

Fill in this information to identify the case:

Debtor 1 Fov Ortega Enterprises, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of California

Case number 16-40050 WJL7

CM 11:24 a.m.
FILED
FEB 18 2016
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Terry L. Austen</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Terry L. Austen</u> Name <u>626 Chapman St.</u> Number Street <u>San Jose</u> <u>CA</u> <u>95126</u> City State ZIP Code Contact phone <u>408-292-3515</u> Contact email <u>tausten@sbcglobal.net</u>	Where should payments to the creditor be sent? (if different) <u>same</u> Name Number Street City State ZIP Code Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	
		Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1501.85 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Wine ordered 7/29/2013; paid for 8/2013; not delivered to date

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/12/2016

MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name

First name

Middle name

Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number

Street

City

State

ZIP Code

Contact phone

Email

**PREMIER CRU BANKRUPTCY
CHRONOLOGY FOR CREDITOR: TERRY AUSTEN**

7/29/2013 Responded to e-mail offering from Premier Cru with the following order placed on-line:

- | | |
|---|-----------|
| • 1 bottle 2011 Pichon Lalande | \$106.81 |
| • 4 bottles 2009 Pichon Lalande | 741.16 |
| • 4 bottles 2004 Taittinger Comtes de Champ | 435.96 |
| • 2 bottles 2004 Dom Perignon | 217.98 |
| • 4 bottles 2010 Lynch Bages | 675.80 |
| • Total | \$2177.65 |

8/6/2013 Purchases charged to Austen credit card

9/14/2013 Called Premier Cru (PC). Was told that wine is not in inventory; told to call back at the end of October.

12/11/2013 Called PC, wine not available; told to call back in Spring 2014

4/30/2014 Called PC; wine not in. Told to call back in July/August 2014

10/16/2014 Called PC. Store stated that the 2010 Lynch Bages is available for pick-up. Store stated we need to make an appointment to pick-up the wine at the Berkeley store. Other orders still pending shipment from Beaune. PC explained that delay is typical for pre-arrival orders; some take as long as 3 years, but "customers always get their wine". Told to check back in March 2015.

4/30/2015 Called PC. Verified that the 2010 Lynch Bages is still in store pending pick-up. Told to check in August 2015 for 2009 and 2011 Pichon Lalande; 2004 Champagnes. Stated that all look good for summer 2015 delivery to the store.

8/25/2015 Called PC. Spoke with Whitney, (ext 17). He stated that delivery delays are a chronic problem at PC that they are "working on". Confirmed 2010 Lynch Bages still at store. Whitney will check on back orders for the Pichon Lalande. May need to re-order from the distributor. Stated that the Champagne is confirmed for Fall 2015 delivery.

8/29/2015 Drove to PC in Berkeley. Picked up 4 bottles of 2010 Lynch Bages. Clerk checked on outstanding orders; delivery estimated to be "soon". Subtracting the wine received, new balance is \$1501.85 for outstanding orders.

12/7/2015 Read article in SJ Mercury-News describing PC issue with failure to deliver wine to customers.

12/17/2015 Attempted to contact PC. Reached recorded message stating only e-sales effective immediately at sales@premiercru.net.

From: "Premier Cru" <shipping@premiercru.net>
Subject: Premier Cru Order Acknowledgement
Date: July 29, 2013 8:23:09 AM PDT
To: <tausten@sbcglobal.net>

Thank you for your order!

We have received your order request SO-0000419688-131019.

qty	item	Wine	price	ext	status
1	46070	2011 Pichon Lalande		97.99	97.99 pre-arrival

Bottles : 1
Subtotal: 97.99
Shipping: 0.00
Tax : 8.82
Total : 106.81

Please note:

We do not ship automatically upon order.

If you wish to arrange shipping, please contact us after receiving your order confirmation and we will schedule it.

We do not charge for shipping until your bottles ship out.

