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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.

KAISER PERMANENTE INSURANCE
COMPANY,

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. KAISER PERMANENTE INSURANCE COMPANY ("Defendant") is a California corporation doing business in California.

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.

10. Fox also embezzled funds from the Debtor to purchase personal items for Hector Ortega, who was an officer and director of the Debtor and who held more than 20 percent of the voting shares of the Debtor.

11. From January 9, 2009 through December 7, 2015, on the dates and in the amounts as indicated on the attached **Exhibit A**, which exhibit is made a part hereof, the Debtor paid Defendant the aggregate sum of \$56,134.95 ("the Transfers") on account of the individual health insurance plan(s) of Kathryn Benetti ("Benetti"), Hector Ortega's spouse.

12. At the time of the Transfers, Benetti was not an employee of the Debtor, she was not a participant in the Debtor's group healthcare plan with Defendant, and her spouse, Hector

1 Ortega, was not a participant in the Debtor's group healthcare plan with Defendant.

2 13. The funds used to make the Transfers came from the Debtor's operating accounts
3 and were property of the Debtor.

4 14. At all times from and after January 8, 2009, the Debtor was insolvent.

5 15. The Debtor received nothing in exchange for the Transfers as they were gratuitous
6 payments for the benefit of a spouse of an insider of the Debtor.

7 16. The Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under California
8 Civil Code §§3439 et seq. because at least one creditor holding an unsecured claim that is
9 allowable in the Case under 11 U.S.C. §502 was a creditor of the Debtor on or after the dates of
10 the Transfers.

11 17. Defendant was the initial transferee of the Transfers for purposes of 11 U.S.C.
12 §550(a)(1) because it had dominion and control of the transferred funds.

13 **FIRST CLAIM FOR RELIEF**

14 **(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)

15 18. Plaintiff realleges paragraphs 1 through 17 as though fully set forth herein.

16 19. At the time of each Transfer, (i) the Debtor was insolvent, (ii) the remaining assets
17 of the Debtor were unreasonably small in relation to its business, or (iii) the Debtor believed or
18 reasonably should have believed that it would incur debts beyond its ability to pay as they became
19 due.

20 20. The Debtor did not receive a reasonably equivalent value in exchange for the
21 Transfers.

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

23 **SECOND CLAIM FOR RELIEF**

24 **(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)

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

26 22. The Debtor made the Transfers with intent to hinder, delay or defraud the Debtor's
27 creditors.

28 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 Defendant is the initial transferee under 11 U.S.C. §550(a)(1) and granting recovery against Defendant in the amount of \$56,134.95 plus any additional amounts as may be established according to proof;
6. Awarding pre-judgment interest at the legal rate under California law from the date of each Transfer;
7. For costs of suit; and
8. For such other relief as the Court deems proper.

