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10 *Proposed* Special Conflicts Counsel for Michael
11 G. Kasolas, Chapter 7 Trustee

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 In re:

16 **FOX ORTEGA ENTERPRISES,**
17 **INC. dba PREMIER CRU,**

18 Debtor

Case No. 16-40050-WJL

Chapter 7

**CHAPTER 11 TRUSTEE'S APPLICATION
FOR AN ORDER AUTHORIZING THE
EMPLOYMENT OF ARENT FOX LLP AS
CONFLICTS COUNSEL**

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22 **TO THE HONORABLE WILLIAM J. LAFFERTY, UNITED STATES**
23 **BANKRUPTCY JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE;**
24 **AND ALL OTHER INTERESTED PARTIES:**

25 1. Michael G. Kasolas, the duly appointed chapter 7 trustee of the above-
26 captioned bankruptcy estate (the "Trustee"), hereby applies (the "Application") to this
27 Court for entry of an order authorizing the employment of Arent Fox LLP (the "Firm" or
28 "Arent Fox") as conflicts counsel to the Trustee, effective as of January 26, 2016 with

1 compensation at the expense of the above-captioned estate and in such amounts as this
2 Court may allow.

3 2. This Application is made pursuant to Bankruptcy Code sections 327, and
4 Federal Rule of Bankruptcy Procedure 2014. In support of this Application, the Trustee
5 concurrently submits the declarations of the Trustee (the "Kasolas Declaration") and
6 Aram Ordubegian (the "Ordubegian Declaration"), and respectfully represents as follows:

7 **I.**

8 **RELIEF REQUESTED**

9 3. As permitted by Bankruptcy Code section 327 and Federal Rule of
10 Bankruptcy Procedure 2014, the Trustee seeks to employ Arent Fox as his conflicts
11 bankruptcy counsel effective January 26, 2016 with compensation that is at the expense of
12 the above-captioned estate and in such amounts as this Court may allow pursuant to
13 section 330 of the Bankruptcy Code.

14 4. The Trustee has selected Arent Fox as conflicts counsel because the partners
15 and associates of Arent Fox have considerable expertise in the fields of bankruptcy,
16 insolvency, reorganizations, liquidations, debtor's and creditor's rights, and related
17 litigation and representation of chapter 11 and chapter 7 trustees. Accordingly, the
18 Trustee believes that Arent Fox is well qualified to represent him in this Chapter 7 case.

19 5. The Trustee seeks to employ Arent Fox to serve as conflicts counsel and
20 help him consolidate, liquidate and otherwise administer this Estate. Among other things,
21 the Trustee's initial investigation has revealed that the Estate appears to have significant
22 assets that need to be secured and then liquidated for the benefit of the estate and
23 creditors. Additionally, the trustee anticipates that he may need to file multiple avoidance
24 actions and/or other lawsuits to recover assets for the benefit of creditors. Accordingly,
25 the Trustee may require Arent Fox to render the following types of professional services
26 in a conflicts counsel role to the extent his general counsel Wendel Rosen Black and Dean
27 LLP is conflicted or otherwise unable to render the necessary services:
28

- 1 (a) to investigate, identify and liquidate assets of the Estate including
2 researching and prosecuting potential turnover proceedings and avoidance
3 actions;
4 (b) to investigate and analyze the scope and validity of any avoidance
5 claims, and file any necessary actions;
6 (c) to assist the Trustee to employ other professionals, as needed;
7 (d) to review, evaluate, and object to claims, as necessary
8 (e) to prepare on behalf of the Trustee all necessary motions,
9 applications, answers, orders, reports, and papers in support of positions
10 taken by the Trustee;
11 (f) to appear, as appropriate, before this Court and other courts in which
12 matters may be heard and protecting the interests of the Trustee and the
13 estate before said courts and the Office of the United States Trustee; and
14 (g) to perform all other necessary legal services in this case requested by
15 the Trustee.

