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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.

PAYPAL, INC.,
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. PAYPAL, INC. ("Defendant") is a Delaware corporation conducting 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 purchase female companionship, 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 October 2009, the Debtor made numerous payments in the aggregate sum of \$195,311.85 (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 accounts from Heritage Bank of Commerce and Bank of Marin and were property of the Debtor.

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

on account of purchases made by John Fox for female companionship and other miscellaneous items for his personal use.

13. Plaintiff is currently unaware of any other payments by the Debtor to Defendant on account of John Fox's personal 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 Alfred Rose (Claim No. 754).

15. Based on information and belief, Plaintiff alleges that Defendant 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;
4. Granting recovery against Defendant under 11 U.S.C. §550(a) in the amount of \$195,311.85 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 29, 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	
1329	HBC	1035	10/6/2009	4WW223VLFBEJS	PayPal	188.63
3317	HBC	1035	10/15/2010	4WW224H7ADA8E	PayPal	437.00
3813	HBC	1035	1/5/2011	4WW224NGUSGZA	PayPal	2,500.00
4114	BOM	0286	2/25/2011	4WW224RSV2XLQ	PayPal	2,000.00
4328	BOM	0286	4/4/2011	4WW224U9KNVNY	PayPal	1,950.00
4366	BOM	0286	4/11/2011	4WW224URFWDL8	PayPal	20.90
4367	BOM	0286	4/11/2011	4WW224URGHB92	PayPal	23.00
4368	BOM	0286	4/11/2011	4WW224URGTTNL	PayPal	43.09
4369	BOM	0286	4/11/2011	4WW224URGAT36	PayPal	55.99
4385	BOM	0286	4/12/2011	4WW224UWYQKMN	PayPal	243.00
4472	HBC	1035	4/26/2011	4WW224VUAMC8S	PayPal	1,950.00
4636	BOM	0286	5/24/2011	4WW224XRCZETU	PayPal	700.00
4650	HBC	1035	5/25/2011	4WW22RXTHXZ5Y	PayPal	681.00
4655	BOM	0286	5/27/2011	4WW224XY3T98L	PayPal	500.00
4696	BOM	0286	6/6/2011	4WW224YJP9XVG	PayPal	550.00
4793	BOM	0286	6/20/2011	4WW224ZH4METN	PayPal	18.45
4794	BOM	0286	6/20/2011	4WW224ZGYEURE	PayPal	413.90
4989	HBC	1035	7/14/2011	4WW22537FRQDA	PayPal	700.00
5067	BOM	0286	7/25/2011	4WW2253WCAWN4	PayPal	1,000.00
5127	BOM	0286	8/2/2011	4WW2254GUUXEW	PayPal	700.00
5129	BOM	0286	8/2/2011	4WW2254H52558	PayPal	1,000.00
5209	BOM	0286	8/12/2011	4WW22558CKYXJ	PayPal	800.00
5471	BOM	0286	9/19/2011	4WW2257S22J4A	PayPal	1,000.00
5479	BOM	0286	9/20/2011	4WW2257YLVLE	PayPal	700.00
5749	HBC	1035	10/26/2011	4WW225A9YPMKY	PayPal	1,000.00
5833	BOM	0286	11/7/2011	4WW225BQE7E44	PayPal	1,000.00
5878	BOM	0286	11/14/2011	4WW225C89ULVW	PayPal	1,000.00
5987	BOM	0286	11/29/2011	4WW225DTCFXQ4	PayPal	800.00
6724	HBC	1035	2/21/2012	4WW225MD7NUM8	PayPal	606.34
6746	BOM	0286	2/22/2012	4WW225MQZW33C	PayPal	1,500.00
7543	BOM	0286	5/22/2012	4W225W4RE6RQ	PayPal	1,329.30
7596	BOM	0286	5/31/2012	4WW225WVXBXC�	PayPal	1,000.00
7658	BOM	0286	6/7/2012	4WW225XKYA8X2	PayPal	900.00
7699	HBC	1035	6/13/2012	4WW225Y55HA2S	PayPal	20.03
7704	BOM	0286	6/13/2012	4WW225Y4TQMCS	PayPal	800.00
7822	BOM	0286	7/2/2012	4WW225ZQBR4ZY	PayPal	1,000.00
7846	BOM	0286	7/5/2012	4WW22627APMDL	PayPal	600.00
7892	BOM	0286	7/12/2012	4WW226UY62FSY	PayPal	1,000.00
7953	BOM	0286	7/23/2012	4WW2263TMDWCW	PayPal	1,000.00
8046	BOM	0286	8/2/2012	4WW2264TL6XCL	PayPal	1,000.00
8080	BOM	0286	8/9/2012	4WW2265HQXTSY	PayPal	1,000.00
8153	BOM	0286	8/21/2012	4WW2266MD7JJN	PayPal	1,000.00

