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

11 In re
12 FOX ORTEGA ENTERPRISES, INC., dba
13 PERMIER CRU,
14 Debtors.

Case No. 16-40050-WJL

Chapter 7

**COMPLAINT TO AVOID AND
RECOVER PREFERENTIAL
TRANSFERS**

15 MICHAEL G. KASOLAS, Trustee,
16 Plaintiff,
17 vs.
18 CHAMBERS & CHAMBERS, INC., a
19 California corporation,
20 Defendant.

1 Plaintiff Michael G. Kasolas (“Trustee”), trustee of the chapter 7 bankruptcy estate of Fox
2 Ortega Enterprises, Inc., dba Premier Cru (“Debtor”), alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an adversary proceeding, pursuant to the Federal Rules of Bankruptcy
5 Procedure (“Fed. R. Bankr. P.”), which relates to the Chapter 7 proceeding captioned *In re Fox*
6 *Ortega Enterprises, Inc., dba Premier Cru*, Case No. 16-40050-WJL (Bankr. N.D. Cal., Oakland
7 Div.) (the “Bankruptcy Case”). The above-captioned Court has jurisdiction over this matter
8 pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a).

9 2. Venue is proper pursuant to 28 U.S.C. § 1409(a).

10 3. The claim stated herein is a core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A),
11 (F) and (O), which seeks relief under 11 U.S.C. §§ 547(b), 502(d) and 550 and Fed. R. Bankr. P.
12 Rule 7001(1).

13 4. Plaintiff consents to the entry of a final order or judgment by the Bankruptcy Court
14 on the claim pled herein.

15 **GENERAL ALLEGATIONS**

16 5. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy
17 Code (Title 11 of the United States Code) on January 8, 2016 (“Petition Date”), commencing this
18 Bankruptcy Case.

19 6. The Trustee is the duly appointed trustee of the Debtor’s Bankruptcy Case.

20 7. The Trustee is informed and believes and thereon alleges that defendant **Chambers**
21 **& Chambers, Inc. (“Defendant”)** is a California corporation, doing business as “Chambers &
22 Chambers Wine Merchants,” organized and existing under the laws of the State of California,
23 doing business in the City and County of San Francisco, California. The Trustee is informed and
24 believes and thereon alleges that Defendant maintains a place of business at 2140 Palou Avenue,
25 San Francisco, California 94124.

26 8. The Debtor transferred an interest of the Debtor in certain property belonging to the
27 Debtor to Defendant, including, but not limited to, certain funds of the Debtor by way of the
28 following payments to Defendant and delivery of certain goods of the Debtor to Defendant in

1 payment of its account balance owing to Defendant (the “Transfers”), as more particularly set
2 forth below:

3 11/2/2015	Payment by Check	\$ 1,248.00
4 11/5/2015	Payment by Check	\$ 20,000.00
5 11/13/2015	Payment by Check	\$ 7,000.00
6 11/20/2015	Payment by Check	\$ 10,000.00
12/7/2015	Goods Provided	\$ 11,740.00
		\$ 49,988.00

7 9. As set forth above, the Transfers totaled not less than **\$49,988.00**.

8 **FIRST CLAIM FOR RELIEF**

9 **[Avoid and Recover Preferential Transfers**

10 **Under 11 U.S.C. §§ 547(b) and 550]**

11 10. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 9
12 above, as though fully set forth herein.

13 11. The Transfers were made to or for the benefit of a creditor, namely, the Defendant,
14 who, at the time of the Transfers, was owed money by the Debtor.

15 12. The Transfers were made on account of an antecedent debt owed by the Debtor
16 before such Transfers was made.

17 13. The Transfers were made while the Debtor was insolvent.

18 14. The Transfers was made on or within 90 days before the Petition Date.

19 15. The Transfers enabled Defendant to receive more than Defendant would receive if
20 (a) the case was a case under Chapter 7 of Title 11; (b) the Debtor had not made the Transfer; and
21 (c) the Defendant received payment of such debt to the extent provided by the provisions of Title
22 11.

23 16. The Defendant had dominion and control of the property transferred and the
24 Defendant was the initial transferee of the Transfers under 11 U.S.C. § 550(a)(1).

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

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

PRAYER FOR RELIEF

The Trustee requests judgment against Defendant for the following relief:

1. For a judgment avoiding the Transfers, and each of them, under 11 U.S.C. § 547(b) and recovering the value thereof under 11 U.S.C. § 550(a);
2. For a judgment determining that Defendant was the initial transferees under 11 U.S.C. § 550(a)(1) and granting recovery against Defendant in the amount of not less than \$49,988.00, plus any additional amounts as may be established according to proof;
3. For an award of all recoverable prejudgment interest at the legal rate allowed by law;
4. For allowable costs of suit incurred herein; and
5. For such further relief as may be just and proper.

Dated: January 8, 2018

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Leonard E. Marquez

Leonard E. Marquez
Attorneys for Plaintiff
Michael G. Kasolas, Trustee