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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.
SHIRLIN WONG,
Defendant.

Adversary Proceeding No.

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

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 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 ("Petition Date").
2. The Trustee is the duly qualified and acting trustee of the Debtor's chapter 7 case.

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

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

4 5. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (F) and (O).

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

7
8 **FIRST CLAIM FOR RELIEF**
 Avoidance and Recovery of Preferential Transfer

9 7. On or about October 23, 2015, the Debtor transferred \$78,736.33 of its funds to
10 Defendant Shirlin Wong (the "Defendant"). A true and correct copy of the check from the Debtor
11 to Defendant is attached hereto as **Exhibit A** (the "Transfer").

12 8. The Debtor made the Transfer to or for the benefit of a creditor, namely the
13 Defendant, who at the time of the Transfer was owed money by the Debtor.

14 9. The Transfer was made on account of an antecedent debt,...

15 10. The Transfer was made while the Debtor was insolvent.

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

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

20 13. The Defendant asserted dominion and control of the funds transferred and the
21 Defendant was the initial transferee of the Transfer under 11 U.S.C. §550(a)(1).

22 14. The Trustee's investigation is ongoing and to the extent the Trustee discovers
23 additional transfers to Defendant within the 90 day period prior to the Petition Date, the Trustee
24 will amend this complaint to include such transfers as part of this claim.

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

26 **SECOND CLAIM FOR RELIEF**
 Disallowance of Claims

27 15. The Trustee re-alleges and incorporates by reference paragraphs 1-14 of this
28

1 Complaint.

2 16. The Transfer is avoidable under 11 U.S.C. §547 (a) and is recoverable under 11
3 U.S.C. §550(a).

4 17. The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. §550
5 (a) despite the Trustee's numerous demands.

6 WHEREFORE, the Trustee prays for relief as follows:

7
8 **PRAYER FOR RELIEF**

9 The Trustee seeks judgment against Defendant as follows:

10 **On the First Claim for Relief:**

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

13 2. Determining that the Trustee may recover \$78,736.33 from Defendant;

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

15 **On the Second Claim for Relief:**

16 4. Disallowing any claim filed by Defendant in the case under Bankruptcy Code
17 §502(d).

18 **On each Claim:**

19 5. Awarding costs of suit incurred herein; and,

20 6. For any other relief that the Court deems proper.

21 Dated: December 18, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

23 By: /s/ Mark S. Bostick

24 Mark S. Bostick
25 Attorneys for Plaintiff
26 Michael G. Kasolas, Trustee
27
28

EXHIBIT A

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER

PREMIER CRUI

Community

BANK OF THE BAY

180 GRAND AVENUE OAKLAND, CA 94612 (510) 433-5400

019507

1 1005

90-4240/1211
0160001004

October 23, 2015

PAYABLE TO ~~NON-NEGOTIABLE~~

\$78,736.33

PAY ~~EXACTLY~~ **78,736 DOL 33 CTS**

MEMORANDUM

FOR

CASHIER'S CHECK

* RECEIVED 10/22/15 BY *[Signature]*

Debra J. [Signature]