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8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 In re

13 FOX ORTEGA ENTERPRISES, INC.,
14 dba PREMIER CRU,

15 Debtor.

Case No. 16-40050-WJL

Chapter 7

**AMENDED TRUSTEE'S EX PARTE
APPLICATION FOR ORDER
ESTABLISHING CERTAIN NOTICING
PROCEDURES; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

19
20 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

21 Michael G. Kasolas, trustee ("Trustee") of the above-captioned bankruptcy estate hereby
22 submits this motion (the "Motion") to establish the following modified notice procedures in this
23 Chapter 7 case in lieu of serving all creditors with hard copies of pleadings pursuant to
24 Bankruptcy Rule 2002. This motion seeks approval of the following modification: 1) Creditors
25 can file a Request for Special Notice requesting a hard copy of all pleadings; 2) Creditors will be
26 directed to a website where they can sign up for email notification; and in addition to using Pacer
27 to review pleadings, the Trustee will establish a website where all creditors can review pleadings
28

1 at any time at no cost, and can print a pleading to their own computer. The Trustee is not asking
2 the Court to modify notice for any pleading that impacts a specific individual such as an objection
3 to claim. In support of this Motion, the Trustee respectfully states as follows:

4
5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 **A. Jurisdiction**

7 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and
8 1334.

9 2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

10 3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11 4. The statutory bases for the relief requested herein are Section 105(a) of Title 11 of
12 the United States Code, (the “Bankruptcy Code”) and Rule 2002 of the Federal Rules of
13 Bankruptcy Procedure (the “Bankruptcy Rules”).

14
15 **B. Factual Background**

16 5. An Order for relief under Chapter 7 of Title 11 of the United States Code was
17 entered herein pursuant to voluntary petition filed by the debtor on January 8, 2016. Michael G.
Kasolas is the duly appointed, qualified and acting trustee of the debtor’s estate (“Trustee”).

18 6. As of the date of this writing, there are 9,253 persons on the mailing matrix, and
19 this number increases.

20 7. The cost for mailing a letter sized envelope to all creditors on the mailing matrix is
21 approximately \$6,000. Therefore, every mailing is large expense, and it will cost this estate and
22 the creditors of this estate a large amount if every mailing has to be mailed to all creditors on the
23 mailing matrix.

24
25 **III. BASIS FOR REQUESTED RELIEF**

26 The Bankruptcy Code requires that the Debtor, its creditors and other parties in interest are
27 entitled to notice by mail of certain proceedings in this Chapter 7 case, as enumerated in
28 Bankruptcy Rule 2002. This Court may, however, limit the number of parties in interest upon

1 which motions must be served and designate the matters in respect to which, and the form and
2 manner in which, notice shall be sent. *See* Fed. R. Bankr. P. 2002(m) (“The court may from time
3 to time enter orders designating the matters in respect to which, the entity to whom, and the form
4 and manner in which notices shall be sent except as otherwise provided by these rules.”). *See also*
5 *Jonas v. United States Small Bus. Admin. (In re Southland Supply, Inc.)*, 657 F.2d 1076, 1081 (9th
6 Cir. 1981) (holding that notice of a proposed sale, compromise, or settlement to an authorized
7 creditors’ committee and to any creditors who file a request to receive all notices is adequate); *In*
8 *re Siegler Bottling Co.*, 65 B.R. 117, 119 (Bankr. S.D. Ohio 1986) (recognizing that the
9 Bankruptcy Rules contain provisions generally authorizing the court to limit notices to be sent to
10 certain claimants); 9 *Collier on Bankruptcy* ¶2002.02[2] at 2002-16 (15th ed. rev. 2005) (“whether
11 by local rule or otherwise, in most larger cases the ‘notice to all’ provision . . . is restricted”).

12 Due to the large number of parties in interest in this case (9256 as of the date of this
13 writing), the Trustee respectfully requests that the Court limit the number of parties upon which
14 hard copies of notice of proceedings in the above-captioned case must be mailed to “all creditors”
15 pursuant to Bankruptcy Rule 2002.

