

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:

**FWLL, LLC,
Debtor.**

§
§ **CASE NO. 15-52071-cag**

§
§ **Chapter 7**

**RANDOLPH N. OSHEROW,
in his capacity as CHAPTER 7
TRUSTEE**

Plaintiff,

v.

**CARLOS URESTI;
THE URESTI LAW FIRM, P.C.
Defendants.**

§
§ **ADV. PROC. _____**

PLAINTIFF’S ORIGINAL COMPLAINT

**TO THE HONORABLE CRAIG A GARGOTTA,
UNITED STATES BANKRUPTCY JUDGE:**

NOW COMES RANDOLPH N. OSHEROW, in his capacity as CHAPTER 7 TRUSTEE (“Trustee”) and files this Original Complaint pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), complaining of CARLOS URESTI and THE URESTI LAW FIRM, P.C., and would show the Court as follows:

NATURE OF THE ACTION

1. This is an adversary proceeding brought in the above-captioned bankruptcy case pursuant to Part VII of the Bankruptcy Rules seeking damages arising from Defendants’ failure to repay a loan from FWLL in accordance with the terms of the parties’ agreement.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b).

3. This adversary proceeding has been referred to this Court pursuant to 28 U.S.C. § 157(a).

4. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E) and (O).

5. Venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. § 1409(a).

PARTIES

6. Plaintiff Trustee is a resident of the State of Texas who may be served through his undersigned counsel.

7. Upon information and belief, Defendant Uresti is an individual residing in San Antonio, Texas who can be served at 924 McCullough Ave, San Antonio, TX 78215 or wherever he may be found in the State of Texas.

8. Upon information and belief, The Uresti Law Firm, P.C. is a professional corporation organized under the laws of the State of Texas, which can be served through its registered agent, Carlos Uresti, at 1114 S.W. Military Dr., Ste. 102, San Antonio, Texas 78221.

GENERAL BACKGROUND

9. FWLL was founded in or about 2012 for the purpose of selling “frac sand” to oil and gas exploration and production companies that were conducting hydraulic fracturing production operations in the Texas shale plays.

10. At the times relevant herein, FWLL was owned by Stan Bates (51%), Shannon Smith (48%), and Carlos Uresti (1%).

11. FWLL's ultimate goal was to become a "one stop shop" providing the full spectrum of oilfield services utilized by exploration and production companies in shale plays in Texas and Mexico.

12. FWLL determined that it would raise capital and execute its business plan by entering into joint ventures with investors.

13. On or about June 25, 2014, Uresti, in his individual capacity, executed that certain Promissory Note in the amount of \$40,000.00 payable to Stan Bates, a true and correct copy of which is attached hereto as **Exhibit A**.

14. On or about June 25, 2014, FWLL issued a check payable to The Uresti Law Firm, P.C. in the amount of \$40,000.00. A true and correct copy of the check is attached hereto as **Exhibit B**.

15. The term of the Promissory Note was six (6) months, alternately described as 180 days. Thus, payment on the Promissory Note was due no later than December 25, 2014.

16. Pursuant to the terms of the Promissory Note, interest accrued on the debt at the rate of 5% per annum.

17. Pursuant to the terms of the Promissory Note, if Defendants defaulted and the holder was required to retain attorneys for the purpose of collecting on the Promissory Note, Defendants covenant to pay all reasonable attorneys' fees, costs and expenses incurred in the collection efforts.

18. Defendants failed to pay the principal and interest when it became due and owing on December 25, 2014.

19. Bates, in his individual capacity, and FWLL have made demand on Uresti and The Uresti Law Firm, for payment in accordance with the terms of the Promissory Note.

20. Bates retained the law firm of Pulman, Cappuccio, Pullen, Benson & Jones, LLP to collect on the Promissory Note.

21. The Chapter 7 Trustee has retained the law firm of Langley & Banack, Inc. to collect on the Promissory Note.

22. Both Bates and the Chapter 7 Trustee have incurred attorneys' fees, costs, and expenses in their attempts to collect on the Promissory Note.

COUNT I – Breach of Contract

23. Paragraphs 1-22 are incorporated by reference as though fully set out herein.

24. The Promissory Note is a valid, enforceable contract.

25. FWLL is a proper party to sue for breach of the Promissory Note. Although Stan Bates, FWLL's principal, was named as the holder of the Promissory Note, the consideration for the promise to repay was FWLL's corporate funds.¹

26. FWLL performed its obligations under the contract by transmitting \$40,000.00 to The Uresti Law Firm on or about June 25, 2014.

27. Uresti and The Uresti Law Firm breached the contract by failing to pay the principal and interest due when the Promissory Note matured on December 25, 2014. Defendants' breach is ongoing and the Promissory Note continues to accrue interest.

