively. The actual name and service addresses of these parties exist in BMC Group's business records as Service List numbers 62436 and 62437.

7. The Settlement Notice cited www.bmcgroup.com/premiercru as a resource for further information. The following heading is posted on the website **Class Settlement in the Adversary Proceeding of Podolsky v. Kasolas** followed by the underlined hyperlinks to listed documents as shown below:

Order Granting Preliminary Approval of Settlement
Notice of Class Action & Class Action Settlement
Instructions for Estimating Possible Recoveries
Account Information Spreadsheet Look Up

Account Number Recovery: Please use the Customer ID shown after your name on the mailing label of your class notice.
If assistance is needed, please email PremierCru@bmcgroup.com

Segregated Bottle Redemption Form (.pdf)
Segregated Bottle Redemption Form (.doc)

8. The Settlement Notice also cited BMC Group's designated Premier Cru e-mail address and its toll free call center phone number as information resources. As of this date, BMC Group has recorded at least 127 phone calls and 200 emails.

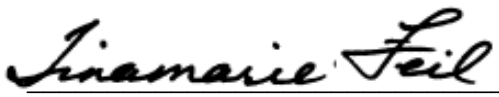
9. On or about June 7, 2016, BMC, Trustee and Class Counsel became aware that some parties were sent the Settlement Notice in error. After a review of the Debtor's records, it was determined that the Trustee had included 373 parties on the class list initially provided BMC Group who did not have allocated bottles and therefore were not class members.

9. On June 8, 2016, at the direction of Trustee and Class Counsel, BMC Group served the Corrective Notice upon those 373 parties who were sent the Settlement Notice in error. The names and addresses of the parties as served exist in BMC Group's business records as Service List numbers 62451 and 62452.

10. Calls and email inquiries have primarily been related to account number recovery. Secondarily, calls have been to seek clarification regarding eligibility for bottle redemption. Finally, class members have called to seek confirmation that bottles and claims not included in the settlement are still pending in the bankruptcy proceeding.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on the 14th day of June 2016 at Seattle, Washington.



Tinamarie Feil

NOTICE OF CLASS ACTION AND CLASS ACTION SETTLEMENT

If you purchased bottles of wine from Premier Cru and have had your order filled but not delivered, you could receive money from a class action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit that affects your rights. The settlement resolves a class action filed against the trustee appointed to manage the estate of Fox Ortega Enterprises, Inc., dba Premier Cru, which filed a voluntary chapter 7 petition for bankruptcy on January 8, 2016. The lawsuit disputes the assertion by the trustee, Michael G. Kasolas (the "Trustee"), of ownership of certain bottles of wine purchased by members of the class that were held in storage by Premier Cru at the time it declared bankruptcy and which the trustee intends to liquidate.

- The Court has not decided whether to finally approve the settlement. Relief will be made final only after the Court approves the settlement.

YOUR RIGHTS AND OPTIONS	
DO NOTHING	Do nothing. Receive your share of proceeds from the sale of the stored bottles. See section 13 below for more information about your settlement share.
REDEEM SEGREGATED BOTTLES	Redeem bottles that were pulled from the shelves and segregated for delivery to you as of January 8, 2016, in addition to receiving your share of proceeds from the sale of other stored bottles. See section 9 below for more information about how to redeem bottles.
OBJECT TO THE TERMS OF THE SETTLEMENT	File an objection that the settlement is unfair or inadequate. See section 12 below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Opt out of the settlement. Receive no benefits from the settlement. See sections 10 and 11 below for more information about how to opt out and the consequences if you do so.

Please read this notice carefully. It describes your rights, and the steps you have to take, if any, to receive money from the settlement or to exclude yourself from the lawsuit.

The date of this notice is June 3, 2016.

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Case: 16-04033 Doc# 20-3 Filed: 06/15/16 Entered: 06/15/16 11:58:58 Page 5 of 13

BASIC INFORMATION

1. Why did I receive this Notice?

Records show that you have purchased wine from Premier Cru (the "Debtor") and that the wine you purchased has been received but not shipped to you. A settlement has been reached in a class action lawsuit filed against the trustee appointed to manage the chapter 7 estate of Premier Cru, which filed for bankruptcy on January 8, 2016. This settlement may affect your legal rights and you have choices to make. Judge William J. Lafferty, III of the United States Bankruptcy Court for the Northern District of California , who is overseeing this class action, has authorized that you be sent this notice. The settlement agreement and order approving it on a preliminary basis, has been posted on the website www.BMCGroup.com/PremierCru and can be reviewed there. The motion requesting final approval of the settlement agreement, together with supporting documents, will be posted on the website no later than June 15, 2016.