Dated: January 8, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

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

EXHIBIT A

SEQ#	BANK	ACCT#	Transaction Date	Transaction # Check #/Wire #	Payee Last Name/Business Name	Binetti	Billing Unit ID Family Acct No	543361204 11-0004626617
27	HBC	1035	1/6/2009	6761	Kaiser Foundation Health Plan	436.45		
83	HBC	1035	1/16/2009	6815	Kaiser Foundation Health Plan			
124	HBC	1035	1/23/2009	6829	Kaiser Foundation Health Plan	518.45		
200	HBC	1035	2/11/2009	6893	Kaiser Foundation Health Plan			
300	HBC	1035	2/27/2009	6926	Kaiser Foundation Health Plan	477.45		
443	HBC	1035	3/27/2009	7015	Kaiser Foundation Health Plan	477.45		
654	HBC	1035	5/6/2009	7131	Kaiser Foundation Health Plan	477.45		
740	HBC	1035	5/20/2009	7199	Kaiser Foundation Health Plan	477.45		
780	HBC	1035	5/29/2009	7223	Kaiser Foundation Health Plan			
929	HBC	1035	7/3/2009	7333	Kaiser Foundation Health Plan			
943	HBC	1035	7/7/2009	7334	Kaiser Foundation Health Plan	477.45		
995	HBC	1035	7/20/2009	7375	Kaiser Foundation Health Plan			
1014	HBC	1035	7/22/2009	7370	Kaiser Foundation Health Plan	477.45		
1161	HBC	1035	8/24/2009	7478	Kaiser Foundation Health Plan	539.45		
1293	HBC	1035	9/28/2009	7562	Kaiser Foundation Health Plan	539.45		
1402	HBC	1035	10/21/2009	7655	Kaiser Foundation Health Plan			
1426	HBC	1035	10/26/2009	7648	Kaiser Foundation Health Plan	539.45		
1458	HBC	1035	10/29/2009	7692	Kaiser Foundation Health Plan			
1687	HBC	1035	12/14/2009	7819	Kaiser Foundation Health Plan	539.45		
1767	HBC	1035	12/29/2009	7886	Kaiser Foundation Health Plan	583.45		
1792	HBC	1035	12/31/2009	7904	Kaiser Foundation Health Plan			
1956	HBC	1035	2/5/2010	8001	Kaiser Foundation Health Plan	583.45		
2051	HBC	1035	2/26/2010	8072	Kaiser Foundation Health Plan			
2073	HBC	1035	3/2/2010	8071	Kaiser Foundation Health Plan	583.45		
2173	HBC	1035	3/22/2010	8147	Kaiser Foundation Health Plan	583.45		
2401	HBC	1035	4/29/2010	8298	Kaiser Foundation Health Plan	583.45		
2436	HBC	1035	5/4/2010	8322	Kaiser Foundation Health Plan			
2654	CBB	1248	6/16/2010	1055	Kaiser Foundation Health Plan	583.45		
2778	CBB	1248	7/6/2010	1113	Kaiser Foundation Health Plan	583.45		
2938	CBB	1248	8/2/2010	1229	Kaiser Foundation Health Plan			
3051	CBB	1248	8/23/2010	1279	Kaiser Foundation Health Plan	1,166.90		
3216	CBB	1248	9/23/2010	1395	Kaiser Foundation Health Plan	583.45		
3382	CBB	1248	10/26/2010	1505	Kaiser Foundation Health Plan	583.45		
3690	CBB	1248	12/15/2010	1683	Kaiser Foundation Health Plan	583.45		
3975	CBB	1248	1/31/2011	1922	Kaiser Foundation Health Plan	601.94		
4165	CBB	1248	3/4/2011	2078	Kaiser Foundation Health Plan			
4194	CBB	1248	3/9/2011	2079	Kaiser Foundation Health Plan	1,203.88		
4363	CBB	1248	4/8/2011	2196	Kaiser Foundation Health Plan			
4371	CBB	1248	4/11/2011	2197	Kaiser Foundation Health Plan	601.94		
4697	CBB	1248	6/6/2011	2392	Kaiser Foundation Health Plan	1,203.88		
4864	CBB	2956	7/1/2011	8007314661	Kaiser Dues			
5027	CBB	2956	7/18/2011	2722	Kaiser Foundation Health Plan			