28. FWLL was injured as a result of Defendants' breach.

¹ To the extent that the Promissory Note was payable to Bates individually although the funds were FWLL's corporate funds, any repayment to Bates (or his Chapter 7 Bankruptcy Estate) would be a fraudulent conveyance recoverable by FWLL's Chapter 7 Bankruptcy Estate. The Chapter 7 Trustee reserves the right to make a claim against Bates' Bankruptcy Estate in the event that payment on the Promissory Note is made (or has been made) to Bates individually rather than to FWLL.

COUNT II – Quantum Meruit²

- 29. Paragraphs 1-28 are incorporated by reference as though fully restated herein.
- 30. FWLL provided valuable services or materials in the form of a loan of \$40,000.00.
- 31. The services or materials were provided for Uresti and/or The Uresti Law Firm.
- 32. Uresti and/or The Uresti Law Firm accepted the services or materials.
- 33. Uresti and/or The Uresti Law Firm had reasonable notice that FWLL expected compensation for the services or materials in the form of repayment of the principal amount of the loan and interest thereon.

COUNT III – UNJUST ENRICHMENT

- 34. Paragraphs 1-33 are incorporated by reference as though fully restated herein.
- 35. If the Promissory note is unenforceable or void for other legal reason, FWLL can recover from Uresti and/or the Uresti Law Firm under the theory of unjust enrichment.
- 36. FWLL gave money or property to Uresti and/or The Uresti Law Firm.
- 37. It would be inequitable and unjust to allow Uresti and/or The Uresti Law Firm to retain the benefit received from FWLL.

ATTORNEYS' FEES

- 38. Paragraphs 1-37 are incorporated by reference as though fully restated herein.

² Quantum Meruit is pled solely in the alternative in the event that the Court finds the Promissory Note unenforceable or unenforceable by FWLL.

39. Uresti and/or The Uresti Law Firm's refusal to pay FWLL according to the terms of the parties' agreement required Bates and/or FWLL and/or the Chapter 7 Trustee to retain counsel for the purpose of collecting the amounts due and owing to FWLL. The Trustee requests that the Court award the reasonable fees for the attorney's services rendered and to be rendered through trial and appeal, as allowed pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code.

PRAYER

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests the following relief:

- A. That judgment be entered in favor of the Trustee and against Uresti and/or The Uresti Law Firm;
- B. Pre- and post-judgment interest as allowed by law;
- C. Attorneys' fees and costs of court; and
- D. That the Trustee be granted such other and further relief as is just and proper.

Dated: April 19, 2016

Respectfully submitted,

LANGLEY & BANACK, INC.
745 E. Mulberry, Suite 900
San Antonio, Texas 78212
Telephone: (210) 736-6600
Telecopy: (210) 735-6889

By: /s/ David S. Gragg
DAVID S. GRAGG
Texas Bar No. 08253300
dgragg@langleybanack.com
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nwilson@langleybanack.com

ATTORNEYS FOR RANDOLPH N. OSHEROW,
CHAPTER 7 TRUSTEE

EXHIBIT A

PROMISSORY NOTE

\$40,000.00 U.S.

San Antonio, Texas

June 25, 2014

FOR VALUE RECEIVED, the undersigned, Carlos Uresti, The Uresti Law Firm, P.C. an individual resident of the State of Texas with an office address of 924 McCullough Avenue, San Antonio, Texas ("Maker", whether one or more), promises to pay to the order of Stan Bates, the sum of FORTY THOUSAND AND 00/100 DOLLARS (\$40,000.00) (or so much thereof *as* may be advanced or outstanding), in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, and to pay interest on the unpaid principal balance of this promissory note (the "Note") from time to time outstanding from the date hereof until maturity at a per annum rate of interest equal to the lesser of (i) the "Applicable Rate" or (ii) the "Maximum Rate", as those terms are herein defined;

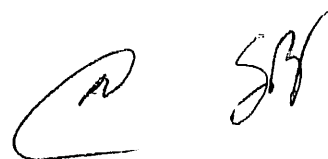
- (i) The term "Applicable Rate" means a fixed rate of interest per annum equal at all times to five percent (5%) for the total of 6 Months.
- (ii) The term "Maximum Rate" means the maximum lawful rate of interest permitted to be charged by the holder of this Note to Maker under the law of the State of Texas or the United States of America which permits the highest rate of interest.

Interest shall be computed on a per annum basis of a year of 360 days and for the actual number of days elapsed unless such calculation would result in a usurious rate of interest, in which case interest shall be calculated on a per annum basis of a year of 365 or 366 days, as the case may be. Maker agrees that the Maximum Rate under the laws of the State of Texas shall be the greater of the indicated rate ceiling from time to time in effect or five percent (5.00%) per annum, *as* provided in the Texas Finance Code, as amended; provided, however, the holder of this Note may rely on other applicable laws, including, without limitation, laws of the United States of America, for calculation of the Maximum Rate if the application thereof results in a greater Maximum Rate.