16 As an alternative to mailing hard copies of pleadings to all creditors pursuant to
17 Bankruptcy Rule 2002, the Trustee believes that the following would constitute sufficient notice:
18 1) the availability of a website on which all creditors could review pleadings at their leisure and at
19 no expense; 2) creditors can opt in to receive electronic copies of all pleadings filed; and 3)
20 creditors can opt to file a request for special notice to request hard copies of documents.

21 Therefore, in addition to establishing a website that creditors could view pleadings, and
22 print them if they want them, the Trustee seeks authority to establish a reduced mailing list for
23 hard copies of documents to those persons who file with the Court a “Request for Notice” of their
24 own format as described in **Exhibit A** hereto; and any parties against whom relief is specifically
25 sought in the subject motion or application. Those creditors who file a Request for Notice will be
26 added to the Official Service List, and persons or entities on that list will receive hard copies of
27 pleadings.

28

1 The Trustee submits that restricting notice to these persons is necessary in order to achieve
2 an efficient and expeditious resolution of this Chapter 7 case, while ensuring that parties with
3 significant interests in the proceedings, or their representatives, will have an opportunity to be
4 heard. The Trustee will afford all parties in interest the opportunity to be included on the Official
5 Service List. The Trustee proposes to mail to all known parties in interest (as listed on the
6 Creditor Matrix) a Notice of Procedures to Limit Notice, substantially in the form attached hereto
7 as Exhibit A¹, informing such parties that hard copy notice of most proceedings related to the
8 above-captioned bankruptcy case will be served only upon parties included on the Official Service
9 List. Such Notice will state that parties in interest that wish to be included on the Official Service
10 List must file with the Court and serve upon the undersigned Trustee's counsel a written request to
11 be so included along with instructions on how to obtain email notification from the Court's
12 website and where copies of pleadings can be reviewed at any time on a website. Any of the
13 parties on the Official Service List may from time to time request that notices be sent to a different
14 address by filing with the Court and serving on the undersigned Trustee's counsel a request for
15 change of address, can ask to be removed from the list, and creditors can ask to be added to the list
16 at any time.

17 If the Court grants this Motion, the Trustee will serve notice of all matters enumerated in
18 Bankruptcy Rule 2002(a) only to the parties named on the Official Service List; *provided*,
19 *however*, that the Movant will serve notice by mail on any matter upon any party against whom
20 direct relief is sought, such as parties to executory contracts proposed to be assumed or rejected,
21 and parties with interests in property proposed to be sold.

22 The Trustee further requests that the Court order that the electronic transmission of notice
23 to registered CM/ECF e-filers and email notification based on the email addresses provided by
24 creditors who opt to receive notice by email without requiring mailing or other "hard copy"
25 transmission of redundant paper service be deemed sufficient.

26 _____
27 ¹ The Notice attached as Exhibit A will be modified to include the actual website to review the
28 pleadings filed and links to elect to be served with pleadings via email as soon as this Court
approves the claims agent that will be assisting the Trustee.

1 The Trustee submits that by allowing the noticing procedures set forth in this Motion to be
2 implemented, the Court will reduce the estate's expenses (including photocopying and postage
3 charges, as well as related personnel costs), thereby benefiting creditors and other parties in
4 interest, without prejudicing the rights of any interested parties.

5 The Trustee also requests that the Claims Agent be authorized to file any proof of service
6 of electronic transmitted notices under seal to protect the privacy of those persons who request
7 service by electronic transmission and the value thereof to the estate, and to serve said proof of
8 service on the office of the U.S. Trustee and Trustee's Counsel by email. At the Court's request
9 the Trustee will file a separate motion for such relief. Trustee wants to file said proof of service
10 under seal to protect the privacy of the creditors and prevent the electronic mailing list from falling
11 into the hands of someone who may misuse the information in a manner in which has not been
12 authorized. In addition, if such a list is transferable, the list could be a valuable asset of this Estate.
13 The Trustee has not made a determination as to whether the list is transferable at this time.

