



1 Mark S. Bostick (Bar No. 111241)
Elizabeth Berke-Dreyfuss (Bar No. 114651)
2 Tracy Green (Bar No. 114876)
WENDEL, ROSEN, BLACK & DEAN LLP
3 1111 Broadway, 24th Floor
Oakland, California 94607-4036
4 Telephone: (510) 834-6600
Fax: (510) 834-1928
5 Email: mbostick@wendel.com;
edreyfuss@wendel.com;
6 tgreen@wendel.com

The following constitutes the order of the court.
Signed February 22, 2016


William J. Lafferty, III
U.S. Bankruptcy Judge

7 Attorneys for Michael G. Kasolas, Trustee

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

12
13 In re
14 FOX ORTEGA ENTERPRISES, INC.,
dba PREMIER CRU,
15
16 Debtor.

Case No. 16-40050-WJL
Chapter 7
**ORDER APPROVING EMPLOYMENT OF
BMC GROUP, INC.**

17
18 The Court has reviewed the Application for Employment of BMC Group, Inc.
19 (“Application”) filed by Michael Kasolas, the Chapter 7 trustee (“Trustee”) on February 11, 2016
20 (Docket Number 71), and supporting pleadings, and notice was sufficient under the circumstances,
21 and for good cause appearing,

22 IT IS HEREBY ORDERED that:

23 1. The Trustee’s Application pursuant to Bankruptcy Code Section 328 is granted, and
24 the Trustee is authorized to retain BMC Group, Inc. (“BMC”) and to execute the Agreement of
25 Services attached to the Declaration of Tinamarie Feil filed in support of the Application as
26 Exhibit A (Docket Number 71-2).

27 2. The terms of the Agreement for Services as modified or clarified by the Declaration
28 of Tinamarie Feil will be enforced by this Court.

1 3. The Trustee is authorized to pay BMC its costs, subject to available funds, and BMC
2 will file a fee application pursuant to Bankruptcy Code Section 330 for approval of services.

3 4. The Trustee will file a separate request to determine the best method to obtain free
4 access to documents to BMC from the Court’s website for the purpose of uploading them to the
5 website to be made available, and if necessary for authority to file a proof of service under seal.
6 Until such motion is filed, BMC is authorized to file a proof of service by listing the names of the
7 persons who requested service by email, but will not include the actual email addresses. BMC will
8 however, provide a complete copy of the proof of service to Counsel for the Trustee and the office
9 of the U.S. Trustee.

10 5. BMC agrees that notwithstanding anything to contrary in its contract the following
11 provisions shall not apply:

- 12 a) No interest shall be charged the estate.
- 13 b) In the event that BMC or the Trustee elect to terminate the contract, the
14 terminating party will seek Court Approval.
- 15 c) BMC’s limitation of the warranty limiting damages to re-noticing in the event of
16 an inaccurate service or listing on a proof of service is not limited by the paragraph entitled
17 Warranty set forth on page 2 of its contract, and BMC has represented that it has insurance
18 to cover damages should they arise. Therefore, by approval of its retention, and by this
19 Order, the Court strikes the Warranty paragraph of the BMC contract. However, it is
20 understood, that where a refiling or re-noticing can cure any problem, the parties will
21 endeavor to take such steps.
- 22 d) BMC will seek Court approval of its services billed by the hour, and such fees
23 are subject to determination by the Court, and include the Court’s ability to allow less fees
24 than requested based on the general factors related to the case, including damages as a
25 result of a faulty mailing or failure to serve the complete mailing matrix.

26 //
27 //
28 //

1 APPROVED AS TO FORM:

2 TRACY HOPE DAVIS
3 UNITED STATES TRUSTEE

4 By: /s/ Margaret H. McGee
5 Margaret H. McGee

6
7 BMC Group

8
9 By: /s/ Tinamarie Feil
10 Tinamarie Feil

11 **END OF ORDER**

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COURT SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ECF Recipients