If you have any questions, please email us at info@premiercru.net or call us at 510-644-9463.

Premier Cru
1011 University Avenue
Berkeley, CA 94710
(510) 644-9463

From: "Premier Cru" <shipping@premiercru.net>
Subject: Premier Cru Order Acknowledgement
Date: July 23, 2013 11:23:19 AM PDT
To: <tausten@sbcglobal.net>

Thank you for your order!

We have received your order request SO-0000419153-130615.

qty	item	Wine	price	ext	status
4	41693	2009 Pichon Lalande		169.99	679.96 pre-arrival

Bottles : 4
Subtotal: 679.96
Shipping: 0.00
Tax : 61.20
Total : 741.16

Please note:

We do not ship automatically upon order.

If you wish to arrange shipping, please contact us after receiving your order confirmation and we will schedule it.

We do not charge for shipping until your bottles ship out.

If you have any questions, please email us at info@premiercru.net or call us at 510-644-9463.

Premier Cru
1011 University Avenue
Berkeley, CA 94710
(510) 644-9463

From: "Premier Cru" <shipping@premiercru.net>
Subject: Premier Cru Order Acknowledgement
Date: July 29, 2013 8:20:15 AM PDT
To: <tausten@sbcglobal.net>

Thank you for your order!

We have received your order request SO-0000419685-131017.

qty	item	Wine	price	ext	status
4	47492	2004 Taittinger Comtes de Champagne Blanc de	99.99	399.96	pre-arrival

Bottles : 4
Subtotal: 399.96
Shipping: 0.00
Tax : 36.00
Total : 435.96

Please note:

We do not ship automatically upon order.

If you wish to arrange shipping, please contact us after receiving your order confirmation and we will schedule it.

We do not charge for shipping until your bottles ship out.

If you have any questions, please email us at info@premiercru.net or call us at 510-644-9463.

Premier Cru
1011 University Avenue
Berkeley, CA 94710
(510) 644-9463

From: "Premier Cru" <shipping@premiercru.net>
Subject: Premier Cru Order Acknowledgement
Date: July 29, 2013 8:21:10 AM PDT
To: <tausten@sbcglobal.net>

Thank you for your order!

We have received your order request SO-0000419687-131018.

qty	item	Wine	price	ext	status
2	48077	2004 Dom Perignon		99.99	199.98 pre-arrival

Bottles : 2
Subtotal: 199.98
Shipping: 0.00
Tax : 18.00
Total : 217.98

Please note:

We do not ship automatically upon order.

If you wish to arrange shipping, please contact us after receiving your order confirmation and we will schedule it.

We do not charge for shipping until your bottles ship out.

If you have any questions, please email us at info@premiercru.net or call us at 510-644-9463.

Premier Cru
1011 University Avenue
Berkeley, CA 94710
(510) 644-9463

From: "Premier Cru" <shipping@premiercru.net>
Subject: Premier Cru Order Acknowledgement
Date: July 29, 2013 8:35:13 AM PDT
To: <tausten@sbcglobal.net>

Thank you for your order!

We have received your order request SO-0000419693-131021.

qty	item	Wine	price	ext	status
4	43942	2010 Lynch Bages		155.00	620.00 pre-arrival

Bottles : 4

Subtotal: 620.00

Shipping: 0.00

Tax : 55.80

Total : 675.80

rec'd 8/29/2015

Please note:

We do not ship automatically upon order.

If you wish to arrange shipping, please contact us after receiving your order confirmation and we will schedule it.

We do not charge for shipping until your bottles ship out.

If you have any questions, please email us at info@premiercru.net or call us at 510-644-9463.

