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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

**DECLARATION OF TINAMARIE FEIL IN
SUPPORT OF APPLICATION FOR
APPOINTMENT OF BMC GROUP, INC.**

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18 I, TINAMARIE FEIL, declare:

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20 1. I am the co-founder and the President of Client Services of BMC Group, Inc.

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22 (“BMC”). I have 30 years experience directing various aspects of corporate compliance,
23 communications, insolvency case administration, as well as the due diligence process in major
24 merger & acquisition transactions. I currently sit on the Board of Directors of the American
25 Bankruptcy Institute and am a Committee Leader of IWIRC’s delegation to the United Nations
26 Committee on International Trade Law (Working Group V, Insolvency).

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28 2. To the best of my knowledge, neither I, nor BMC has a connection of any kind or
nature with the Debtor, the Debtor’s creditors, the United States Trustee, persons employed in the
Office of the United States Trustee, or any other party-in-interest, or their respective attorneys and

1 accountants in the above-captioned case, which would preclude our employment or make me or
2 BMC other than a disinterested party within the meaning of Bankruptcy Code § 327. To the best
3 of my knowledge, neither I nor BMC holds or represents any interest adverse to the estate.

4 3. BMC is willing to waive its retainer, and is willing to provide some services
5 without being compensated immediately according to our normal invoice period of 30 days. We
6 understand that this is a Chapter 7 bankruptcy estate and that the Trustee anticipates that there will
7 be available cash to pay basic operations after some settlements are approved, the Trustee obtains
8 financing, or a sale is approved. We are willing to wait until such time as that happens, and
9 understand that until then we will have an administrative claim. As soon as the Trustee in his
10 determination has sufficient assets, we agree that he can then begin paying our invoices up to
11 \$12,000 a month without further court order.

12 4. To the extent our fees exceed \$12,000 a month for the services to be rendered, we
13 understand that we will have to apply for approval of such fees on some periodic basis. We
14 estimate that if we had to mail two notices to all creditors listed in the Mailing Matrix with the
15 Court in one month, our postage and copy charges alone could exceed \$12,000.

16 5. Attached hereto as **Exhibit A** is a true and correct copy of the Agreement for
17 Services, under the terms of which we seek to be employed.

18 6. Because creditors have already started filing proof of claims with the Bankruptcy
19 Court, at this time we are informed and believe that the Trustee has decided to allow that process
20 to continue, and after the bar date, and periodically thereafter, we will download the filed proofs of
21 claim and move them to our system.

22 7. If there is a charge from the Court for downloading any pleading, those charges
23 will be passed along to the Estate. Therefore, it is our hope that we can work with the Court to
24 provide access without charge to obtain electronic copies of the filed pleadings and claims and any
25 data related thereto.

26 8. We will establish a website that has copies of all pleadings filed for creditors to
27 view and print. Creditors will be able to download, view and print pleadings at no additional cost
28 to the Estate or the creditor.

1 I declare under penalty of perjury, under the laws of the United States of America and the
2 State of California, that the foregoing is true and correct, and if called upon as a witness, I could
3 and would competently testify thereto, and that this declaration is executed on February 11, 2016,
4 in Seattle, Washington.
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6 /s/ Tinamarie Feil
7 Tinamarie Feil
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Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036

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

EXHIBIT A

TO

**DECLARATION OF TINAMARIE FEIL IN SUPPORT OF
APPLICATION FOR APPOINTMENT OF BMC GROUP, INC.**



AGREEMENT FOR SERVICES

This Agreement dated as of February __, 2016, is entered between Michael Kasolas as Chapter 7 Trustee for the Estate of Fox Ortega Enterprises, Inc., Case No. 16-40050, ("Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

TERMS AND CONDITIONS

SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide upon request one or more of the services as follows: (a) assisting the Customer, his Counsel and Office of the Clerk with noticing and claims docketing and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a liquidation effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC may provide one or more of the following services: (1) prepare and serve those notices required in the bankruptcy case; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy case; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy case; (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) assist with the production of reports, exhibits and schedules of information or use by the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (8) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (9) facilitate or perform distributions, and (10) assist Customer with all analyses and/or collections of avoidance actions pursuant to Chapter 5 of the United States Bankruptcy Code.

TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customers in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customers requested reports, program modifications, database modification, and/or other features.

PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in accordance with the fee schedule annexed hereto adjusted as follows:
- BMC will guarantee an average billable rate across the life of the entire case of \$125.00/hr or less.
 - BMC will waive its top Executive/Principal rate of \$225.00/hr.
 - No rate increases for the life of the case.
 - For manual claims processing, charge a flat rate of \$2.50/claim discounted to \$1.50/claim for all claims over 1,000 with no hourly charges for claims intake and docketing.
 - BMC will waive its website set up and maintenance fee for the first 6 months.
 - BMC will waive its physical document storage fee.



