

Mark S. Bostick (Bar No. 111241)  
Elizabeth Berke-Dreyfuss (Bar No. 114651)  
Tracy Green (Bar No. 114876)  
**WENDEL, ROSEN, BLACK & DEAN LLP**  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, California 94607-4036  
Telephone: (510) 834-6600  
Fax: (510) 834-1928  
Email: mbostick@wendel.com  
Email: tgreen@wendel.com

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

MICHAEL G. KASOLAS, Trustee,

Plaintiff,

vs.

JAMES TANANBAUM,

Defendant.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND  
RECOVER PREFERENTIAL  
TRANSFERS AND DISALLOW CLAIMS**

Plaintiff Michael G. Kasolas ("Trustee"), trustee of the chapter 7 bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor"), alleges as follows:

**JURISDICTION AND VENUE**

1. The Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code (Title 11 of the United States Code) on January 8, 2016 ("Petition Date").
2. The Trustee is the duly qualified and acting trustee of the Debtor's chapter 7 case.
3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b)

1 and 28 U.S.C. §157.

2 4. Venue is proper pursuant to 28 U.S.C. §1409(a).

3 5. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (F) and (O).

4  
5 **FIRST CLAIM FOR RELIEF**  
**Avoidance and Recovery of Preferential Transfers**

6 6. Within 90 days before the Petition Date the Debtor transferred the aggregate sum of  
7 \$259,083.40 (the “Transfers”) to defendant James Tanenbaum (“Tananbaum”).

8 7. At the time of the Transfers, Tananbaum was a creditor of the Debtor.

9 8. The Debtor made the Transfers for or on account of an antecedent debt it owed to  
10 Tananbaum before the transfers were made.

11 9. At the time of the Transfers, the Debtor was operating a “Ponzi” or fraudulent  
12 scheme in which it took funds from new customers on orders it did not fulfill to pay or cover for  
13 antecedent debts.

14 10. Prior to the Transfers, Tananbaum applied pressure to collect his debt from the  
15 Debtor by threatening to initiate civil or criminal proceedings.

16 11. The Debtor made the Transfers to or for the benefit of Tananbaum.

17 12. The Debtor made the Transfers from its own property.

18 13. The Debtor made the Transfers while it was insolvent.

19 14. The Transfers enabled Tananbaum to receive more than he would have received if:  
20 (a) the case was a case under chapter 7 of Title 11; (b) the Debtor had not made the Transfer; and  
21 (c) Tananbaum received payment of such debt to the extent provided by the provisions of Title 11.

22 15. The Trustee may avoid the Transfers under 11 U.S.C. § 547(b) and may recover the  
23 value thereof from Tananbaum under 11 U.S.C. § 550.

24 16. To the extent the Trustee discovers during this proceeding any additional avoidable  
25 transfers to Tananbaum, the Trustee will amend this complaint to include any such Transfers.

26 WHEREFORE, the Trustee prays for relief as set forth below.

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**SECOND CLAIM FOR RELIEF**  
**Disallowance of Claims**

17. The Trustee re-alleges and incorporates by reference paragraphs 1-16 of this Complaint.

18. Tananbaum is a transferee of transfers avoidable under Bankruptcy Code §547.

19. Despite the Trustee's demand, Tananbaum has not paid the amount or turned over the property transferred for which he is liable under 11 U.S.C. § 550.

WHEREFORE, the Trustee prays for relief as follows:

**PRAYER FOR RELIEF**

The Trustee requests judgment against James Tananbaum:

**On the First Claim for Relief:**

1. Avoiding the Transfers under 11 U.S.C. § 547(b).
2. Granting the Trustee recovery in the sum of \$259,083.40.
3. Awarding pre-judgment interest at the legal rate from the date of transfer.

**On the Second Claim for Relief:**

4. Disallowing any claim filed by Tananbaum pursuant to 11 U.S.C. § 502(d).

**On each Claim:**

5. Awarding costs of suit incurred herein.
6. For any other relief that is deemed proper.

Dated: May 22, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

Mark S. Bostick  
Attorneys for Plaintiff  
Michael G. Kasolas, Trustee