16 II.

17 COMPENSATION

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19 6. Subject to this Court's approval, and in accordance with 11 U.S.C. §§ 327,
20 330, 331, 503, and 507, the Trustee seeks to employ Arent Fox with compensation at the
21 expense of the Debtor's estate on an hourly rate basis in accordance with its ordinary and
22 customary hourly rates for services of this type and nature and for this type of matter in
23 effect on the date such services are rendered and to reimburse Arent Fox for its actual,
24 reasonable, and necessary out-of-pocket disbursements incurred in connection therewith.
25 The principal attorneys presently designated to represent the Trustee are Aram
26 Ordubegian and M. Douglas Flahaut. The lowest "preferred" hourly rate for those
27 individuals are \$625 and \$475 respectively and these hourly rates are subject to
28 adjustment on a periodic basis, typically annually. Arent Fox will not bill for travel time

1 in connection with its representation of the Trustee in this case.

2 7. The following are Arent Fox's current "preferred" hourly rates for work of
3 this nature:

4 (a) Partners: \$600 - \$965

5 (b) Of Counsel: \$495 - \$820

6 (c) Associates: \$330 - \$585

7 (d) Paraprofessionals: \$195 - \$335

8 8. In addition to Arent Fox's professional fees, its billing statements will
9 include charges for reasonable and necessary third party and staff services employed in
10 the course of its representation of the Trustee, as well as expenses incurred with respect to
11 postage, messenger services, photocopying, filing fees, travel, computerized legal
12 research, and facsimile transmission. These charges are separately itemized on Arent
13 Fox's statements at scheduled rates based on the service involved and out-of-pocket
14 disbursements incurred.

15 9. There are no arrangements between the Firm and any other entity for the
16 sharing of compensation received or to be received in connection with this case, except
17 insofar as such compensation may be shared among the partners, of counsel, and
18 associates of the Firm. Arent Fox did not receive a retainer from the Trustee and there is
19 no retainer agreement between the Trustee and Arent Fox. It is intended that this
20 Application and the Court's order approving Arent Fox's retention will govern Arent
21 Fox's employment in the case, with the Court retaining jurisdiction to resolve any issue
22 that might arise.

23 III.

24 CONNECTIONS WITH THE DEBTOR, THE TRUSTEE, AND OTHER PARTIES

25 10. In connection with the Trustee's proposed retention of the Firm, Arent Fox
26 performed an internal conflicts search to ensure that Arent Fox does not have a conflict of
27 interest that would prohibit it from representing the Trustee in the above-captioned matter.
28 To the best of the Trustee's knowledge, information, and belief, and except as otherwise

1 set forth in the Ordubegian Declaration, neither Arent Fox nor its respective attorneys are
2 a creditor, equity security holder, or an “insider” of the Debtor as that term is defined in
3 11 U.S.C. § 101(31). Moreover, except as otherwise set forth in the Ordubegian
4 Declaration, Arent Fox and its attorneys have no connection with and no interests adverse
5 to the Debtor, its creditors, the Estate, or any other party-in-interest herein or their
6 respective professionals in matters relating to the Debtor and its estate, and none of the
7 attorneys comprising or employed by Arent Fox are related to any judge of the United
8 States Bankruptcy Court for the Northern District of California, the U.S Trustee, or any
9 person employed in the Office of the United States Trustee.

10 11. To the best of the Trustee’s knowledge and based upon the Ordubegian
11 Declaration, neither the Firm nor any of its partners, of counsel, or associates is or was,
12 within two years before the date of the filing of the petition, a director, officer, or
13 employee of the Debtor.

14 12. To the best of the Trustee’s knowledge and except as otherwise disclosed in
15 the Ordubegian Declaration (specifically regarding the Warren Capital receivership
16 matter), Arent Fox: (i) does not hold or represent any interest adverse to the Trustee or the
17 Debtor’s estate with respect to the matters for which it is being retained; (ii) Arent Fox is
18 a “disinterested person” as that phrase is defined in 11 U.S.C. § 101(14) (as modified by
19 11 U.S.C. § 1103(b)); (iii) neither Arent Fox nor its professionals have any connection
20 with the Trustee, the Debtor, its Estate, or its creditors; and (iv) Arent Fox’s employment
21 is necessary and in the best interests of the Debtor’s estate.