2. What is this class action about?

The class action, *Michael D. Podolsky v. Michael Kasolas, as Trustee*, Adversary Proceeding No. 16-04033 WJL, filed in the United States Bankruptcy Court for the Northern District of California, Oakland Division, disputes the assertion of the Trustee of ownership of bottles of wine stored by Premier Cru at the time it filed for bankruptcy. The lawsuit seeks to have the Bankruptcy Court quiet title in the bottles in favor of Premier Cru's customers, who have paid for but not received delivery of bottles that they ordered. The lawsuit is based on theories of special property, UCC identification, resulting trusts and other equitable remedies. The lawsuit also seeks to enjoin the trustee from selling the bottles.

3. How does the Trustee respond?

The Trustee has denied, and continues to deny, all of the allegations in the lawsuit. The Trustee contends that the bankruptcy estate owns all bottles of wine, and that he is therefore entitled to sell the bottles for the benefit of all unsecured creditors, whether or not they purchased those particular bottles.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people called "class representatives" sue on behalf of other people who have similar claims. The class representative in this case is Michael D. Podolsky. The other individuals the class representatives represent constitute the "class" and are "class members." The class representative is also called the "plaintiff." The Trustee is the "defendant." The court resolves the issues for everyone in the class action except for those who request to exclude themselves, by "opting out."

5. What does the settlement provide?

The settlement provides for the sale of the wine held in the Trustee's possession to one or more bulk buyers. A portion of the proceeds from that sale will be distributed to class members that do not exclude themselves from this settlement. Class members whose wine had been designated and segregated for shipping or pickup as of January 8, 2016 will also have the opportunity to redeem those bottles.

Under the settlement, there are multiple categories of bottles: "Allocated Bottles," "New Bottles", "Purchased Bottles", "Oversubscribed Bottles," "Unassigned Bottles," "Segregated Bottles," and "Segregated Oversubscribed Bottles."

EXHIBIT 1

"Allocated Bottles" are those bottles as of January 8, 2016 for which 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.

"New Bottles" are any bottles received by Debtor within 90 days preceding the January 8, 2016, including a container shipment of bottles received by the Debtor as of November 12, 2015.

"Purchased Bottles" are 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.

"Oversubscribed Bottles" are bottles in the warehouse corresponding to specific orders, other than New Bottles, that had been Allocated to more purchasers than bottles.

"Unassigned Bottles" are bottles in the warehouse that were not Purchased Bottles, Oversubscribed Bottles, Segregated Bottles or New Bottles.

"Segregated Bottles" are Purchased Bottles, and any other bottles that, although not Allocated, that have 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 January 8, 2016.

"Segregated Oversubscribed Bottles" are Oversubscribed Bottles that were pulled off the shelves and segregated for delivery or pickup as of the January 8, 2016.

Under the settlement, the Trustee will use his best efforts to obtain an aggregate, gross purchase price of no less than $5,000,000 for all the bottles in the warehouse excluding the bottles allocated to those who have elected to exclude themselves from the settlement. The net proceeds of that sale will then be distributed to class members and to the bankruptcy estate, pursuant to various formulae set forth in the settlement. Those formulae will vary among different categories of bottles (e.g., Purchased Bottles, Oversubscribed Bottles, etc.), based on varying strengths of legal arguments pertaining to ownership and equitable remedies.

For more information on whether you are a class member, and on which categories of bottles correspond to your purchase orders, see section 9. For more information about the allocation of the proceeds from the sale, see section 13 below. For more information about how to redeem bottles, see section 10 below.

6. Why is the lawsuit being settled?

The legal arguments and disputes between the Trustee and the plaintiff, concerning ownership under the Uniform Commercial Code and various equitable remedy doctrines, are extremely complicated, numerous and difficult to resolve. In all likelihood, nonconsensual resolution of those disputes would consume many months or years of litigation, at much greater expense and at significant risk of loss. In addition, the bottles of wine in question would need to be stored and preserved at substantial cost throughout the litigation, and the Trustee's limited funds and other resources, and lack of long-term warehouse occupancy, would make such storage and preservation highly problematic and unlikely. As a result, at the end of the litigation, there might be nothing left of value to recover, despite prevailing on the issues.

For those reasons, the Bankruptcy Court urged the parties to enter into judicial mediation, and the Trustee and plaintiff, together with some individual class members, did so. In that mediation, supervised by a sitting bankruptcy judge, after extensive negotiations and the exchange of information and documents, the class

EXHIBIT 1

plaintiff and the Trustee agreed to settle the claims rather than go to trial. The settlement represents a compromise of disputed claims and is not an admission by either the Trustee or the plaintiff as to ownership of the bottles. The parties and their attorneys believe that the settlement is in your best interests given the risks and expense of either litigating the class action further or your asserting your own ownership claims in the Bankruptcy Court.

