

1 Mark S. Bostick (Bar No. 111241)  
Leonard E. Marquez (Bar No. 206885)  
2 Albert Flor, Jr. (Bar No. 168291)  
**WENDEL, ROSEN, BLACK & DEAN LLP**  
3 1111 Broadway, 24<sup>th</sup> Floor  
Oakland, California 94607-4036  
4 Telephone: (510) 834-6600  
Fax: (510) 834-1928  
5 Email: mbostick@wendel.com  
Email: lmarquez@wendel.com  
6 Email: afluor@wendel.com

7 Attorneys for Plaintiff  
Michael G. Kasolas, Trustee

8  
9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12  
13 In re  
14 FOX ORTEGA ENTERPRISES, INC., dba  
PREMIER CRU,  
15 Debtors.

Case No. 16-40050-WJL

Chapter 7

16  
17 MICHAEL G. KASOLAS, Trustee,  
18 Plaintiff,  
19 vs.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND  
RECOVER FRAUDULENT TRANSFERS**

20 ANN C. TAYLOR, Trustee of the Taylor  
Family Trust U/D/T/ April 1, 1991, or the  
21 survivors' trust thereof; and ANN C.  
TAYLOR, Individually  
22 Defendants.

23  
24  
25 Plaintiff Michael G. Kasolas ("Trustee"), trustee of the chapter 7 bankruptcy estate of Fox  
26 Ortega Enterprises, Inc., dba Premier Cru ("Debtor"), alleges as follows:  
27  
28

## 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. Defendant Ann C. Taylor is named herein individually and as trustee of the Taylor Family Trust U/D/T April 1, 1991, or its successor survivor trust (the "Trust"), collectively referred to herein as the "Taylor Defendants."

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.

9. John Fox further admitted in his Plea Agreement that he embezzled funds from the Debtor to purchase personal items for himself and his family. He also embezzled funds from the Debtor to pay for the personal obligations of other insiders of the Debtor, including those of 1011 University Ave. LLC, a limited liability company in which the Debtor held a 60 percent membership interest.

10. From March 29, 2010 through November 27, 2015, on the dates and in the amounts

1 as indicated on the attached **Exhibit A**, which exhibit is made a part hereof, the Debtor paid the  
2 Taylor Defendants the aggregate sum of \$545,812.79 ("the Transfers") on account of a secured  
3 debt obligation of 1011 University LLC to the Trust.

4 11. The Debtor was not a party to the contract between the Trust and 1011 University  
5 LLC and had no obligation to the Trust.

6 12. The funds used to make the Transfers came from the Debtor's operating accounts at  
7 Community Bank of the Bay and Heritage Bank of Commerce as indicated in Exhibit A and were  
8 property of the Debtor.

9 13. At all times from and after January 8, 2009, the Debtor was insolvent.

10 14. The Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under California  
11 Civil Code §§3439 et seq. because at least one creditor holding an unsecured claim that is  
12 allowable in the Case under 11 U.S.C. §502 was a creditor of the Debtor when the Transfers were  
13 made.

14 15. The Taylor Defendants were the initial transferees of the Transfers for purposes of  
15 11 U.S.C. §550(a)(1) because they had dominion and control of the transferred funds.

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

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

20 17. At the time of each Transfer, (i) the Debtor was engaged or was about to engage in  
21 a business or a transaction for which the remaining assets of the Debtor were unreasonably small  
22 in relation to the business or transaction or (ii) the Debtor intended to incur or believed or  
23 reasonably should have believed that it would incur debts beyond its ability to pay as they became  
24 due.

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

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

28 //

**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 actual intent to hinder, delay or defraud the Debtor's creditors.

WHEREFORE, Plaintiff prays for relief as follows.

**THIRD CLAIM FOR RELIEF**  
**(Claim to Avoid and Recover Intentional Fraudulent Transfers Under California Civil Code § 3439.05(a) et seq.; 11 U.S.C. §§ 544(b) and 550)**

21. Plaintiff realleges paragraphs 1 through 20 as though fully set forth herein.

22. The Debtor made the Transfers without receiving a reasonably equivalent value in exchange for the transfer or obligation and the Debtor was insolvent at that time or became insolvent as a result of the Transfer.