8186	BOM	0286	8/24/2012	4WW2266XEH9UC	PayPal	1,000.00
8208	HBC	1035	8/28/2012	4WW2267AHM22	PayPal	500.00
8233	BOM	0286	8/30/2012	4WW2267H62X78	PayPal	800.00
8299	HBC	1035	9/10/2012	4WW2268DXRY92	PayPal	1,000.00
8380	BOM	0286	9/21/2012	4WW2269N8SH3C	PayPal	300.00
8391	BOM	0286	9/24/2012	4WW2269TK8FYA	PayPal	800.00
9700	BOM	0286	3/13/2013	4WW226UMHYFG	PayPal	2,000.00
9718	BOM	0286	3/18/2013	4WW226UY2ES38	PayPal	1,000.00
9743	BOM	0286	3/20/2013	4WW226VDRBJ6U	PayPal	1,000.00
9759	BOM	0286	3/22/2013	4WW226VLSE644	PayPal	1,500.00
9838	BOM	0286	4/1/2013	4WW226WGFWL84	PayPal	1,500.00
9869	BOM	0286	4/3/2013	4WW226WRC4NH4	PayPal	39.99
9871	BOM	0286	4/3/2013	4WW226WRCT8DC	PayPal	199.94
9884	BOM	0286	4/4/2013	4WW226WZ4266J	PayPal	1,000.00
9929	BOM	0286	4/10/2013	4WW226XKPTCPW	PayPal	800.00
9953	BOM	0286	4/12/2013	4WW226XTBJHGU	PayPal	1,500.00
9981	BOM	0286	4/16/2013	4WW226Y7GQXNB	PayPal	1,500.00
10040	BOM	0286	4/24/2013	4WW226Z28AQY8	PayPal	1,500.00
10209	BOM	0286	5/22/2013	4WW2273UEPLTU	PayPal	1,600.00
10231	BOM	0286	5/28/2013	4WW22745PUG74	PayPal	1,500.00
10283	BOM	0286	6/3/2013	4WW2274T5M8PQ	PayPal	1,200.00
10321	BOM	0286	6/6/2013	4WW2275CCCSFY	PayPal	1,000.00
10326	BOM	0286	6/7/2013	4WW2275FJAA8E	PayPal	1,000.00
10344	BOM	0286	6/10/2013	4WW2275JBKPC6	PayPal	1,500.00
10405	BOM	0286	6/17/2013	4WW22768F88WJ	PayPal	1,500.00
10438	BOM	0286	6/21/2013	4WW2276TC7PQS	PayPal	1,000.00
10439	BOM	0286	6/21/2013	4WW2276TB45WQ	PayPal	1,000.00
10547	BOM	0286	7/8/2013	4WW2278AWSDFS	PayPal	1,500.00
10617	BOM	0286	7/17/2013	4WW2279DUJAGG	PayPal	1,500.00
10675	BOM	0286	7/23/2013	4WW227A28KMCJ	PayPal	500.00
10689	BOM	0286	7/24/2013	4WW227A6AE298	PayPal	500.00
10778	BOM	0286	8/5/2013	J222223DUEAA	PayPal	207.25
10788	BOM	0286	8/6/2013	4WW227BJXRPHG	PayPal	800.00
10812	BOM	0286	8/12/2013	4WW227C2JRBQ2	PayPal	500.00
10831	BOM	0286	8/13/2013	4WW227CBFRK4N	PayPal	1,400.00
10832	BOM	0286	8/13/2013	4WW227CB99V6S	PayPal	1,500.00
10942	BOM	0286	8/27/2013	J222223MGTEE	PayPal	1,500.00
10947	BOM	0286	8/28/2013	J222223NU8SS	PayPal	102.56
11005	BOM	0286	9/5/2013	J222223XBQSY	Paypal	1,000.00
11033	BOM	0286	9/11/2013	J222224627FS	Paypal	500.00
11044	BOM	0286	9/12/2013	J2222246TDS4	Paypal	1,000.00
11053	BOM	0286	9/13/2013	J2222248CSR6	Paypal	1,200.00
11108	BOM	0286	9/24/2013	J222224MA37W	Paypal	700.00