The principal of this Note and all accrued unpaid interest thereon shall be due and payable One Hundred Eighty (180) days after the date hereof.

All amounts due under this Note shall be payable to the holder of this Note to Stan Bates, and/or or at such other address as may be provided in writing to Maker.

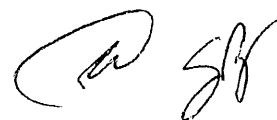
This Note may be prepaid in whole or in part at any time and from time to time without prepayment charge or penalty. Simultaneously with any prepayment of principal, there must also be paid all interest accrued on the amount of principal so prepaid and all other sums then due hereunder or under any instrument, document, or other writing now or hereafter securing or pertaining to this Note. All partial prepayments of principal shall be applied to the last maturing installments of principal hereunder.



Maker further agrees that all past due principal and accrued interest shall bear interest from the date it is due until paid at the Maximum Rate; and if no Maximum Rate is applicable, then at the rate of five percent (5.00%) per annum; provided, however, nothing herein or in any instrument, document, or other writing now or hereafter securing this Note shall entitle the holder of this Note to contract for, charge, receive, take, or reserve interest hereon in excess of the Maximum Rate. In the event this Note is prepaid in full or in the event the maturity of this Note is accelerated prior to the end of the full stated term hereof, and the interest received prior to such prepayment or acceleration exceeds interest calculated at the Maximum Rate, the then holder of this Note shall credit the amount of such excess against the amounts lawfully owing under this Note or under any instrument, document, or other writing securing this Note as of the date of such prepayment or acceleration, in any order, preference, or manner as the holder hereof may elect, until all sums lawfully owing to the holder hereof are fully and finally paid, and the balance, if any, shall be refunded to the person or entity entitled thereto.

Maker further agrees that, notwithstanding any other provision of this Note, in no event shall the aggregate of (i) all interest which has accrued on this Note from the date hereof through the date of such calculation, and (ii) the sum of all other amounts accrued or paid which, under applicable laws, are considered interest from the date hereof through the date of such calculation, ever exceed interest calculated at the Maximum Rate on the principal balance of this Note from time to time remaining unpaid. In this connection, it is agreed that in the execution, delivery, and acceptance of this Note, Maker and the holder of this Note intend to contract in strict compliance with the state and federal usury laws from time to time in effect. In furtherance thereof, none of the terms of *this* Note or of any instrument, document, or other writing now or hereafter securing or pertaining to this Note shall ever be construed to create a contract to pay for the use, forbearance, or detention of money any interest at a rate in excess of the Maximum Rate. No person or entity shall ever be liable for interest in excess of the Maximum Rate, and the provisions of this paragraph shall control over all other provisions of this Note or the Security Documents (hereafter defined) which may be in apparent conflict therewith. Specifically, and without limiting the generality of the foregoing, Maker agrees that:

- (i) if, under any circumstances, the aggregate amounts paid on this Note prior to and incident to final payment hereof include amounts which by law are considered interest which would exceed the Maximum Rate, Maker agrees that such payment and collection will have been and will be deemed to have been the result of mathematical error on the part both of Maker and the holder of this Note, and the recipient of such excess payments shall promptly refund the amount of such excess (to the extent only of such interest payments above the maximum amount which could lawfully have been collected and retained) upon discovery of such error by the recipient of such payment or upon receipt of notice thereof from the person or entity making such payment; and
- (ii) to the fullest extent permitted by applicable law, all sums paid or agreed to be paid to the holder hereof for the use, forbearance, or detention of the indebtedness evidenced



here by shall, be amortized, prorated, allocated, and spread throughout the full term of this Note.

Maker further agrees that if any default occurs in the payment of this Note, principal or interest, or in the payment of any other note or indebtedness of Maker, Maker's successors or assigns, to the then holder of this Note, or upon the occurrence of any default under any instrument, document, or other writing then securing this Note or any other indebtedness of Maker, Maker's successors or assigns, to the then holder of this Note, then, in any such event, and at any time thereafter, cumulative of and in addition to all other rights and remedies available to the holder of this Note, at the option of such holder, the entire unpaid principal balance and all accrued interest then owing on this Note shall immediately mature and be due and payable.

