

Mark S. Bostick (Bar No. 111241)
Albert Flor, Jr. (Bar No. 168291)
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

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.

JOSE DAVILA,

Defendant.

Case No. 16-40050-WJL

Chapter 7

Adversary Proceeding No.

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

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

JURISDICTION AND VENUE

1. The Debtor filed its voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (Title 11 of the United States Code) on January 8, 2016 (the “Petition Date”).

2. Thereafter, the Trustee was appointed. At all relevant times herein, the Trustee was, and currently is, the duly qualified and acting trustee of the Debtor’s chapter 7 bankruptcy case (the “Case”).

3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §157(a).

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

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F) and (O), which seeks relief under 11 U.S.C. §§ 547(a), 550(a) and 502(d), and under Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

6. The Trustee consents to the entry of a final order by the above-captioned Bankruptcy Court.

7. Defendant JOSE DAVILA (“Defendant”) is an individual.

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

8. On or about 12/23/2015, the Debtor made transfers in the form of wine shipped to Defendant in the aggregate value of at least \$25,479.79 (the “Transfer”). A detailed summary of the wines constituting the Transfer is attached hereto as **Exhibit A**.

9. The Transfer was made to or for the benefit of a creditor, namely, the Defendant, who, at the time of the Transfer, was owed goods by the Debtor.

10. The Transfer was made on account of an antecedent debt.

11. The Transfer was made while the Debtor was insolvent.

12. The Transfer was made within 90 days of the Petition Date.

13. The Transfer enabled Defendant to receive more than Defendant would receive if (a) the case was a case under chapter 7 of Title 11; (b) the Debtor had not made the Transfer; and (c) the Defendant received payment of such debt to the extent provided by the provisions of Title 11.

14. The Defendant asserted dominion and control of the wine transferred and the Defendant was the immediate transferee of the Transfer under 11 U.S.C. § 550(a)(1).

15. The Trustee's investigation is ongoing, and the Trustee may not be currently aware of all transfers that may have been made to Defendant during the 90 day period prior to the Petition Date. The Trustee will amend this Complaint to include any newly discovered transfers that are avoidable.

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

SECOND CLAIM FOR RELIEF

Disallowance of Claim

16. The Trustee re-alleges and incorporates by reference paragraphs 1-15 of this Complaint as though fully set forth herein.

17. The Transfer is avoidable under 11 U.S.C. § 547 (a) and the value thereof is recoverable under 11 U.S.C. § 550(a).

18. The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. § 550(a).

WHEREFORE, the Trustee prays for relief as follows:

PRAYER FOR RELIEF

The Trustee requests entry of judgment against Defendant as follows:

On the First Claim for Relief:

1. Avoiding the Transfer under 11 U.S.C. § 547(b) and recovering the value thereof under 11 U.S.C. § 550(a);

2. Determining that the Trustee may recover \$25,479.79 from Defendant; and

3. Awarding pre-judgment interest at the legal rate from the date of demand.

On the Second Claim for Relief:

4. Disallowing any and all claims filed in the Case by Defendant pursuant to 11 U.S.C. § 502(d).

On each Claim:

5. Awarding costs of suit incurred herein; and

6. For any other relief that the Court Deems proper.

Dated: December 12, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Albert Flor, Jr.

Albert Flor, Jr.
Attorneys for Plaintiff
Michael G. Kasolas, Trustee

EXHIBIT A

CustID	CustName	ShipDate	Shipment	PMT Date	Tender Type	SO Date	Sales Order	PickDate	PickList	ItemID	Format	QtyShip	UnitPrice	ExtPrice
JDavil	Jose Davila	12/23/2015	0000339299-SH	6/20/2011	VISA	6/15/2011	SO-0000357922	12/18/2015	130539	43939 2010 Clinet Magnum	1.5 L	6	\$ 273.00	\$ 1,638.00
JDavil	Jose Davila	12/23/2015	0000339299-SH	10/26/2011	VISA	10/19/2011	SO-0000364685	12/18/2015	130539	43952 2010 d'Issan	750 ml	12	\$ 46.99	\$ 563.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	10/26/2011	VISA	10/19/2011	SO-0000364685	12/18/2015	130539	44141 2010 Canon	750 ml	12	\$ 79.99	\$ 959.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/2/2010	VISA	6/29/2010	SO-0000340058	12/18/2015	130539	41701 09 Figeac 3 Liter	3 L	1	\$ 895.00	\$ 895.00
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/14/2010	VISA	7/9/2010	SO-0000340462	12/18/2015	130539	41783 09 La Mission Haut Brion Bl	750 ml	11	\$ 650.00	\$ 7,150.00
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/30/2010	VISA	7/30/2010	SO-0000341135	12/18/2015	130539	41686 09 La Conseillante	750 ml	12	\$ 179.99	\$ 2,159.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/2/2010	VISA	6/29/2010	SO-0000340058	12/18/2015	130539	41690 09 Pavie 3 Liter	3 L	1	\$ 1,060.00	\$ 1,060.00
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/2/2010	VISA	6/29/2010	SO-0000340058	12/18/2015	130539	41700 09 Figeac Magnum	1.5 L	4	\$ 443.00	\$ 1,772.00
JDavil	Jose Davila	12/23/2015	0000339299-SH	2/9/2009	VISA	2/9/2009	SO-0000312262	12/18/2015	130539	39508 07 Batard Montrachet, Lefla	750 ml	1	\$ 269.99	\$ 269.99
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/14/2010	VISA	7/9/2010	SO-0000340462	12/18/2015	130539	41608 09 Domaine de Chevalier Bl	750 ml	12	\$ 60.99	\$ 731.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	7/30/2010	VISA	7/30/2010	SO-0000341135	12/18/2015	130539	41655 09 Canon	750 ml	12	\$ 109.99	\$ 1,319.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	5/25/2010	VISA	5/19/2010	SO-0000337230	12/18/2015	130539	41361 07 Tignanello, Antinori	750 ml	24	\$ 69.99	\$ 1,679.76
JDavil	Jose Davila	12/23/2015	0000339299-SH	5/25/2010	VISA	5/19/2010	SO-0000337232	12/18/2015	130539	41361 07 Tignanello, Antinori	750 ml	12	\$ 69.99	\$ 839.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	5/25/2010	VISA	5/17/2010	SO-0000337195	12/18/2015	130539	41361 07 Tignanello, Antinori	750 ml	12	\$ 69.99	\$ 839.88
JDavil	Jose Davila	12/23/2015	0000339299-SH	8/20/2010	VISA	8/20/2010	SO-0000341896	12/18/2015	130539	41150 08 Chevalier Montrachet, Le	750 ml	10	\$ 299.99	\$ 2,999.90
JDavil	Jose Davila	12/23/2015	0000339299-SH	8/20/2010	VISA	8/20/2010	SO-0000341899	12/18/2015	130539	41150 08 Chevalier Montrachet, Le	750 ml	2	\$ 299.99	\$ 599.98
												144		\$ 25,479.79