11182	BOM	0286	10/2/2013	J2222224XQ4XU	Paypal	500.00
11224	BOM	0286	10/8/2013	J22222257EXCE	Paypal	1,500.00
11231	BOM	0286	10/9/2013	J22222258YVH8	Paypal	600.00
11272	BOM	0286	10/15/2013	J2222225EH3E2	Paypal	1,500.00
11312	BOM	0286	10/22/2013	J2222225TZWFQ	Paypal	700.00
11326	BOM	0286	10/23/2013	J2222225JVCL	Paypal	800.00
11335	BOM	0286	10/28/2013	J222222627cb2	Paypal	105.00
11354	BOM	0286	10/29/2013	J22222266cmr2	Paypal	700.00
11413	BOM	0286	11/4/2013	4WW227KCAJ2TJ	Paypal	196.51
11415	BOM	0286	11/4/2013	J2222226ELQ2S	Paypal	600.00
11482	BOM	0286	11/12/2013	J22222274DE3G	Paypal	1,000.00
11483	BOM	0286	11/12/2013	J2222226WGW56	Paypal	1,400.00
11504	BOM	0286	11/14/2013	J222222797NP8	Paypal	517.00
11505	BOM	0286	11/14/2013	J22222279RB6A	Paypal	700.00
11537	BOM	0286	11/19/2013	J2222227LZ7VL	Paypal	1,100.00
11553	BOM	0286	11/21/2013	J2222227QWAQE	Paypal	1,300.00
11596	BOM	0286	11/27/2013	J2222228776ks	Paypal	1,100.00
11623	BOM	0286	12/2/2013	J2222228ESFCE	Paypal	1,000.00
11646	BOM	0286	12/3/2013	J2222228Q3UTS	Paypal	4,000.00
11674	BOM	0286	12/6/2013	J2222228YJGW2	Paypal	500.00
11715	BOM	0286	12/10/2013	J222222A6A9ZA	Paypal	600.00
11800	BOM	0286	12/20/2013	J222222A6A9ZA	Paypal	600.00
11849	BOM	0286	12/27/2013	J222222AJFGNS	Paypal	600.00
11880	BOM	0286	1/2/2014	J222222AM3C2	Paypal	600.00
11882	BOM	0286	1/2/2014	J222222AXJBX8	Paypal	650.00
11895	BOM	0286	1/3/2014	J222222AZUFLY	Paypal	1,100.00
11910	BOM	0286	1/6/2014	J222222b3tj2n	Paypal	1,200.00
11951	BOM	0286	1/9/2014	J222222BEB5DW	Paypal	1,800.00
12047	BOM	0286	1/21/2014		Paypal	600.00
12068	BOM	0286	1/24/2014	J222222CEWQTC	Paypal	600.00
12080	BOM	0286	1/27/2014	J222222CKL8YE	Paypal	1,300.00
12087	BOM	0286	1/28/2014	J222222CQBR78	Paypal	400.00
12100	BOM	0286	1/29/2014	J222222CRVB6W	Paypal	200.00
12132	BOM	0286	2/3/2014	J222222C639BU	Paypal	600.00
12173	BOM	0286	2/7/2014	J222222DEUV52	Paypal	1,500.00
12217	BOM	0286	2/12/2014	J222222DSMCRS	Paypal	600.00
12254	BOM	0286	2/18/2014	J222222E4L93A	Paypal	1,100.00
12331	BOM	0286	2/26/2014	J222222ERRC3N	Paypal	1,700.00
12356	BOM	0286	3/3/2014	J222222F32898	Paypal	700.00
12419	BOM	0286	3/7/2014	J222222FF5CA8	Paypal	1,100.00
12435	BOM	0479	3/10/2014		PayPal	1,000.00
12448	BOM	0479	3/11/2014		PayPal	1,000.00
12480	BOM	0479	3/14/2014		PayPal	1,500.00