5047	CBB	2956	7/20/2011	2712	Kaiser Foundation Health Plan	601.94
5169	CBB	2956	8/8/2011	2767	Kaiser Foundation Health Plan	601.94
5320	CBB	2956	8/29/2011	2861	Kaiser Foundation Health Plan	
5452	CBB	2956	9/15/2011	52915	Kaiser Foundation Health Plan	601.94
5547	CBB	2956	9/30/2011	52972	Kaiser Foundation Health Plan	601.94
5873	CBB	2956	11/14/2011	53117	Kaiser Foundation Health Plan	601.94
6006	CBB	2956	11/30/2011	53194	Kaiser Foundation Health Plan	
6431	CBB	2956	1/19/2012		Kaiser Dues	1,940.82
6554	CBB	2956	2/1/2012		Kaiser Dues	
7122	CBB	2956	3/30/2012		Kaiser Dues	
7137	CBB	2956	4/2/2012	53727	Kaiser Foundation Health Plan	1,338.88
7611	CBB	2956	6/1/2012		Kaiser Dues	
7666	CBB	2956	6/8/2012		Kaiser Dues	1,338.88
7917	CBB	2956	7/17/2012		Kaiser Dues	1,338.88
8050	CBB	2956	8/2/2012		Kaiser Dues	
8273	CBB	2956	9/5/2012		Kaiser Dues	669.44
8489	CBB	2956	10/5/2012		Kaiser Dues	669.44
8497	CBB	2956	10/5/2012		Kaiser Dues	
8684	CBB	2956	11/5/2012		Kaiser Dues	669.44
8925	CBB	2956	12/5/2012		Kaiser Dues	669.44
9178	CBB	2956	1/7/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
9413	CBB	2956	2/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
9427	CBB	2956	2/5/2013	0000369214144/800731466	Kaiser Dues	
9632	CBB	2956	3/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
9864	CBB	2956	4/2/2013	0000384410644/800731446	Kaiser Dues	
9893	CBB	2956	4/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
10095	CBB	2956	5/6/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
10273	CBB	2956	6/3/2013	55461	Kaiser Foundation Health Plan	10.00
10310	CBB	2956	6/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
10535	CBB	2956	7/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
10777	CBB	2956	8/2/2013	0000417940854/800731466	Kaiser Dues	
10780	CBB	2956	8/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
11004	CBB	2956	9/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
11209	CBB	2956	10/7/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
11216	CBB	2956	10/7/2013	0000435817598/800731466	Kaiser Dues	
11431	CBB	2956	11/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
11665	CBB	2956	12/5/2013	543361204120718	Kaiser Permanent Direct Pay	740.95
11908	CBB	2956	1/6/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
12156	CBB	2956	2/4/2014	470152903/8007314661	Kaiser Dues	
12159	CBB	2956	2/5/2014	000000470152903	Kaiser Permanent Direct Pay	790.47
12397	CBB	2956	3/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
12658	CBB	2956	4/2/2014	0000488376122/800731466	Kaiser Dues	
12684	CBB	2956	4/7/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
12899	CBB	2956	5/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
13155	CBB	2956	6/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47

13388	CBB	2956	7/7/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
13617	CBB	2956	8/4/2014	522912633/8007314661	Kaiser Dues	
13622	CBB	2956	8/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
13859	CBB	2956	9/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
14101	CBB	2956	10/6/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
14330	CBB	4184	11/4/2014		Kaiser Dues	
14338	CBB	2956	11/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
14536	CBB	4184	12/4/2014		Kaiser Dues	
14541	CBB	2956	12/5/2014	543361204120718	Kaiser Permanent Direct Pay	790.47
14768	CBB	2956	1/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
15032	CBB	2956	2/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
15257	CBB	2956	3/3/2015	00000582254399/800731466	Kaiser Dues	
15265	CBB	2956	3/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
15407	CBB	2956	3/23/2015	57178	Kaiser Foundation Health Plan	
15485	CBB	4184	4/2/2015		Kaiser Dues	
15502	CBB	2956	4/6/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
15748	CBB	2956	5/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
15792	CBB	2956	5/8/2015	00000601934905/800731466	Kaiser Dues	
16041	CBB	2956	6/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
16301	CBB	2956	7/2/2015	00000616497334/800731466	Kaiser Dues	
16316	CBB	2956	7/6/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
16808	CBB	2956	9/2/2015	00000633312059/800731466	Kaiser Dues	
16825	CBB	2956	9/8/2015	543361204120718	Kaiser Permanent Direct Pay	1,679.00
17079	CBB	2956	10/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
17385	CBB	2956	11/5/2015	543361204120718	Kaiser Permanent Direct Pay	827.00
17690	CBB	2956	12/7/2015	543361204120718	Kaiser Permanent Direct Pay	827.00

56,571.40