22 IV.

23 NOTICE AND NO PRIOR APPLICATION

24 13. A copy of this Application has been provided to the Office of the United
25 States Trustee as well as all other creditors and interested parties in the case. The Trustee
26 respectfully represents that such notice is sufficient, and requests that this Court find that
27 no further notice of the relief requested herein is necessary or appropriate. No prior
28 application has been made for the relief requested herein to this or any other Court.

1 **WHEREFORE**, the Trustee believes that the retention and employment of Arent
2 Fox is in the best interests of the Debtor's estate and creditors, and respectfully requests
3 that this Court: (i) approve the employment and retention of Arent Fox as general
4 bankruptcy counsel to the Trustee effective as of January 26, 2016 as set forth in this
5 Application, and (ii) grant such other, further relief as is just and proper.

6
7 Dated: February 19, 2016

**MICHAEL G. KASOLAS, CHAPTER 7
TRUSTEE**

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9
10 By: /s/ Michael G. Kasolas

11 Michael G. Kasolas, Chapter 7 Trustee
12 of the Fox Ortega Enterprises, Inc. dba
Premier Cru bankruptcy estate

13 *Submitted by*

ARENT FOX LLP

14
15 By: /s/ Aram Ordubegian

16 Aram Ordubegian

17 *Proposed Special Conflicts Counsel for*
18 Michael G. Kasolas, Chapter 7 Trustee
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1 **DECLARATION OF MICHAEL G. KASOLAS**

2 I, Michael G. Kasolas declare that:

3 1. I am the duly appointed and acting Chapter 7 Trustee (the "Trustee") for the
4 above-captioned bankruptcy estate of Fox Ortega Enterprises, Inc. dba Premier Cru. I
5 have personal knowledge of the facts described herein and if called as a witness, I could
6 and would testify competently thereto.

7 2. I have read the foregoing Application for the employment of counsel
8 (including the declaration of Aram Ordubegian in support thereof) and, except for those
9 matters stated upon information and belief, I know the facts represented therein, which are
10 known to me to be true. If called as a witness, I could and would competently testify
11 thereto.

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

14 Executed this 19th day of February 2016, at Los Angeles, California.

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16 /s/ Michael G. Kasolas

17 Michael G. Kasolas
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DECLARATION OF ARAM ORDUBEGIAN

I, Aram Ordubegian, declare that:

1. I am a partner of the firm Arent Fox LLP (“Arent Fox” or the “Firm”), a law firm that employs approximately 365 attorneys and maintains an office for the practice of law at 55 Second Street, 21st Floor, San Francisco, CA 94105, as well as offices in Los Angeles, CA, Washington, DC, St. Louis, MO, and New York, NY.

2. I am fully familiar with the facts hereinafter stated, and I am authorized to and hereby make this declaration (the “Declaration”) on behalf of Arent Fox. The information contained in this Declaration is of my own personal knowledge or is derived from discussions with my partners or my review of the files in this case.

3. I submit this Declaration in support of the accompanying application (the “Application”) for an order authorizing the employment and retention of the Firm as counsel to the Chapter 7 Trustee, Michael G. Kasolas (the “Trustee”) effective as of January 26, 2016 and in order to provide certain disclosures under Bankruptcy Code section 504, Federal Rule of Bankruptcy Procedure 2014.

4. All attorneys who will work on this engagement have read and are fully familiar with the Bankruptcy Code, the Federal Bankruptcy Rules, and the Local Bankruptcy Rules of this Court and are sufficiently competent to handle whatever might reasonably be expected of the Trustee’s counsel in this matter.

5. Insofar as I have been able to ascertain, except as described herein, the partners, counsel, and associates of Arent Fox are disinterested parties within the meaning of 11 U.S.C. § 101(14) and have no interest adverse to, and no connections with, the Trustee, the Debtor, the Debtor’s estate, creditors, or any other party-in-interest herein or their respective attorneys and accountants with respect to matters for which Arent Fox is to be engaged. Although Arent Fox from time to time has represented and in the future may represent various entities that are creditors of the Debtor’s estate or otherwise had or have an interest in this proceeding in matters wholly unrelated to this proceeding, Arent Fox will not represent those creditors or parties in connection with this Chapter 7 case.

