

Mark S. Bostick (Bar No. 111241)
Albert Flor, Jr. (Bar No. 168291)
Leonard Marquez (Bar No. 206885)
WENDEL, ROSEN, BLACK & DEAN LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036
Telephone: (510) 834-6600
Fax: (510) 834-1928
Email: mbostick@wendel.com
Email: aflor@wendel.com
Email: lmarquez@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.

MICHAEL G. KASOLAS, Trustee,

Plaintiff,

vs.

GATEWAY ONE LENDING & FINANCE,
LLC,

Defendant.

Case No. 16-40050-WJL

Chapter 7

Adversary Proceeding No.

**COMPLAINT TO AVOID AND
RECOVER FRAUDULENT TRANSFERS**

Plaintiff Michael G. Kasolas ("Plaintiff" or "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. § 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 (1) of the Federal Rules of Bankruptcy Procedure.

4. Plaintiff consents to the entry of a final order by the Bankruptcy Court.

GENERAL ALLEGATIONS

5. 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").

6. The Trustee is the duly appointed trustee of the Debtor's chapter 7 case (the "Case").

7. Gateway One Lending & Finance, LLC ("Defendant") is a Delaware corporation with offices in Atwood and Anaheim, California.

8. On or about August 11, 2016, the Debtor's founder and president, John Fox, entered into a guilty plea in his criminal case [*United States v. John Fox*, Case No. CR 16-281 JD, N.D. Cal] and, in his Plea Agreement admitted that the Debtor had been running a fraudulent enterprise since at least 2010 that involved both the sale of "phantom wines" and his use of current customer payments to satisfy prior customer orders; in short, the Debtor was running a Ponzi scheme.

9. John Fox further admitted in his Plea Agreement that he embezzled funds from the Debtor to purchase or lease expensive cars, to pay for charges incurred on his and his wife's personal credit cards, and to pay for other goods and services obtained for his personal use.

10. Commencing in April 2013, and continuing through September 2014, the Debtor made 19 monthly payments in the aggregate sum of \$31,261.22 (the "Funds") to Defendant on the dates and in the amounts as indicated in the attached **Exhibit A** (the "Transfers"), which Exhibit is made a part hereof.

11. The Funds used to make the Transfers came from the Debtor's operating account nos. 2956 and 4184 at Community Bank of the Bay and were property of the Debtor.

12. Plaintiff is informed and believes and thereon alleges that the Transfers were made

1 on account of a vehicle financing contract (believed to be Account No. 20130349450644) between
2 Defendant and John Fox with respect a 2008 Audi R8 (VIN No. WUAAU34238N002705) that
3 was owned or leased by John Fox for his personal use.

4 13. Plaintiff is currently unaware of any other payments to Defendant made by the
5 Debtor on account of John Fox's obligations and Plaintiff will amend this complaint to include
6 any such transfers as they are discovered.

7 14. The Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under California
8 Civil Code §§3439 et seq. because on the Petition Date, at least one creditor holding an unsecured
9 claim that is allowable in the Case under 11 U.S.C. §502 held a claim against the Debtor's
10 transferees to avoid its fraudulent transfers under Cal. Civil Code §3439 et seq.; among such
11 creditors were Albert Nassi (Claim No. 1936) and Albert Rose (Claim No. 754).

12 15. Based on information and belief, Plaintiff alleges that Defendant had dominion and
13 control of the Funds once it received the Transfers from the Debtor.

14 **FIRST CLAIM FOR RELIEF**
15 **(Claim to Avoid and Recover Constructive Fraudulent Transfers)**
(California Civil Code § 3439.4(a)(2) et seq.; 11 U.S.C. §§ 544(b) and 550)

16 16. Plaintiff realleges paragraphs 1 through 15 as though fully set forth herein.

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

21 18. The Debtor did not receive a reasonably equivalent value in exchange for the
22 Transfers.

23 WHEREFORE, Plaintiff prays for relief as set forth below.

24 **SECOND CLAIM FOR RELIEF**
25 **(Claim to Avoid and Recover Intentional Fraudulent Transfers Under**
California Civil Code § 3439.04(a)(1) et seq.; 11 U.S.C. §§ 544(b) and 550)

26 19. Plaintiff realleges paragraphs 1 through 18 as though fully set forth herein.

27 20. The Debtor made the Transfers with intent to hinder, delay or defraud the Debtor's
28 creditors.

1 WHEREFORE, Plaintiff prays for relief as follows.

2 **PRAYER FOR RELIEF**

3 Plaintiff prays for judgment:

- 4 1. Determining that the Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers
5 under Cal Civil Code §3439 et seq.;
- 6 2. Avoiding the Transfers as intentional or constructive fraudulent transfers;
- 7 3. Determining that Defendant is the initial transferee under 11 U.S.C. §550(a)(1);
- 8 4. Granting recovery against Defendant in the amount of \$31,261.22 plus any
9 additional amounts as may be established according to proof;
- 10 6. Awarding pre-judgment interest at the rate of 7 percent per annum from the date of
11 each Transfer as provided under California law;
- 12 7. For costs of suit, and
- 13 8. For such other relief as the Court deems proper.
- 14

15 Dated: December 12, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

17 By: /s/ Mark S. Bostick

18 Mark S. Bostick
19 Attorneys for Plaintiff
20 Michael G. Kasolas, Trustee
21
22
23
24
25
26
27
28

EXHIBIT A

SEQ#					Payee	Payee	
10018	CBB	2956	4/22/2013		55280 Gateway One Lending & Finance		1,622.48
10106	CBB	2956	5/7/2013		55333 Gateway One Lending & Finance		1,622.48
10361	CBB	2956	6/11/2013		55493 Gateway One Lending & Finance		1,622.48
10639	CBB	2956	7/19/2013		55615 Gateway One Lending & Finance		1,622.48
10924	CBB	2956	8/26/2013		55788 Gateway One Lending & Finance		1,622.48
11016	CBB	2956	9/9/2013		55825 Gateway One Lending & Finance		1,703.60
11315	CBB	2956	10/22/2013	20130349450644	Gateway One Lending & Finance		1,703.60
11548	CBB	2956	11/20/2013	20130349450644	Gateway One Lending & Finance		1,631.98
11793	CBB	2956	12/19/2013	20130349450644	Gateway One Lending & Finance		1,631.98
12055	CBB	2956	1/22/2014	20130349450644	Gateway One Lending & Finance		1,631.98
12185	CBB	2956	2/10/2014		56423 Gateway One Lending & Finance		1,622.48
12436	CBB	4184	3/10/2014		70102 Gateway One Lending & Finance		1,622.48
12790	CBB	2956	4/21/2014	20130349450644	Gateway One Lending & Finance		1,622.48
13062	CBB	4184	5/23/2014		70192 Gateway One Lending & Finance		1,622.48
13299	CBB	4184	6/23/2014		70261 Gateway One Lending & Finance		1,703.60
13546	CBB	4184	7/28/2014		70345 Gateway One Lending & Finance		1,622.48
13766	CBB	4184	8/25/2014		70385 Gateway One Lending & Finance		1,622.48
13767	CBB	4184	8/25/2014		70385 Gateway One Lending & Finance		1,622.48
13989	CBB	4184	9/22/2014		70467 Gateway One Lending & Finance		1,784.72
18611					Gateway One Lending & Finance		31,261.22

EXHIBIT "A"