12592	BOM	0479	3/26/2014		PayPal	600.00
12602	BOM	0479	3/27/2014		PayPal	600.00
12640	BOM	0479	4/1/2014		PayPal	600.00
12665	BOM	0479	4/3/2014		PayPal	600.00
12738	BOM	0479	4/11/2014		PayPal	1,600.00
12755	BOM	0479	4/15/2014		PayPal	800.00
12788	BOM	0479	4/21/2014		PayPal	600.00
12944	BOM	0479	5/12/2014		PayPal	800.00
12983	BOM	0479	5/15/2014		PayPal	600.00
13007	BOM	0479	5/19/2014		PayPal	1,500.00
13188	BOM	0479	6/11/2014	Xfer 140611	PayPal	550.00
13250	BOM	0479	6/17/2014	Possible Premium Care LLC (2mo)	PayPal	1,800.00
13324	BOM	0479	6/24/2014	Xfer 140624	PayPal	1,700.00
13443	BOM	0479	7/14/2014	Xfer 140714	PayPal	300.00
13613	BOM	0479	8/4/2014		PayPal	5,000.00
13651	BOM	0479	8/11/2014		PayPal	600.00
13681	BOM	0479	8/15/2014		PayPal	728.00
13688	BOM	0479	8/18/2014		PayPal	36.90
13701	BOM	0479	8/18/2014		PayPal	5,000.00
13789	BOM	0479	8/27/2014		PayPal	1,500.00
13828	BOM	0479	9/2/2014		PayPal	5,000.00
13873	BOM	0479	9/8/2014		PayPal	1,000.00
13934	BOM	0479	9/16/2014		PayPal	5,000.00
14019	BOM	0479	9/26/2014		PayPal	1,500.00
14081	BOM	0479	10/2/2014		PayPal	5,000.00
14193	BOM	0479	10/16/2014		PayPal	5,000.00
14308	BOM	0479	11/3/2014		PayPal	5,000.00
14376	BOM	0479	11/12/2014		PayPal	1,200.00
14416	BOM	0479	11/17/2014		PayPal	5,000.00
14515	BOM	0479	12/2/2014		PayPal	5,000.00
14529	BOM	0479	12/4/2014		PayPal	50.91
14530	BOM	0479	12/4/2014		PayPal	85.16
14540	BOM	0479	12/5/2014		PayPal	787.00
14621	BOM	0479	12/16/2014		PayPal	310.00
14627	BOM	0479	12/16/2014		PayPal	5,000.00
14678	BOM	0479	12/23/2014		PayPal	310.00
14700	BOM	0479	12/26/2014		PayPal	305.00
14817	BOM	0479	1/9/2015		PayPal	5,000.00
19247					PayPal	195,311.85