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[Proposed] Attorneys for Michael G. Kasolas,
Trustee

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY TO OBJECTION
TO APPLICATION FOR ORDER
AUTHORIZING EMPLOYMENT OF
BRIAN NISHI**

Date: TBD
Time: TBD
Place: Courtroom 220
1300 Clay Street
Oakland, CA
Judge: The Hon. William J. Lafferty, III

Pursuant to Federal Rule of Evidence 201, Michael Kasolas, Trustee of the above captioned chapter 7 bankruptcy estate hereby requests that the Court take judicial notice of the attached excerpts from the Handbook for Chapter 7 Trustees available at the U.S. Trustee's website.

DATED: February 5, 2016

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Tracy Green
Tracy Green
Attorneys for Michael G. Kasolas

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES

HANDBOOK FOR CHAPTER 7 TRUSTEES



Effective October 1, 2012

estate (e.g., note or mortgage receivable) or may arise when a trustee accepts periodic payments to sell an asset.

Generally, the trustee should avoid sales of estate assets involving buyer payments which will extend beyond one year. However, there may be instances when it is in the best interest of the estate to sell an estate asset in this manner. When the purchase price will be paid in installments, the trustee must obtain and perfect a security interest in the estate assets sold and take other suitable precautions to protect the estate against default by the purchaser. 28 U.S.C. § 586.

When an estate asset consists of future payments, the trustee should attempt to discount the future income stream to an appropriate present value and liquidate the asset as expeditiously as possible. If the discounted payments cannot be liquidated, or the asset cannot otherwise be assigned for the benefit of creditors, the trustee should consider interim distributions to creditors as funds become available, provided that claims are resolved and sufficient funds are reserved to administer the estate.

10) EMPLOYMENT OF PROFESSIONALS

a. GENERAL STANDARDS

Under section 327, a chapter 7 trustee may employ professionals, including attorneys, accountants, appraisers or auctioneers to “represent or assist the trustee” in performing trustee duties under title 11. Those professionals may be awarded compensation for actual and necessary services and reimbursement for actual and necessary expenses, pursuant to section 330.

The employment of professionals must be approved by the court. Court approval must be sought prior to the rendering of any services. 11 U.S.C. § 327(a). Issues such as disinterestedness and necessity of employment are more appropriately addressed when court approval is sought and obtained prior to work by the professional. Generally, courts do not authorize compensation for services rendered prior to court-ordered employment. However, some courts permit retroactive or nunc pro tunc orders of employment in special circumstances, but even where permitted, such orders should be rarely sought.

b. DEFINITION OF PROFESSIONALS

The list of “professional persons” provided by section 327(a) – attorneys, accountants, appraisers, liquidators, auctioneers – is not exhaustive. The trustee must seek court approval only if the person sought to be employed is a “professional person” within the scope of section 327(a). The trustee may find it necessary to employ brokers, underwriters, farm managers, private investigators, or others to assist in the administration of estate assets. If an issue arises regarding the need to obtain court approval of the employment, the trustee should consider the following:

- 1) Does the person play a central role in the administration of the estate?

- 2) Does the person possess discretion or autonomy over some part of the estate?
- 3) Does the person have special knowledge or skill usually achieved by study and educational attainments?
- 4) Does the person operate under a license or governmental regulation?

When in doubt, it is recommended that the trustee err on the side of caution and seek court approval of the employment.

c. EMPLOYMENT STANDARDS

The threshold question for the employment of any professional is the necessity of employment. The trustee must determine whether the services of a professional are needed and whether the cost is warranted. 11 U.S.C. §§ 330 and 704(a). Further, the trustee needs to determine at the outset the level of professional work required and the estimated costs and benefits associated with the work.

As a general rule, professional persons employed by a trustee must be disinterested and must not have an interest adverse to the estate. 11 U.S.C. §§ 327(a) and 101(14). There are some exceptions. If a trustee is authorized to operate the debtor's business under section 721, and if the debtor has regularly employed professional persons on salary, the trustee may retain or replace such professional persons. 11 U.S.C. § 327(b). Representation of a creditor does not disqualify a person from representing the trustee, unless there is an objection from another creditor or the United States Trustee and the court finds there is an actual conflict of interest. 11 U.S.C. § 327(c). The trustee may retain an attorney for a "specified special purpose," even though the attorney previously represented the debtor, if the attorney does not hold or represent an adverse interest to the debtor or the estate with respect to the subject matter of the employment. 11 U.S.C. § 327(e).

The employment of a professional with a conflict of interest can result in denial of compensation to the professional under section 328(c) and to the trustee under section 326(d).

The trustee may not employ a person who has served as an examiner in the case. 11 U.S.C. § 327(f).

d. EMPLOYMENT PROCEDURES

Section 327 does not require notice and hearing procedures to hire professionals, only court approval. The trustee must provide a copy of the employment application to the United States Trustee. Fed. R. Bankr. P. 2014(a).

The form of applications for employment is governed by Fed. R. Bankr. P. 2014 and 6005. An employment application must state:

- 1) The specific facts necessitating employment;