7. Has the Court decided who is right?

No. The Court has not decided anything yet, only that you should get a copy of this notice so that you can decide whether to remain in the class, and so that you can review the settlement and determine whether you want to object or redeem bottles.

8. Who will administer the settlement?

The Trustee will administer the settlement, with the assistance of individuals familiar with the Debtor's inventory and computer systems. The Trustee is an independent person appointed by the Office of the United States Trustee (a division of the U.S. Department of Justice) to administer certain bankruptcy cases pending in the Bankruptcy Court. Any questions regarding determination of awards and allocations should be presented to the Trustee at the following email address: classactionquestions@premiercru.net.

YOUR RIGHTS AND OPTIONS

9. Am I part of the class in this case?

The class certified by the Court consists 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 and is identifiable as corresponding to such order(s) in Debtor's computer inventory system.

Premier Cru's records indicate that you may be a member of the class.

How do I participate in the settlement?

You do not need to do anything to participate. You will automatically receive a settlement payment from the proceeds of the sale by the Trustee of the wine and release claims against the Trustee unless you request to be excluded from the lawsuit.

If you are eligible to redeem a bottle, you must submit your request to redeem the bottle that is received by the Trustee by July 5, 2016. You can check to see if you are eligible to redeem any bottles, and where to send your redemption request, by going to www.BMCGroup.com/PremierCru. You will need your account number in order to access your personal information. Only Segregated Bottles can be redeemed, and only by customers for whom those bottles were segregated. If you do not have your account number, you may obtain it from BMC Group, by emailing the noticing agent at Premiercru@bmcgroup.com, or by calling toll-free at 1 (888) 909-0100.

To redeem bottles, you must submit to the Trustee your written election, by downloading the appropriate form from www.BMCGroup.com/PremierCru, to redeem a bottle together with a payment to Trustee of an amount equal to 20% of the price originally paid by that person to purchase the redeemed bottle, together with the sales taxes. You must also cause the redeemed bottle to be shipped to you prior to August 31, 2016, at your own cost of shipping and after payment of a reasonable handling fee to the trustee's bulk buyer. If you do not cause the

EXHIBIT 1

bottle to be shipped by then, your right to that bottle will be forfeited and assigned to the Trustee, absent consent of the buyer and the Trustee. Moreover, you will have no right to reimbursement of any funds you paid to redeem a bottle.

If you have asserted, or wish to assert, your own ownership rights against the Trustee in the Bankruptcy Court, instead of participating in the settlement, see section 10 below to learn what you must do to be excluded from the settlement.

10. How do I request to be excluded from the lawsuit?

If you wish to be excluded from the lawsuit, you must write to the Trustee at the following address: P.O. Box 26650, San Francisco, CA 94126. Your request must include: (1) your name, (2) your address, (3) your dated signature, and (4) a written statement that you have reviewed this notice and wish to be excluded from the class. **To be effective, your request must be received by July 5, 2016.**

If you do not complete and timely mail a valid request to be excluded from the lawsuit, you will be bound by all terms and conditions of the settlement, including the release of claims set out in section 16. Alternatively, if you submit a timely and valid request to be excluded, you will not receive any money from the settlement, but you will retain the right to assert ownership of particular bottles of wine, as against the Trustee and other customers to whom those bottles were Allocated.

If the number of bottles allocated to individuals who opt out exceeds a certain percentage of the total bottles in the warehouse, the Trustee shall have the option to terminate the settlement in his sole discretion.

11. What happens next if I choose to exclude myself from the settlement?

If you choose to exclude yourself from the settlement, then any bottles that have been Allocated to you will not be sold by the Trustee, and they will instead be held by the Trustee, at least temporarily. You will then need to litigate your right to those bottles, either personally or through a lawyer, with the Trustee and with any competing purchasers, on your own in the Bankruptcy Court. Unless your assertion is quickly settled with the Trustee and any competing purchasers (likely on the same or lesser terms than the class settlement), the Trustee is likely to either abandon the bottles, leaving you to a dispute with other competing purchasers, or with the Debtor, or with the warehouse lessor, or condition his further preservation of the bottles on you funding the cost of that preservation in advance. You will then need to address both the costs and risks of your litigation and the cost of bottle preservation.

Class Counsel strongly advise you against excluding yourself from the Class for those important reasons. Class Counsel are available to discuss with you the risks and consequences of exclusion from the class. You may contact Class Counsel for that purpose at the addresses identified elsewhere in this notice.