WHEREFORE, Plaintiff prays for relief as follows.

**PRAYER FOR RELIEF**

Plaintiff prays for judgment:

1. Avoiding the Transfers as intentional or constructive fraudulent transfers;
2. Determining that the Taylor Defendants were the initial transferees under 11 U.S.C. § 550(a)(1) and granting recovery against them in the amount of \$545,812.79 plus any additional amounts as may be established according to proof;
3. Awarding pre-judgment interest from the date of each transfer at the legal rate under California law; and
4. For such further relief as may be just and proper.

Dated: January 5, 2018

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

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

# EXHIBIT A

2222	HBC	1035	3/29/2010	8167 Taylor	Ann	20,893.33
2609	CBB	1248	6/8/2010	1022 Taylor	Ann	20,893.33
2676	CBB	1248	6/18/2010	1067 Taylor	Ann	20,893.33
2716	CBB	1248	6/25/2010	1086 Taylor	Ann	20,893.33
3015	CBB	1248	8/16/2010	1212 Taylor	Ann	20,893.33
3101	CBB	1248	8/31/2010	1323 Taylor	Ann	20,893.33
3212	CBB	1248	9/22/2010	1410 Taylor	Ann	20,893.33
3347	CBB	1248	10/20/2010	1483 Taylor	Ann	20,893.33
3667	CBB	1248	12/13/2010	1630 Taylor	Ann	20,893.33
3850	CBB	1248	1/10/2011	1813 Taylor	Ann	20,893.33
3944	CBB	1248	1/25/2011	1899 Taylor	Ann	20,893.33
4128	CBB	1248	2/28/2011	2042 Taylor	Ann	20,893.33
4351	CBB	1248	4/6/2011	2160 Taylor	Ann	24,018.58
4499	CBB	1248	4/29/2011	2248 Taylor	Ann	24,018.58
4701	CBB	1248	6/6/2011	2361 Taylor	Ann	24,018.58
4883	CBB	2956	7/5/2011	2459 Taylor	Ann	24,018.58
5088	CBB	2956	7/26/2011	2733 Taylor	Ann	24,018.58
11848	CBB	2956	12/26/2013	56243 Taylor	Ann	8,333.33
12352	CBB	2956	3/5/2014	56516 Taylor	Ann	8,333.33
12527	CBB	2956	3/31/2014	56583 Taylor	Ann	8,333.33
12722	CBB	2956	4/28/2014	56737 Taylor	Ann	8,333.33
12990	CBB	2956	6/2/2014	56807 Taylor	Ann	8,333.33
13217	CBB	4184	6/27/2014	70300 Taylor	Ann	8,333.33
13450	CBB	4184	8/1/2014	70371 Taylor	Ann	8,333.33
13750	CBB	4184	9/12/2014	70453 Taylor	Ann	8,333.33
13989	CBB	4184	10/14/2014	70518 Taylor	Ann	8,333.33
14178	CBB	4184	11/10/2014	70565 Taylor	Ann	8,333.33
14253	CBB	4184	11/21/2014	70566 Taylor	Ann	8,333.33
14346	CBB	4184	12/8/2014	70638 Taylor	Ann	8,333.33
14530	CBB	4184	12/31/2014	70692 Taylor	Ann	8,333.33
14799	CBB	2956	2/4/2015	57127 Taylor	Ann	8,333.33
15250	CBB	2956	4/3/2015	57209 Taylor	Ann	8,333.33
15251	CBB	2956	4/3/2015	57210 Taylor	Ann	8,333.33
16407	CBB	2956	8/18/2015	57454 Taylor	Ann	8,333.33
16408	CBB	2956	8/18/2015	57455 Taylor	Ann	8,333.33
16658	CBB	2956	9/18/2015	57595 Taylor	Ann	8,333.33
16948	CBB	2956	10/21/2015	57760 Taylor	Ann	8,333.33
17321	CBB	2956	11/27/2015	57945 Taylor	Ann	8,333.33

545,812.79