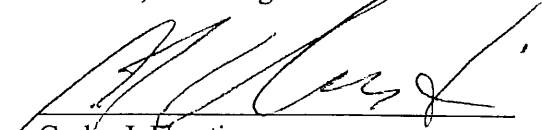
Maker further agrees that if the original or a copy of this Note is placed in the hands of an attorney for collection after the occurrence of any default here under, or for the purpose of being sued upon or established in any manner in any court, or for any other purpose whatsoever in any manner connected with or pertaining to (i) the extension of credit evidenced hereby, (ii) Maker, Maker's successors or assigns, or (iii) any property, rights, or interests now or hereafter securing this Note, then, in any such event, Maker promises to pay to the then holder of this Note all reasonable attorneys' fees, costs, and expenses theretofore, then, and thereafter paid or incurred by any holder of this Note in any manner connected therewith.

To the maximum extent not prohibited by applicable law, Maker, on behalf of Maker and Maker's successors and assigns, hereby (i) waives grace, demand, notice of default, notice of intent to accelerate maturity, notice that the holder hereof will not or will no longer accept late payments, notice of acceleration of maturity, presentment for acceleration, presentment for payment, protest, notice of protest and of dishonor, and diligence in taking any action with respect to any security or the collection of any sums owing hereon and (ii) consents to any and all renewals, extensions, modifications, and rearrangements hereof and to the release of all or any part of the security here for or any person or entity liable hereon or here for under any terms deemed by the holder hereof, in its sole discretion, to be adequate. Any such renewal, extension, modification, or rearrangement, or the release of any such security, person, or entity, may be made without notice to Maker, Maker's successors or assigns, and without affecting any security here for or the liabilities and obligations of Maker, Maker's successors or assigns, which are not expressly released in writing. Maker further agrees that the exercise of any right or remedy conferred upon any holder hereof in this Note, or in any instrument, document, or other writing now or hereafter securing or otherwise pertaining to this Note, or securing or pertaining to any other indebtedness now or hereafter owing by Maker to any holder hereof, shall be wholly discretionary with the holder of this Note, and the exercise of, or failure to exercise, any such right or remedy shall not in any manner affect, impair, or diminish the obligations and liabilities of Maker, or constitute or be deemed a waiver of any such right or remedy or any other past, present, or future right or remedy of any holder hereof. Maker further agrees that (without limiting the foregoing) the acceptance of late payments or the failure to exercise the option to accelerate the maturity of this Note upon any default hereunder shall not in any manner constitute a waiver of the right to exercise the option to accelerate the maturity of this Note upon the failure to promptly pay any subsequent payment or in the event there exists or thereafter occurs any other or

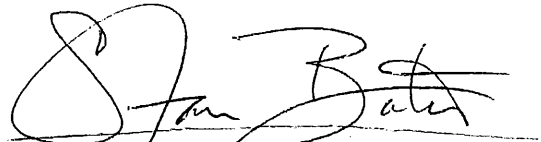
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subsequent default, and no waiver shall be enforceable against the holder of this Note unless such waiver is expressly set forth in writing and duly executed by such holder.

This Note, and all instruments, documents, and other writings evidencing, securing, pertaining to the indebtedness evidenced hereby have been executed and delivered in Harris Count) (Texas, and shall be construed in accordance with and governed by the applicable laws of the United States of America and the State of Texas (without giving effect to the choice of laws or principles thereof). Maker further agrees and consents to all of the provisions of all instruments, documents, and other writings now or hereafter securing or pertaining to this Note and agrees that all of same are binding on Maker, and on the heirs, successors, legal representatives, and assigns of Maker.

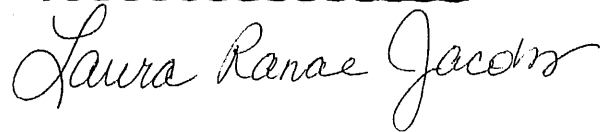


Carlos I. Uresti



Stan Bates





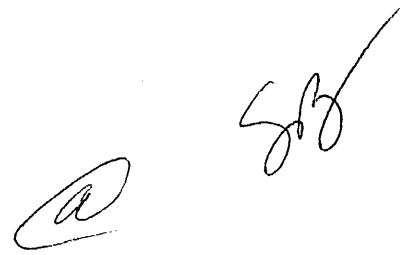


EXHIBIT B

FWLL, LLC
17319 SAN PEDRO AVE STE 140
SAN ANTONIO, TX 78232

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com
32-61-1110

6/25/2014

PAY TO THE ORDER OF The Uresti Law Firm, P.C.

\$ **40,000.00

Forty Thousand and 00/100***** DOLLAR

The Uresti Law Firm, P.C.
103 S. Comal Suite 102
San Antonio, TX 78207



[Handwritten Signature]

AUTHORIZED SIGNATURE

MEMO

⑈005096⑈ ⑆111000614⑆ 589558761⑈

FWLL, LLC

5096

The Uresti Law Firm, P.C.

6/25/2014

40,000.00

JPMorgan Chase - Op

40,000.00