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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

**SECOND APPLICATION OF BMC GROUP,  
INC. FOR INTERIM COMPENSATION FOR  
SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES  
INCURRED**

**Hearing Date: December 20, 2017**  
**Time: 2:00 p.m.**  
**Courtroom: 220**

**TO: THE HONORABLE WILLIAM J. LAFFERTY, III, UNITED STATES  
BANKRUPTCY JUDGE AT OAKLAND CALIFORNIA:**

Michael G. Kasolas ("Trustee") of the above referenced bankruptcy estate, respectfully submits the "*Second Application of BMC Group, Inc. ("BMC") for Interim Compensation for Services Rendered and Reimbursement of Expenses Incurred*" (the "Application") for interim compensation for services rendered and reimbursement of expenses for the period from October 1, 2016 through October 31, 2017 (the "Application Period") pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of

1 Bankruptcy Procedure, and the Guidelines for Compensation and Expense Reimbursement for  
2 Professionals and Trustees of the United States Bankruptcy Court for the Northern District of  
3 California (the “Guidelines”).

4 **Background**

5 1. This is BMC’s second application for interim compensation for services rendered  
6 and reimbursement of expenses incurred while providing assistance to the Trustee with:

7 (i) establishing a website for creditors to review pleadings and other information the Trustee may  
8 choose to post, (ii) serving creditors who opt for electronic notice of pleadings filed,  
9 (iii) maintaining the Debtor’s mailing matrix of over 9,250 parties, (iv) serving copies of notices  
10 when required to be mailed to all creditors, (v) assisting with managing the proofs of claims, and  
11 (vi) preparing and mailing checks and related tax documents.

12 2. BMC’s employment was granted pursuant to the “*Order Approving Employment of*  
13 *BMC Group, Inc.*” (“BMC Employment Order”) entered on the Court’s docket at Docket  
14 Number 95, on or about February 23, 2016. As set forth in the BMC Employment Order and  
15 related pleadings, BMC did not receive any retainer from the Trustee or the estate in  
16 contemplation of its services and expenses.

17 3. Pursuant to the “*Order Approving First Interim Application for Compensation and*  
18 *Reimbursement of Expenses by BMC Group, Inc.*” entered on or about December 16, 2106 at  
19 Docket No. 499, the Court granted BMC’s first interim application, allowed \$21,079.00 in fees  
20 requested, subject to a 30% holdback pending further Court order, and allowed 100% of BMC’s  
21 \$32,926.44 of costs incurred, and authorized the Trustee to pay 70% of the fees, and 100% of the  
22 costs upon entry of the Order. Thereafter, pursuant to the “*Order Authorizing Payment of*  
23 *Administrative Fees and Expenses Incurred to Administer Class Settlement and Authorizing*  
24 *Payment of Previously Allowed Professional Fees*” entered on or about July 14, 2017 at Docket  
25 No. 568, the Court authorized the payment of BMC’s fees and expenses in the amount of  
26 \$22,064.13 incurred to administer the class settlement and payment of the 30% holdback amount  
27 from BMC’s First Interim Fee Application in the amount of \$6,323.70. Other than as set forth  
28 herein, BMC has received no other payments on account of its services rendered or expenses

1 incurred.

2 **Case Status**

3 4. BMC incorporates herein by reference the case status and narrative history  
4 provided in the Application for Compensation of Wendel, Rosen, Black & Dean LLP, attorneys  
5 for the Trustee, filed contemporaneously herewith.

6 **Summary of Services Rendered**

7 5. By this Application, BMC seeks interim allowance of its reasonable and necessary  
8 fees for services rendered, in the amount of \$29,018.00, together with reimbursement of its actual  
9 and necessary expenses incurred, in the amount of \$24,014.35 during the Application Period.  
10 Pursuant to the requests of the Trustee, BMC has broken out the fees and expenses allocable to  
11 Fox Ortega Enterprises (“FOE”) and those allocable to Class Action (“Class Action”). Of the total  
12 amounts requested herein, \$19,250.50 in fees and \$18,805.93 in expenses are allocable to FOE  
13 and \$9,767.50 in fees and \$5,208.42 in expenses allocable to Class Action.

14 6. Attached to the “*Declaration of Varouj Bakhshian in Support of Second*  
15 *Application of BMC Group, Inc. for Interim Compensation for Services Rendered and*  
16 *Reimbursement of Expenses Incurred*” (“Bakhshian Declaration”) as Exhibit A is a detailed  
17 statement of fees for services rendered by BMC during the Application Period, which includes: :  
18 (i) a description of the individual timekeeper performing the services; (ii) the date the services  
19 were performed; (iii) whether the services were for Fox Ortega Enterprises or related to the Class  
20 Action; (iv) a detailed description of the nature of the services and the related time expended; (v) a  
21 summary of the hours and total compensation requested by timekeeper, and each timekeeper’s  
22 biographical information; and (vi) a summary of the hours and total compensation for each project  
23 category. During the Application Period, BMC allocated its services into seven basic categories.  
24 The discussion below provides an overview of the services performed by BMC by category as set  
25 forth in the Bakhshian Declaration filed concurrently herewith:

26 a) Case Management: Total Hours: 56.4; Total Fees: \$5,494.50

27 FOE: Hours: 47.4; Fees: \$4,773.50 Class Action: Hours: 9.0; Fees: \$721.00

28 Services in this category relate to case management and related communications with the

Trustee and his counsel regarding events in the case, upcoming deadlines and anticipated actions and services to be provided by BMC, the preparation of BMC's first interim fee application<sup>1</sup>, the request from the Trustee's counsel to breakout BMC's fees and expenses requested in the first interim fee application that were allocable to Class Action, the preparation of a subsequent administrative request for Class Action fees and expenses, and preparation of invoices to the Trustee for services rendered and expenses incurred.