You cannot object to the settlement and exclude yourself from the lawsuit – you can only do one or the other.

12. May I object to the settlement?

If you believe the settlement is unfair or inadequate, you may object, personally or through an attorney, by filing your objection with the Bankruptcy Court. **You cannot object to the settlement and exclude yourself from the lawsuit – you can only do one or the other.** Your objection must include: (1) your name, (2) the reasons why you object to the settlement, (3) a statement of whether you intend to appear at the final approval

EXHIBIT 1

hearing, (4) a list of any documents or witnesses you contend support your objection, and (5) your dated signature. **To be effective, your objection must be filed with the Bankruptcy Court by July 5, 2016. Do not telephone the Court or Trustee's counsel.**

If the Court rejects your objection, you will still be bound by the terms of the settlement. You will not be able to exclude yourself from the settlement.

13. How will my share of the settlement be calculated?

Your share of the proceeds from the sale of the bottles will depend on a variety of factors, including how much you paid for the bottles and the category into which your bottles falls. For an estimate of your settlement share, please go to www.BMCGroup.com/PremierCru, where you will find instructions with which to make your calculation of recoveries. You will need your account number in order to access your personal information. If you do not have your account number, you may obtain it from BMC Group, by emailing the noticing agent at Premiercru@bmcgroup.com, or by calling toll-free at 1 (888) 909-0100. Please note that the amount you receive may be different depending on various factors, including the number of class members who request to be excluded from the class as well as the purchase price for which the bottles are sold. Neither the Trustee nor the class representative, nor any agent, counsel or representative, can provide certainty to you as to the actual distribution, and only an estimate is possible at this time.

14. Will I have to pay taxes on my award?

You should consult a tax professional for more information about your own specific situation.

15. When will I receive my payment?

Payments will be sent after the Court gives the settlement its final approval and the sale closes. If any objections are filed and an appeal is taken, if the sale is stayed by the Bankruptcy Court pending resolution of that appeal, or if the Trustee otherwise chooses to wait until resolution of the appeal before making distributions, then payments may be delayed until that appeal is resolved in favor of the settlement. The parties believe that such a delay is unlikely, but possible. Please be patient.

RELEASE OF CLAIMS

16. What claims are being released as part of the settlement?

Under the settlement, the Trustee will release 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 settlement.

Also, participating Class members' claims against the chapter 7 estate will be reduced by the mitigation of damages obtained through this settlement – by 80% of the original purchase price of Redeemed Bottles and by the amount of funds distributed to members. ANY CLASS MEMBERS WHO DO NOT AMEND THEIR PROOFS OF CLAIM BY OCTOBER 31, 2016 TO REFLECT SUCH REDUCTIONS WILL BE DEEMED TO HAVE WITHDRAWN THOSE PROOFS OF CLAIM IN THEIR ENTIRETIES.

EXHIBIT 1

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

The Court has determined that the Meyers Law Group, P.C. and the law firm of Chavez & Gertler LLP are qualified to represent you and all of the class members. These firms are called "Class Counsel." The contact information for all counsel is set forth below in section 22.

18. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, you will be responsible for paying for that lawyer.

19. How will Class Counsel be paid?

You do not have to pay Class Counsel's fees and costs. The fees and expenses that the Court approves will be out of the proceeds of the sale of bottles. Class Counsel has reserved the right to seek up to 25% of the total proceeds to be distributed to class members from the sale of Purchased Bottles, Oversubscribed Bottles, Segregated Bottles and Segregated Oversubscribed Bottles. Class Counsel's motion for approval of those fees will be filed, and posted to the www.BMCGroup.com/PremierCru website. If you wish to object to the Class Counsel's fee motion, you must do so by filing the objection, and any supporting evidence or other documents, with the Bankruptcy Court by July 5, 2016. Class Counsel will reply to the objection by July 15, 2016, and the Bankruptcy Court will consider the motion and any objections on a preliminary basis on July 27, 2016 at 10:00 a.m.

FINAL SETTLEMENT APPROVAL HEARING

20. When will the Court consider whether to finally approve the settlement?

The Court will hold a hearing in Courtroom 220 of the United States Bankruptcy Court for the Northern District of California located at 1300 Clay Street, Oakland, California, 94612, on July 27, 2016 at 10:00 a.m, to decide whether to finally approve the settlement. At that time, the Court will also consider on a preliminary basis whether to approve Class Counsel's requests for attorneys' fees and reimbursement of costs.