Premier Cru
1011 University Avenue
Berkeley, CA 94710
(510) 644-9463



www.premiercru.net

PACKSLIP	0000419693127852
PAGE	Page 1 of 1
DATE	8/29/2015
CUSTOMER NUMBER	41858
Customer Tel:	

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Terry Austen

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Terry Austen
626 Chapman St
San Jose, CA, 95126

Cust_PO#	Date Order	Date Required	FREIGHT TERMS	Carriers	Service
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LINE #	ITEM	DESCRIPTION	QUANTITY ORDERED	QUANTITY SHIPPED	QUANTITY BACKORDERED	In BOX #
43942		2010 Lynch Bages	4	4		4 in 100108092

4.00

TOTAL UNITS SHIPPED: 4.00

TOTAL # OF CARTONS: 1

Retail

Your Order Packed with Pride by: MT

ACCOUNT ACTIVITY (CONTINUED)

Date of Transaction	Merchant Name or Transaction Description	\$ Amount
07/14	ORCHARD SUPPLY #010 SAN JOSE CA	91.7
07/16	ZANOTTO'S FAMILY M SAN JOSE CA	120.7
07/18	STARBUCKS #05436 SAN JOSE San Jose CA	7.8
07/21	KL *WINEMERCHANTS-RWC Redwood City CA	730.0
07/19	CLEANERS CONNECTIONS SAN JOSE CA	39.7
07/22	BEVERAGES & MORE #66 SAN JOSE CA	328.2
07/24	PETSMART INC 1418 SAN JOSE CA	20.2
07/23	PREMIER CRU 510-6449463 CA <i>2009 Pichon Lalarde</i>	741.1
07/24	ZANOTTO'S FAMILY M SAN JOSE CA	5.9
07/28	ORCHARD SUPPLY #010 SAN JOSE CA	25.0
07/27	MOUNTAIN MIKES PIZZA SAN JOSE CA	26.8
07/28	LV SALON SANTA CLARA CA	60.0
07/27	CLEANERS CONNECTIONS SAN JOSE CA	22.7
07/28	Southern Lumber Company SAN JOSE CA	6.8
07/29	PAYPAL *GOATHOUSE RE 402-935-7733 NC	250.0
07/29	PREMIER CRU 510-6449463 CA <i>2004 Taitinger</i>	435.9
07/29	PREMIER CRU 510-6449463 CA <i>2004 Don Perignon</i>	217.9
07/29	PREMIER CRU 510-6449463 CA <i>2011 Pichon Lalarde</i>	106.8
07/29	PREMIER CRU 510-6449463 CA <i>2010 Lynch Bagel</i>	675.8
07/30	TICKETS OAKLAND AS 800-3520212 CA	51.7
07/29	ARAMARK OAKLAND COLISEUM OAKLAND CA	98.2
07/29	SAFEWAY STORE00014761 SAN JOSE CA	140.3
07/31	VIN, VINO, WINE PALO ALTO CA	577.9
07/31	ZANOTTO'S FAMILY M SAN JOSE CA	24.8
08/02	LUNARDI'S MKT SAN JOSE CA	85.7
08/03	DELTA QUEEN CAR WASH CAMPBELL CA	12.0
08/01	MOUNTAIN MIKES PIZZA SAN JOSE CA	22.8
08/02	OPTICO SAN JOSE CA	52.0
08/02	CELLARTRACKER 206-6017226 WA	150.0
08/04	PAYPAL *GOATHOUSE RE 402-935-7733 NC	5.0
	TERRY L AUSTEN	
	TRANSACTIONS THIS CYCLE (CARD 2103) \$5,429.58	

2013 Totals Year-to-Date	
Total fees charged in 2013	\$60.00
Total interest charged in 2013	\$0.00

Year-to-date totals reflect all charges minus any refunds applied to your account.

INTEREST CHARGES

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Balance Type	Annual Percentage Rate (APR)	Balance Subject To Interest Rate	Interest Charges
PURCHASES			
Purchases	13.24% (v)	-0-	-0-
CASH ADVANCES			
Cash Advances	19.24% (v)	-0-	-0-
BALANCE TRANSFERS			