1 **Arent Fox's Conflict Check System**

2 6. In connection with preparing this Declaration, Arent Fox submitted the
3 names of parties-in-interest in this case (the "Parties-in-Interest") for review in the
4 computerized conflict database system maintained by Arent Fox. The list of the Parties-
5 in-Interest was obtained by Arent Fox from the bankruptcy schedules originally filed in
6 this case by the Debtor. Arent Fox maintains and systematically updates its conflict check
7 system in the regular course of business of the firm, and it is the regular practice of the
8 firm to make and maintain these records. The conflict check system maintained by Arent
9 Fox is designed to include every matter on which the firm is now or has been engaged, the
10 entity for which the firm is now or has been engaged, and in each instance, the identity of
11 related parties and adverse parties and the attorney in the firm that is knowledgeable about
12 the matter. It is the policy of Arent Fox that no new matter may be accepted or opened
13 within the firm without completing and submitting to those charged with maintaining the
14 conflict check system the information necessary to check each such matter for conflicts,
15 including the identity of the prospective client, as well as related and adverse parties.
16 Accordingly, the database is regularly updated for every new matter undertaken by Arent
17 Fox.

18 7. The Parties-in-Interest that Arent Fox submitted to its conflict database
19 include the Trustee, the Debtor and certain creditors and other interested parties. A list of
20 the parties submitted to the conflict check system is attached hereto as **Exhibit 1**.

21 8. Due to the exceptionally large number of creditors in this case, Arent Fox
22 has modified its conflict search protocol for purposes of identifying its conflicts and
23 connection to interested parties in the case. Under normal protocols, Arent Fox would
24 search for any relationship it has under all possible names of a party and potential related
25 entities. Under the modified protocol, Arent Fox will only search for current and former
26 client relationships in the names listed as creditors in the Debtor's schedules. All clients
27 and former clients of Arent Fox will be identified and disclosed in a supplemental
28 declaration to be filed shortly once the connections search has been completed.

1 **Arent Fox's Relationship With Parties-In-Interest In Unrelated Matters**

2 9. Arent Fox appears in cases, proceedings, and transactions involving a
3 substantial number of different attorneys, accountants, financial consultants, and
4 investment bankers, some of whom now, or may in the future, represent creditors or
5 Parties-In-Interest in this case. The Office of United States Trustee appears in each
6 bankruptcy matter in which Arent Fox appears. Aside from this, there is no known
7 connection with the Office of United States Trustee or any of its attorneys. Also, from
8 time to time, Arent Fox attorneys may have appeared before the Honorable William J.
9 Lafferty, but there is no known connection to Judge Lafferty or his chambers staff.

10 10. Arent Fox represents Michael G. Kasolas in his capacity as receiver of the
11 Warren Capital Corp. and Warren Equipment Finance, Inc. estates in an unrelated state
12 court action entitled Stephens v. Warren Capital Corp [San Francisco Superior Court Case
13 No. CGC-14-543097] and in his capacity as Chapter 7 trustee of the bankruptcy estate of
14 Redwood Ranch LLC [Case No. 14-42071-CN]. Arent Fox does not believe this to be a
15 conflict in any manner.

16 11. **Exhibit 2** contains a list of the Parties-in-Interest or their affiliates that
17 Arent Fox has represented, currently represents, or is or was adverse to in matters wholly
18 unrelated to the Debtor and his estate. As disclosed in Exhibit 2, Arent Fox and its
19 partners, counsel, and associates have in the past represented, currently represent, and may
20 in the future represent entities that are creditors of the Debtor, or other parties-in-interest
21 in the Debtor's Chapter 7 case in matters unrelated to this case. Arent Fox has not, and
22 will not, represent any creditors of the Debtor or other parties-in-interest in connection
23 with the Debtor or this case or have any relationship with any such entity that would be
24 adverse to the Debtor or its estate.

25 **Normal Hourly Rates and Disbursement Policy**

26 12. Arent Fox has not agreed to share (a) any compensation it may receive with
27 another party or person, other than with the partners and associates of Arent Fox, or (b)
28 any compensation another person or party has received or may receive.

