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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

MICHAEL G. KASOLAS, Trustee,

Plaintiff,

vs.

BOARDWALK CARS, INC.,

Defendant.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND
RECOVER FRAUDULENT TRANSFERS**

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 above-captioned Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 1409(a).

3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (H), which seeks relief under 11 U.S.C. §§ 544(b) and 550 and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

GENERAL ALLEGATIONS

4. 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 (the “Petition Date”).

5. The Trustee is the duly appointed trustee of the Debtor's chapter 7 case.

6. Boardwalk Cars Inc., also known as Boardwalk Chevrolet, is a California corporation doing business at 535 East Bayshore Road, Redwood City, California and at One Bair Island Road, Redwood City, California.

7. From 1980 through the Petition Date, John Fox ("Fox") was the president of the Debtor.

8. From 2010 through the Petition Date, Fox ran the debtor as a Ponzi scheme by selling millions of dollars of phantom “pre-arrival” wine that he never purchased and diverting money coming in from current customers to obtain wine for prior customers who had never received their wine. He also used the Debtor’s funds to buy or lease luxury cars for his personal account and use. Fox admitted to this conduct in his Plea Agreement executed on August 11, 2016, in Case No. CR 16-281 JD in the United States District Court for the Northern District of California. Based on the Plea Agreement, he has been sentenced to six years in federal prison.

9. From and after January 8, 2009, Fox purchased the following vehicles from Boardwalk Cars Inc. for his personal, family or household use: (1) on or about November 9, 2012, he purchased a 2013 Chevrolet Corvette for \$84,806.18; (2) on or about March 5, 2015, he purchased a 2015 Chevrolet Corvette for \$104,480.00; on or about April 5, 2015, he purchased a 2015 Chevrolet Corvette for \$118,135.60; and on or about September 19, 2015, he purchased a 2016 Chevrolet Corvette for \$132,253.00.

FIRST CLAIM FOR RELIEF

(Avoidance and Recovery of Fraudulent Transfers)
(California Civil Code § 3439 et seq.; 11 U.S.C. §§ 544(b) and 550)

10. Plaintiff realleges paragraphs 1 through 9 as though fully set forth herein.

11. From September 25, 2012, through February 6, 2015, the Debtor made the following transfers to Boardwalk Chevrolet by checks drawn on its Community Bank of the Bay checking account: \$20,000.00 on September 25, 2012; \$75,442.35 on October 21, 2013; and, \$10,000.00 on February 6, 2015 (the "Transfers"); true and correct copies of the negotiated checks are attached hereto as **Exhibit A**.

12. Plaintiff is informed and believes and thereon alleges that the Transfers were made on account of debts Fox incurred to purchase one or more of the aforementioned Corvettes.

13. At the time of each Transfer, (i) the Debtor was insolvent, (ii) the remaining assets of the Debtor were unreasonably small in relation to its business, or (iii) the Debtor believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

14. At the time of each Transfer, a creditor holding an unsecured claim that is allowable in this case under 11 U.S.C. §502 held a claim against the Debtor; among such creditors were: Albert Nassi (Claim No. 1936), Albert Rose (Claim No. 754) and Arthur Bankhurst (Claim No. 1106) (the "Claimants").

15. The Debtor made each of the Transfers with intent to hinder, delay or defraud a creditor.

16. The Debtor did not receive in exchange for any of the Transfers a reasonably equivalent value.

17. None of the Transfers were or could reasonably have been discovered by at least one Claimant until after one year prior to the Petition Date.

18. The Transfers occurred within seven years of the Filing Date.

19. Each Transfer was made directly to Boardwalk Cars Inc. by the Debtor, and Boardwalk Cars Inc. is the initial transferee of such Transfers as that term is used under 11 U.S.C. §550(a)(1) because it was free to do as it pleased with the funds it received from the Debtor.

WHEREFORE, plaintiff prays for judgment as follows:

1. Determining that the Trustee may exercise his "strong-arm powers" under 11 U.S.C. §544 (b);

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2. Avoiding each Transfer under Cal Civil Code §3439 et seq.;
3. Granting recovery under 11 U.S.C. §550(a)(1) in the sum of \$105, 442.35 or such additional sum as may avoided according to proof;
4. Awarding pre-judgment interest from the date of each Transfer at the legal rate allowed under California law, and
5. For costs of suit.

Dated: August 8, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick
Mark S. Bostick
Attorneys for Plaintiff
Michael G. Kasolas, Trustee

EXHIBIT A

PREMIER CNU 1011 University Ave Berkeley CA 94710 510-844-9453	54405 190982 10.23.12 20,173.10	PAY TO THE ORDER OF COMERICA BANK P.O. BOX 100 ALTO, CA 94501
PAY TO THE ORDER OF Boardwalk Chevrolet Security through		2956

PREMIER CNU 1011 University Ave Berkeley CA 94710 510-844-9453	55967 10/21/13 75,462.35
PAY TO THE ORDER OF Boardwalk Chevrolet Security through	

00 #55967 10/21/13 \$75,462.35

PREMIER CNU 1011 University Ave Berkeley CA 94710 510-844-9453	70828 2/24/15 10,000.00
PAY TO THE ORDER OF Boardwalk Chevrolet Security through	

#70828 2/24/15 \$10,000.00