- B. BMC shall be provided with an advance payment retainer of \$ Not Applicable. BMC will be compensated at its stated rates for services rendered and reimbursed for expenses necessarily incurred.
- C. Wire transfer information for the transmission of payments is as follows:

Bank Name -	Bridge Bank, N.A.
ABA/Routing # -	121143260
Account Name -	BMC Group, Inc.
Account # -	0101222545
- D. BMC raises its rates from time to time and generally does so each January. The rates for this case shall remain fixed at the 2016 fee schedule attached hereto.
- E. Customers agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.
- F. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- G. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated at one and one-half percent (1-1/2%) of the amount unpaid, accruing monthly from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Late charges shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- H. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connections with this Services Agreement.

WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.
- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any



information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.

- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

NON-SOLICITATION

Customer agrees that they shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

CONFIDENTIALITY

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

TERMINATION

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or their designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the BMC data center serving the Customer.



LIMITATIONS OF LIABILITY AND INDEMNIFICATION

Except with respect to breaches under Section "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section "Confidentiality", in no event shall BMC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

NOTICES

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile or overnight courier and shall be deemed as given, if by email, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc. Attn: Tinamarie Feil 600 1st Avenue Suite 623 Seattle, WA 98104 E-Mail: tfeil@bmcgroup.com Tel: 206.516.3300	Michael G. Kasolas, CPA United States Bankruptcy Trustee P.O. Box 26650 San Francisco, CA 94126 Email: trustee@kasolas.net Tel: (415) 504-1926
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.

APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that they have the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this

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Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer's bankruptcy cases, the term of the order shall govern.

ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By: <u><i>Tinamarie Feil</i></u> Name: Tinamarie Feil Title: President, Client Services Date: February 3, 2016	By: _____ Name: Michael Kasolas Title: Chapter 7 Trustee for the Estate of Fox Ortega Enterprises, Inc. Date: _____, 2016
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Pricing and Expenses

The total charge for BMC to support this project will be based on time spent plus payment of print/mail costs and any other out-of-pocket reimbursable items.

Noticing Management

Data Entry/Call Center/ Admin Support	\$25/35/45 per hour
Noticing Manager	\$65 - \$85 per hour

Project Management

Analyst	\$55 - \$75 per hour
Consultant	\$65 - \$85 per hour
Data Manager	\$65 - \$115 per hour
Senior Consultant/Project Manager	\$85 - \$150 per hour
Director of Case Management	\$125 - \$175 per hour
Director of Solicitation	\$150 - \$185 per hour
Executive/Principal	\$225 per hour (WAIVED)

No surcharge for overtime, weekends or holiday hours required to support your case

Claims & Balloting Management

Online Claims & Ballots Filing	No per claim/ballot charge
Manual Claims Processing	\$2.50/claim; reduced to \$1.50 at >1,000 (no hourly rates)
Claims Data Storage	\$.085/record/month
B-Linx Online Reconciliation Tool	No Charge (Unlimited Users)

Print Mail and Noticing Services¹

Copy/Print	\$.03 - \$.08 per image (volume discounts apply)
Finishing (Fold/Collate, Insert, Label & Envelope)	\$.15 per standard or \$.20 per catalog sized package
Postage, FedEx, Priority Overnight, Couriers	At cost (includes optimization recommendations)
Certified Electronic Noticing Service tracking)	\$40 per 1000 (no per page charge; includes receipt tracking)
Certified Fax Noticing Service	\$0.15 per image (includes delivery acknowledgment)
CD-ROM	\$2.50 per CD (no set up fee)
Processing of Undeliverable Mail	\$0.25 each
Publication Noticing (publishers)	Quote (leverage BMC negotiated discounts with publishers)

1. Since our production facilities are located in Los Angeles, you receive the benefit of West Coast deadlines.



Document and Information Management

DATA TRANSFER AND IMAGING:

Data Import	No per creditor charge
Document Imaging	\$0.08 per image
Document Imaging OCR	No additional charge

CALL CENTER

Live Operator Call Center Set up and Maintenance	No Charge
Live Operator Call Center Usage	\$35 per hour (billed for actual usage only)

Automated (IVR) Call Center Set Up & Maintenance	No Charge
IVR Call Center Usage	\$0.30/min

PUBLIC WEBSITE

Public Case Website Hosting Monthly Fee	\$250/month
Public Case Website Docket Updates	\$.08/page (Maximum \$2.40/document)

VIRTUAL DATA ROOM

SmartRoom Secure VDR	No Charge for set-up \$0.10/page/month with no minimum contract term
SmartRoom Manager	No Charge

DOCUMENT STORAGE

Physical Document Storage	\$1.45 per box/month
Electronic Document Storage	No Charge

Distribution Services

Cash Distribution	\$1.50/check
IRS Form 1099 Issuance	\$1.50/form
Stock & Warrant Certificate Distribution	\$1.50/Certificate
Electronic Stock Registration	No per claim charge. Communications with DTC at applicable project management rates