1 13. Subject to this Court's approval in accordance with 11 U.S.C. § 330(a),
2 Arent Fox will charge for its legal services on an hourly basis in accordance with its
3 ordinary and customary hourly rates for services of this type and nature and for this type
4 of matter in effect on the date such services are rendered and for its actual, reasonable and
5 necessary out-of-pocket disbursements incurred in connection therewith. The following
6 are Arent Fox's current lowest "preferred" hourly rates for work of this nature:

- 7 (a) Partners: \$600 - \$965
8 (b) Of Counsel: \$495 - \$820
9 (c) Associates: \$330 - \$585
10 (d) Paraprofessionals: \$195 - \$335

11 14. The rates set forth above are subject to periodic review and adjustment and
12 are set at a level designed to fairly compensate Arent Fox for the work of its attorneys and
13 paralegals and to cover fixed and routine overhead expenses. Generally, the rates are
14 subject to an increase at the beginning of each calendar year. It is Arent Fox's policy to
15 charge its clients in all areas of practice for all other expenses incurred in connection with
16 the client's case. The expenses charged to clients include, among other things, telecopier
17 and other charges, mail and express and overnight mail charges, special or hand delivery
18 charges, photocopying charges, travel expenses, expenses for "working meals,"
19 computerized research and transcription costs. Arent Fox will charge the Debtor's estate
20 for these expenses in a manner and at rates consistent with charges made generally to
21 Arent Fox's other clients. Arent Fox believes that it is fairer to charge these expenses to
22 the clients incurring them than to increase the hourly rates and spread the expenses among
23 all clients. Arent Fox will seek reimbursement of its expenses as allowed pursuant to the
24 Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and Orders of this
25 Court.

26 15. Arent Fox did not receive a retainer with respect to its proposed
27 representation of the Trustee.
28

1 16. Arent Fox will not represent any entity other than the Trustee in this Chapter
2 7 case.

3 17. The Trustee first consulted Arent Fox on or about January 26, 2016
4 regarding these matters. Because these matters needed counsel's immediate attention,
5 Arent Fox commenced rendering services to the Trustee on or about January 26, 2016.
6 Accordingly, employment of Arent Fox should be effective as of January 26, 2016.

7 **Conclusion**

8 18. Based upon the information available to me, and except as otherwise
9 described herein, Arent Fox holds no interest adverse to the Trustee, the Debtor, the
10 Debtor's estate or its creditors as to the matters in which it is to be employed other than
11 the representation of the Trustee. I believe that Arent Fox is a "disinterested person" as
12 defined in 11 U.S.C. § 101(14). I know of no reason why Arent Fox cannot act as
13 attorney for the Trustee.

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

16 Executed this 19th day of February 2016, at Los Angeles, California.

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18 /s/ Aram Ordubegian
19 ARAM ORDUBEGIAN
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EXHIBIT 1

Client:

Michael G Kasolas, Chapter 7 Trustee of the Fox Ortega Enterprises, Inc. Bankruptcy Estate

Debtor:

Fox Ortega Enterprises, Inc.
Premier Cru

Creditors and Interested Parties:

Benjamynn Gabriel
Bimal Patel
C. Michael Neuwelt
Charles G Smith
David Silverman
David Solomon
David Wilson
E. James Langham
People of the State of California
Frank Lorincz
James J Pettit
Eric Nyberg
John R. Winther
Cravath Swaine & Moore LLP
Lori Langmark
Dr. Mark B Ratcliffe
Michael Rosenthal
Weil Wotshal & Manges LLP
Richard Sipos
Scott Kraft
Steve Andrighetto
Bear Stearns
Susan G Hermann
Susan Jamison
Essex Property Trust
William C Owens
State of California
JPMorgan Chase & Co

EXHIBIT 2

Party	Arent Fox Relationship
Premier Cru	Former Adverse
David Silverman	Current Client Friendly
David Solomon	Former Other; Former Client Friendly
David Wilson	Former Other; Former Client Friendly
People of the State of California	Current & Former Adverse; Former Other; Former Client Friendly
Cravath Swaine & Moore LLP	Current & Former Adverse; Former Other
Weil Gotshal & Manges LLP	Former Other; Current & Former Adverse; Former Client Friendly
Essex Property Trust	Former Client Friendly; Former Adverse
State of California	See Connections for People of the State of California Above
JPMorgan Chase & Co.	Former Client