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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

**DECLARATION OF MARK S. BOSTICK
IN SUPPORT OF SUPPLEMENTAL
APPLICATION TO EMPLOY COUNSEL
FOR TRUSTEE ON CONTINGENCY
BASIS**

I, Mark S. Bostick, declare:

I am an attorney duly authorized to practice before this court and am a partner of the law firm of Wendel, Rosen, Black & Dean LLP ("Wendel Rosen"); I have personal knowledge of the facts stated herein and if called as a witness I would testify as follows.

1. I submit this declaration in support of the *Supplemental Application to Employ Counsel for Trustee on Contingency Basis* ("Supplemental Application") filed by Michael G. Kasolas, trustee ("Applicant"), which seeks to pay Wendel Rosen on a contingency basis with respect to its prosecution of avoidance claims and actions on behalf of the Applicant.

2. Wendel Rosen was originally employed to provide services to the Applicant on an hourly basis, including for services required to "evaluate and investigate potential avoidance

claims and pursue such claims.” See *Order Authorizing Employment of Counsel for Trustee* entered February 4, 2016 [Doc # 62] (the “Employment Order”), at Paragraph 1(c).

3. To ensure that the lion’s share of recoveries from potential avoidance claims will be available to pay the estate’s creditors, at the trustee’s request, Wendel Rosen agrees to modify the Employment Order effective from November 1, 2016, to provide that it will be compensated on a contingency basis with respect to its efforts to recover avoidance claims and European wine claims on the terms as set forth in the Supplemental Application.

4. To date, no avoidance claims or European wine claims have been recovered, nor has any lawsuit to recover them been filed.

5. The amount and recoverability of the potential avoidance claims and European wine claims is still under investigation; however, based on current (preliminary) information it appears that preference payment claims will total less than \$300,000; preference shipment claims could total as much as \$1,200,000; and fraudulent transfer claims (excluding Ponzi “net-winner” claims) should exceed \$700,000.

6. The Supplemental Application provides that services not relating to prosecution of avoidance claims will continue to be compensated on an hourly basis. I do not anticipate a large number of hours will be required for non-avoidance-claim related services. All physical assets have been liquidated. The primary tasks left to administer the case include, among other matters, making the distribution to the class, objecting to claims, taking actions as necessary to preserve the estate’s interests in 1011 University Avenue, Berkeley, California, and the possible need to enforce or interpret the compromise agreement with Saul Gevertz [Doc # 213], approved by the Court on April 13, 2016 [Doc #. 251].

7. On January 1, 2017, the hourly rates of Wendel Rosen attorneys and paralegals increased as follows:

<i>Attorney</i>	<i>Old Rate</i>	<i>New Rate</i>
Mark Bostick	\$495.00	\$520.00
Elizabeth Berke-Dreyfuss	\$495.00	\$520.00
Tracy Green	\$495.00	\$520.00

Paralegal

Michelle Sanchez	\$200.00	\$225.00
Yuin Anna Oh	\$125.00	\$135.00

8. Other than as previously disclosed in my *Declaration of Proposed Counsel in Support of Application to Employ Counsel for Trustee* filed on January 20, 2016 [Doc. # 13-1], my Supplemental Declaration filed on January 27, 2016 [Doc. #29]; my Second Supplemental Declaration filed on February 1, 2016 [Doc. # 46]; and my Third Supplemental Declaration filed on June 16, 2016 [Doc. #326], Wendel Rosen's attorneys and clients have no connection or material relationship to the Debtor, creditors, avoidance claim transferees or their respective attorneys or accountants, the U.S. Trustee, or any person employed in the Office of the U.S. Trustee. To the extent any such relationship is discovered in the course of this engagement, Wendel Rosen will promptly disclose such relationship or connection.

9. In connection with any application to approve the payment of any contingency fee or expense as contemplated under the Supplemental Application, Wendel Rosen will inform the Court of the time expended on any recovered claim and the total time spent to date on all the contingency matters; Wendel Rosen's time records will be produced to the Court and the Office of U.S. Trustee upon request.

10. I sent a copy of the Supplemental Application and proposed order via email to Magee McGee of the Office of the U.S. Trustee on January 26, 2017. I have received no objection or other response thereto. In the meantime, Wendel Rosen agreed to add the European wine claims to the contingency arrangement and the Supplemental Application was modified to include those claims. On February 3, 2017, I spoke with Ms. McGee and informed her of that change and she replied that she saw no problem in adding the European wine claims to the contingency fee arrangement.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 3, 2017, at Oakland, California.

/s/ Mark S. Bostick
Mark Bostick