

1 Mark S. Bostick (Bar No. 111241)
Albert Flor, Jr. (Bar No. 168291)
2 Leonard Marquez (Bar No. 206885)
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
Email: aflor@wendel.com
6 Email: lmarquez@wendel.com

7 Attorneys for Michael G. Kasolas, Trustee

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Case No. 16-40050-WJL

Chapter 7

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MICHAEL G. KASOLAS, Trustee,
18 Plaintiff,

Adversary Proceeding No.

19

vs.

**COMPLAINT TO AVOID AND
RECOVER FRAUDULENT TRANSFERS**

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21 CALLAWAY CARS, INC.,
22 Defendant.

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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:

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JURISDICTION AND VENUE

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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).

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1 his personal use.

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

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

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

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

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

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

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

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

23 **SECOND CLAIM FOR RELIEF**
24 **(Claim to Avoid and Recover Intentional Fraudulent Transfers Under**
25 **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.

WHEREFORE, Plaintiff prays for relief as follows.

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PRAYER FOR RELIEF

Plaintiff prays for judgment:

1. Determining that the Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under Cal Civil Code §3439 et seq.;
2. Avoiding the Transfers as intentional or constructive fraudulent transfers;
3. Determining that Defendant is the initial transferee under 11 U.S.C. §550(a)(1);
4. Granting recovery against Defendant in the amount of \$29,417.80 plus any additional amounts as may be established according to proof;
6. Awarding pre-judgment interest at the rate of 7 percent per annum from the date of each Transfer as provided under California law;
7. For costs of suit, and
8. For such other relief as the Court deems proper.

Dated: December 12, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

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

EXHIBIT A

SEQ#				Payee	Payee	
9765	CBB	2956	3/22/2013	55121 Callaway		13,253.00
10014	CBB	2956	4/19/2013	55284 Callaway		15,664.80
10215	CBB	2956	5/23/2013	55401 Callaway		500.00
18230				Callaway		29,417.80

EXHIBIT "A"