14 This Motion is being served upon the Office of the United States Trustee, the Debtor's
15 counsel, and those parties who have requested special notice. In view of the nature of the relief
16 requested, the Trustee submits that such notice is adequate.

17 **IV. CONCLUSION**

18 WHEREFORE, the Trustee respectfully requests that this Court enter its order: (i) granting
19 the Motion; (ii) approving the noticing procedures applicable in this Chapter 7 case as described
20 above; (iii) approving the Notice of Procedures to Limit Notice in substantially the form attached
21 hereto as Exhibit A; and (iv) granting such other and further relief as the Court deems just and
22 proper.

23 DATED: February 11, 2016

WENDEL, ROSEN, BLACK & DEAN LLP

24
25 By: /s/ Tracy Green
26 Tracy Green
27 Attorneys for Michael G. Kasolas
28

Fox Ortega Enterprises, Inc. dba Premier Cru, Debtor
Case No. 16-40050-WJL-7

EXHIBIT A

TO

**TRUSTEE'S EX PARTE APPLICATION FOR ORDER
ESTABLISHING CERTAIN NOTICING PROCEDURES;
SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES**

1 **EXHIBIT A**

2 UNITED STATES BANKRUPTCY COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 OAKLAND DIVISION

5 In re

Case No. 16-40050-WJL

6 FOX ORTEGA ENTERPRISES, INC.,
7 dba PREMIER CRU,

Chapter 7

8 **NOTICE OF PROCEDURES TO LIMIT
9 NOTICE**

Debtor.

JUDGE: The Hon. William J. Lafferty

10
11 **TO ALL PARTIES IN INTEREST:**

12 **NOTICE IS HEREBY GIVEN** that on February __, 2016, the United States Bankruptcy
13 Court for the Northern District of California (Oakland Division) entered an Order in the above-
14 captioned case limiting notice requirements with respect to certain matters and proceedings related
15 to this Chapter 7 case, for which notice is required pursuant to the provisions of Federal Rule of
Bankruptcy Procedure ("FRBP") 2002 (collectively, the "Chapter 7 Proceedings").

16 Pursuant to the Order, Michael G. Kasolas, Chapter 7 Trustee in this bankruptcy case, will
17 serve paper copies of notice of certain Chapter 7 Proceedings only upon those parties included on
18 the Official Service List established by the Court, provided that with respect to matters or
19 proceedings which request relief against a particular party or parties, service also shall be made
upon such party or parties. Parties who have requested special notice do not need to file a new
request.

20 If you are a party in interest and you want to receive notice, you must make one of the
following elections:

21 1. If you want a hard copy mailed to you, file a Request for Notice which
22 clearly states your name and address and serve it upon the undersigned.

23 2. If you want electronic notice of pleadings, you must register at the
24 following cite: [to be determined].

25 If you make no election, you will not receive notices of general matters required to be
26 served on all creditors. However, you will receive notice of any matter if direct relief against you
is sought, such as an objection to a claim.

27 In addition, all creditors can review pleadings filed at the following website at no expense:
28 [to be determined].

EXHIBIT A

1 **NOTICE IS FURTHER GIVEN** that the Court has determined that electronic
2 transmission of notices by the Court to registered CM/ECF e-filers on the Official Service List
3 constitutes sufficient notice, without requiring mailing of redundant paper service, except with
4 respect to parties against whom relief is specifically sought in a motion or application (such as in
5 an adversary proceeding or contested matter).

6 Dated: _____

7 Mark S. Bostick (Bar No. 111241)
8 Elizabeth Berke-Dreyfuss (Bar No. 114651)
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18 By: _____

19 Mark S. Bostick
20 Attorneys for Michael G. Kasolas, Trustee