b) Claims Management: Total Hours: 87.7; Total Fees: \$5,842.00

FOE: Hours: 87.7; Fees: \$5,842.00 Class Action: None

Services in this category are for specific claims reporting, claims analysis and related requests from the Trustee, along with review and verification of claims filed, claim classes and preparation of the claims registers.

c) Creditor Information: Total Hours: 15.1; Total Fees: \$1,174.50

FOE: Hours: 8.9; Fees: \$687.50 Class Action: Hours: 6.2; Fees: \$487.00

Services in this category relate to responding to telephone and e-mail inquiries from creditors and other parties via BMC's Call Center or the case website related to various notices and forms transmitted by BMC on behalf of the Trustee or the Class Action group, via mail, e-mail or the website to the creditors and other parties.

d) Data Management: Total Hours: 52.2; Total Fees: \$4,009.00

FOE: Hours: 48.0; Fees: \$3,694.00 Class Action: Hours: 4.2; Fees: \$315.00

This category is comprised of data services related to the maintenance and update of the mailing matrix and e-noticing addresses for the over 9,250 parties in the case, the preparation of mail files for mailing and e-service of documents for the Trustee and Class Action, reporting requested by the Trustee, and returned mail data updates to the BMC notice database.

e) Distribution Support: Total Hours: 65.7; Total Fees: \$7,489.50

<sup>1</sup> The actual time expended by BMC in preparation of the Application herein will be reflected and charged in a future fee application. BMC estimates the actual time spent in preparation of the Application is 16 hours for an approximate total of \$1,450.00, which represents 4.99% of the total amount of fees and expenses requested in this Application and includes the additional time necessary to describe the FOE time and expenses from the Class Action time and expenses.

FOE: None

Class Action: Hours: 65.7; Fees: \$7,489.50

Services in this category encompass the preparation, processing and analysis of the claimants scheduled to receive distribution checks for the Class Action distributions, monitoring of the bank accounts and management of the stale dated checks, along with reporting requirements and distribution creditor management as requested by the Trustee.

f) Noticing Management: Total Hours: 108.5; Total Fees: \$3,280.50

FOE: Hours: 83.0; Fees: \$2,557.50

Class Action: Hours: 25.5; Fees: \$723.00

This category is comprised of services rendered related to the mailing or e-service of various pleadings and other documents to creditors and affected parties, pursuant to the request of the Trustee and/or his counsel, and services related to the secure mailings of Class Action distribution checks.

g) Website Management: Total Hours: 4.9; Total Fees: \$434.50

FOE: Hours: 4.9; Fees: \$434.50

Class Action: None

Services in this category relate to the creation, update and maintenance of the Fox Ortega case website hosted by BMC, which contains the pleadings filed in the case and other information the Trustee may choose to post that are necessary to provide an on-line resource for creditors and affected parties regarding the status of the case and the disposition of the estate's assets

### Summary of Expenses

7. BMC expended a total of \$24,014.35 for reasonable and necessary expenses in connection with its services to the Trustee during the Application Period. In accordance with the Guidelines, attached hereto as Exhibit B is a summary of the expenses incurred by type and detailed invoices for BMC's actual expenses incurred. Pursuant to the BMC Employment Order, and in compliance with the Guidelines, BMC charged 8 cents (\$0.08) per page for photocopies, 15 cents (\$0.15) per piece for finishing print mail, 25 cents (\$0.25) per piece for returned mail processing, 15 cents (\$0.15) per image for certified fax noticing, \$40.00 per batch of 1,000 for certified e-noticing, 8.5 cents (\$0.085) per record per month for claims and data storage, and

1 \$250.00 per month<sup>2</sup> for website hosting. All postage, overnight delivery, couriers, FedEx,  
2 CourtCall and Pacer expenses are charged at cost. BMC does not charge for long distance  
3 telephone calls or incoming faxes received.

4 **Valuation of Services**

5 8. In accordance with the factors enumerated in Section 330 of the Bankruptcy Code,  
6 the amounts requested herein for compensation and expense reimbursement are fair and  
7 reasonable given (a) the complexity of this case, (b) the time expended by the individual  
8 timekeepers at BMC, (c) the nature and extent of the services rendered, (d) the value of such  
9 services, and (e) the costs of comparable services other than in a case under this title.

10 9. As set forth in the Bakhshian Declaration, BMC certifies that (i) it has reviewed the  
11 requirements of the Guidelines and (ii) that this Application complies with the Guidelines.

12  
13 WHEREFORE, the Trustee requests that this Court (a) allow compensation for  
14 professional fees and services provided during the Application Period, October 1, 2016 through  
15 October 31, 2017, on an interim basis in the amount of \$29,018.00, and reimbursement of actual  
16 and necessary expenses during the Application Period in the amount of \$24,014.35; (b) authorize  
17 and direct the Trustee to remit payment to BMC for professional fees and services provided during  
18 the Application Period in the amount of \$29,018.00 and reimbursement of actual and necessary  
19 expenses incurred during the Application Period in the amount of \$24,014.35; and (c) grant such  
20 other and further relief as the Court deems just and proper.

21 DATED: November 28, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

22  
23 By: /s/ Mark S. Bostick

24 Mark S. Bostick

25 Attorneys for Michael G. Kasolas  
26

27 <sup>2</sup> Pursuant to the BMC Employment Order, BMC waived the first six months of website hosting  
28 and maintenance expenses and waived all physical document storage expenses.