

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.

/s/ Michael G. Kasolas
MICHAEL G. KASOLAS, Trustee

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick
Mark S. Bostick, Esq.
Counsel for Trustee

CHAVEZ & GERTLER LLP

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

/s/ Michael D. Podolsky
MICHAEL D. PODOLSKY, Plaintiff

MEYERS LAW GROUP, P.C.

By: /s/ Merle C. Meyers
Merle C. Meyers, Esq.
Class Counsel