It is not necessary for you to appear at this hearing. If you have timely submitted an objection to the settlement or to Class Counsel's fee motion, you may appear at the hearing to argue your objection to the Court.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

21. What if the proposed settlement is not approved?

If the proposed settlement is not granted final approval, the settlement class that has been preliminarily certified will be decertified, the class action will proceed without further notice, and none of the agreements set forth in this notice will be valid or enforceable.

EXHIBIT 1

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FURTHER INFORMATION

22. How do I get more information?

This notice provides a summary of the basic terms of the settlement. For the settlement's complete terms and conditions, please consult the settlement agreement, which is available online at www.BMCGroup.com/PremierCru. You will need your account number in order to access your personal information. If you do not have your account number, you may obtain it from BMC Group, by emailing the noticing agent at Premiercru@bmcgroup.com, or by calling toll-free at 1 (888) 909-0100.

You can also view the entire case file by visiting the clerk of the court located at 1300 Clay Street, Suite 300, Oakland, CA 94612, or by contacting Class Counsel at the addresses provided below:

CHAVEZ & GERTLER LLP
Mark A. Chavez
42 Miller Ave.
Mill Valley, CA 94941
Tel: (415) 381-5599
Fax: (415) 381-5572
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kquonbryant@meyerslawgroup.com

PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, THE TRUSTEE, OR COUNSEL FOR THE TRUSTEE FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT 1

CORRECTIVE NOTICE

We recently mailed you the Notice of Class Action and Class Action Settlement ("Notice") in Michael D. Podolsky v. Michael Kasolas, as Trustee, Adversary Proceeding No. 16-04033, which is part of the Fox Ortega Enterprises, Inc., dba Premier Cru bankruptcy proceeding. The Notice was intended only for class members and not other customers of Premier Cru. Unfortunately, as a result of an error in assembling the mailing list, the Notice was also mailed to some individuals who are not class members. You are one of the individuals to whom the Notice was inadvertently mailed. Please ignore the Notice. We apologize for any inconvenience.

EXHIBIT 2

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Attorneys for Plaintiff and the Settlement Class

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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
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 FINAL APPROVAL OF SETTLEMENT WITH TRUSTEE

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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. (the "MLG"), counsel for plaintiff MICHAEL D. PODOLSKY, in his representative capacity ("Plaintiff"), and the settlement class (the "Settlement Class") in this action. 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.

2. I make this declaration in support of final approval of the *Stipulation of Settlement* entered into by and between Plaintiff and the Settlement Class, on the one hand, and defendant MICHAEL G. KASOLAS, as trustee (the "Trustee") of the chapter 7 estate of FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU (the "Debtor"), on the other hand.

3. I have considerable experience in bankruptcy matters and am well-qualified to represent the Proposed Class in the within action.

4. 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.

5. As alleged in the complaint in this case, Plaintiff purchased bottles of wine from the Debtor over the course of several years. After the Debtor filed its chapter 7 petition on January 8, 2016 (the "Petition Date"), the Trustee filed a motion to sell certain wine that remained in the

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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. Our client disputed the Trustee's assertion of ownership, as well his authority to sell.

6. Along with co-counsel Chavez & Gertler LLP, we filed this matter to contest the Trustee's right to sell the wine in his possession and to protect the interests of 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. My firm has the resources to prosecute this case and is prepared to do so.

7. Shortly after Plaintiff filed the present adversary proceeding with this Court, the parties, including Plaintiff, the Trustee, and various former customers of the Debtor mediated the case with the Honorable Dennis Montali, a well-respected bankruptcy judge. The mediation lasted two full days, plus additional days of phone calls and exchanges of correspondence and documentation. 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. There was absolutely no collusion in the negotiation of the settlement.

8. This case involves novel, complex and difficult legal issues, including issues as to Uniform Commercial Code provisions' interpretation and application, equitable remedies and resulting and constructive trusts. There is a very serious risk that, absent settlement, the litigation will be protracted and result in no recovery for the class. In negotiating the *Stipulation of Settlement* we had to carefully weigh the risks of protracted litigation against the benefits of the proposed settlement. In my considered opinion, the proposed settlement strikes the right balance and is a reasonable compromise of hotly disputed claims.

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9. On the basis of my extensive experience handling bankruptcy litigation and my knowledge of the specific legal and factual issues presented by this case, I believe that the proposed settlement is fair, adequate and reasonable, and well within the range likely to warrant final approval. It assures class members concrete and certain benefits. I believe that the settlement is in the class' best interest, given the risks and uncertainties of litigation. I recommend that the Court approve the Settlement on a final basis. The alternative would be to relegate the class to the uncertain and risky fate of further litigation.

10. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 15, 2016 at San Francisco, California.

/s/ Merle C. Meyers
MERLE C. MEYERS

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