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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.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND  
RECOVER FRAUDULENT TRANSFERS**

CHEVRON CORPORATION and  
SYNCHRONY BANK,  
  
Defendants.

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. CHEVRON CORPORATION and SYNCHRONY BANK (collectively "Defendants") are corporations doing business throughout the United States.

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 or Hector Ortega's personal credit cards, and to pay for other goods and services obtained for his or others' personal use.

10. Commencing in February 2009, the Debtor made 76 monthly payments in the aggregate sum of \$24,826.83 (the "Funds") to Defendants on account of a Chevron credit card issued by Defendants 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 accounts at Community Bank of the Bay and Herritage Bank of Commerce and were property of the

Debtor.

12. Plaintiff is informed and believes and thereon alleges that the Transfers were made on account of charges for goods and services incurred by Hector Ortega, a former officer of the debtor, on his Credit Card Account No. 7061 5910 7626 0784 for his personal use.

13. Plaintiff is currently unaware of any other payments the Debtor made to Defendants on account of any third party's obligations and Plaintiff will amend this complaint to include any such transfers as they are discovered.

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

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

**FIRST CLAIM FOR RELIEF**

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

17. 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.

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

WHEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CLAIM FOR RELIEF**

**(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)**

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

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

WHEREFORE, Plaintiff prays for relief as follows.

**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 either Defendants is the initial transferee under 11 U.S.C. §550(a)(1);

4. Granting recovery against either Defendants in the amount of \$24,826.83 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	
220	HBC	1035	2/17/2009	6896 Chevron		177.91
340	HBC	1035	3/10/2009	6972 Chevron		265.23
414	HBC	1035	3/24/2009	7019 Chevron		186.63
633	HBC	1035	5/5/2009	7141 Chevron		215.70
850	HBC	1035	6/15/2009	7273 Chevron		278.33
941	HBC	1035	7/7/2009	7327 Chevron		358.45
1094	HBC	1035	8/11/2009	7444 Chevron		219.53
1325	HBC	1035	10/5/2009	7577 Chevron		715.92
1424	HBC	1035	10/26/2009	7652 Chevron		85.80
1686	HBC	1035	12/14/2009	7813 Chevron		304.73
1766	BOM	0286	12/29/2009	1711 Chevron		379.99
1966	HBC	1035	2/8/2010	7992 Chevron		238.86
2098	HBC	1035	3/8/2010	8086 Chevron		312.70
2273	HBC	1035	4/8/2010	8208 Chevron		252.47
2388	HBC	1035	4/28/2010	8294 Chevron		331.44
2652	CBB	1248	6/16/2010	1040 Chevron		319.57
2777	CBB	1248	7/6/2010	1117 Chevron		338.72
2945	CBB	1248	8/3/2010	1219 Chevron		250.54
3128	CBB	1248	9/7/2010	1337 Chevron		311.74
3298	CBB	1248	10/12/2010	1442 Chevron		398.87
3480	CBB	1248	11/16/2010	1566 Chevron		155.19
3659	CBB	1248	12/13/2010	1686 Chevron		389.01
3842	CBB	1248	1/10/2011	1795 Chevron		440.74
3973	CBB	1248	1/31/2011	1917 Chevron		277.74
4171	CBB	1248	3/7/2011	2073 Chevron		353.38
4386	CBB	1248	4/12/2011	2191 Chevron		270.55
4539	CBB	1248	5/4/2011	2294 Chevron		388.81
4776	CBB	1248	6/15/2011	2408 Chevron		378.29
4871	CBB	2956	7/5/2011	2628 Chevron		404.80
5166	CBB	2956	8/8/2011	2759 Chevron		300.53
5441	CBB	2956	9/14/2011	52913 Chevron		360.39
5561	CBB	2956	10/3/2011	52964 Chevron		346.65
5870	CBB	2956	11/14/2011	53114 Chevron		266.30
6038	CBB	2956	12/5/2011	53207 Chevron		286.45
6378	CBB	2956	1/12/2012	53362 Chevron		407.55
6643	CBB	2956	2/13/2012	53509 Chevron		399.27
6916	CBB	2956	3/12/2012	53652 Chevron		327.23
7131	CBB	2956	4/2/2012	53743 Chevron		459.46
7482	CBB	2956	5/15/2012	53905 Chevron		306.16
7635	CBB	2956	6/5/2012	53997 Chevron		469.51
7820	CBB	2956	7/2/2012	54101 Chevron		392.27
7997	CBB	2956	7/30/2012	54200 Chevron		337.89
8754	CBB	2956	11/13/2012	54584 Chevron		617.35
8977	CBB	2956	12/11/2012	54742 Chevron		369.70

EXHIBIT "A"

9221	CBB	2956	1/11/2013	54871 Chevron	285.60
9390	CBB	2956	2/4/2013	54968 Chevron	267.54
9597	CBB	2956	3/4/2013	55088 Chevron	237.74
9960	CBB	2956	4/15/2013	55263 Chevron	345.00
10280	CBB	2956	6/3/2013	55457 Chevron	352.75
10654	CBB	2956	7/22/2013	55646 Chevron	216.63
10897	CBB	2956	8/21/2013	55759 Chevron	811.06
10974	CBB	2956	8/30/2013	55366 Chevron	390.28
11264	CBB	2956	10/15/2013	55930 Chevron	107.80
11344	CBB	2956	10/29/2013	56004 Chevron	167.34
11694	CBB	2956	12/9/2013	56155 Chevron	269.45
11989	CBB	2956	1/14/2014	56330 Chevron	271.45
12215	CBB	2956	2/12/2014	56429 Chevron	365.48
12431	CBB	4184	3/10/2014	70110 Chevron	304.69
12673	CBB	2956	4/4/2014	56631 Chevron	358.65
13056	CBB	4184	5/23/2014	70184 Chevron	301.67
13293	CBB	4184	6/23/2014	70271 Chevron	474.42
13560	CBB	4184	7/29/2014	70354 Chevron	334.03
13747	CBB	4184	8/22/2014	70386 Chevron	359.34
14091	CBB	4184	10/3/2014	70491 Chevron	736.29
14266	CBB	4184	10/30/2014	70579 Chevron	228.67
14570	CBB	4184	12/10/2014	70653 Chevron	248.41
14979	CBB	4184	1/30/2015	70783 Chevron	491.08
15171	CBB	4184	2/25/2015	70853 Chevron	180.73
15531	CBB	2956	4/9/2015	57220 Chevron	244.84
15610	CBB	4184	4/21/2015	70967 Chevron	327.58
16112	CBB	4184	6/15/2015	71092 Chevron	262.71
16120	CBB	4184	6/15/2015	71080 Chevron	310.41
16393	CBB	4184	7/15/2015	71177 Chevron	225.15
16822	CBB	2956	9/8/2015	57539 Chevron	286.89
17243	CBB	2956	10/23/2015	57778 Chevron	272.78
17334	CBB	2956	11/2/2015	57837 Chevron	142.02
18285				Chevron	24,826.83