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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.
PAUL BASINSKI,
Defendant.

Case No. 16-40050-WJL

Chapter 7

Adversary Proceeding No.

**COMPLAINT TO AVOID AND
RECOVER PREFERENTIAL TRANSFER
AND DISALLOW CLAIMS**

Plaintiff Michael G. Kasolas (the "Trustee"), trustee of the above-captioned chapter 7
bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru (the "Debtor"), alleges as
follows:

JURISDICTION AND VENUE

1. The Debtor filed its voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (Title 11 of the United States Code) on January 8, 2016 (the “Petition Date”).

2. Thereafter, the Trustee was appointed. At all relevant times herein, the Trustee was, and currently is, the duly qualified and acting trustee of the Debtor’s chapter 7 bankruptcy case (the “Case”).

3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §157(a).

4. Venue is proper in this pursuant to 28 U.S.C. §1409(a).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F) and (O), which seeks relief under 11 U.S.C. §§ 547(a), 550(a) and 502(d), and under Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

6. The Trustee consents to the entry of a final order by the above-captioned Bankruptcy Court.

7. Defendant PAUL BASINSKI (“Defendant”) is an individual.

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

8. On or about 12/9/2015, the Debtor made transfers in the form of wine shipped to Defendant in the aggregate value of at least \$39,469.52 (the “Transfer”). A detailed summary of the wines constituting the Transfer is attached hereto as **Exhibit A**.

9. The Transfer was made to or for the benefit of a creditor, namely, the Defendant, who, at the time of the Transfer, was owed goods by the Debtor.

10. The Transfer was made on account of an antecedent debt.

11. The Transfer was made while the Debtor was insolvent.

12. The Transfer was made within 90 days of the Petition Date.

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

14. The Defendant asserted dominion and control of the wine transferred and the Defendant was the immediate transferee of the Transfer under 11 U.S.C. § 550(a)(1).

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

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

SECOND CLAIM FOR RELIEF

Disallowance of Claim

16. The Trustee re-alleges and incorporates by reference paragraphs 1-15 of this Complaint as though fully set forth herein.

17. The Transfer is avoidable under 11 U.S.C. § 547 (a) and the value thereof is recoverable under 11 U.S.C. § 550(a).

18. The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. § 550(a).

WHEREFORE, the Trustee prays for relief as follows:

PRAYER FOR RELIEF

The Trustee requests entry of judgment against Defendant as follows:

On the First Claim for Relief:

1. Avoiding the Transfer under 11 U.S.C. § 547(b) and recovering the value thereof under 11 U.S.C. § 550(a);

2. Determining that the Trustee may recover \$39,469.52 from Defendant; and

3. Awarding pre-judgment interest at the legal rate from the date of demand.

On the Second Claim for Relief:

4. Disallowing any and all claims filed in the Case by Defendant pursuant to 11 U.S.C. § 502(d).

On each Claim:

5. Awarding costs of suit incurred herein; and

6. For any other relief that the Court Deems proper.

Dated: December 12, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Albert Flor, Jr.

Albert Flor, Jr.
Attorneys for Plaintiff
Michael G. Kasolas, Trustee

EXHIBIT A

CustID	CustName	ShipDate	Shipment	PMT Date	Tender Type	SO Date	Sales Order	PickDate	PickList	ItemID	Format	QtyShip	UnitPrice	ExtPrice
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	52151 09 Vouvray Moelleux 'Le Ha 750 ml		3	\$ 39.99	\$ 119.97
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	52157 2013 Batard-Montrachet, Fc 750 ml		6	\$ 197.24	\$ 1,183.44
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	51958 2012 Calera Pinot Noir, Ryar 750 ml		6	\$ 44.99	\$ 269.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	52094 2012 Calera Pinot Noir, Jens 750 ml		5	\$ 79.99	\$ 399.95
4058406436	Paul Basinski	12/9/2015	0000338472-SH	5/16/2015	VISA	5/16/2015	SO-0000478948	10/29/2015	128953	52103 2012 Stag's Leap Cabernet C 750 ml		7	\$ 199.99	\$ 1,399.93
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	50684 2012 Gevrey Chambertin Clc 750 ml		12	\$ 63.74	\$ 764.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	51715 05 Rioja Reserva Viña Ardan 750 ml		24	\$ 29.99	\$ 719.76
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	51957 2012 Calera Pinot Noir, de V 750 ml		6	\$ 44.99	\$ 269.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	50466 Savannah Verdelho Madeirz 750 ml		1	\$ 42.99	\$ 42.99
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	50467 Baltimore Rainwater Madeir 750 ml		1	\$ 42.99	\$ 42.99
4058406436	Paul Basinski	12/9/2015	0000338472-SH	7/4/2015	VISA	7/4/2015	SO-0000483075	10/29/2015	128953	50652 2012 Chateaufneuf du Pape ' 750 ml		6	\$ 38.39	\$ 230.34
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	49215 2011 Chassagne Clos des Mi 375 ml		12	\$ 36.99	\$ 443.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	49924 2012 Cornas 'Granit 30', Vin 750 ml		6	\$ 34.99	\$ 209.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	50465 Charleston Sercial Madeira, 750 ml		1	\$ 42.99	\$ 42.99
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	44154 2010 Moulin St Georges 750 ml		4	\$ 59.99	\$ 239.96
4058406436	Paul Basinski	12/9/2015	0000338472-SH	5/31/2015	VISA	5/31/2015	SO-0000479961	10/29/2015	128953	44651 05 Beaune Cuvee Nicolas Rc 750 ml		6	\$ 45.00	\$ 270.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	38410 New York Malmsey Madeirz 750 ml		1	\$ 42.99	\$ 42.99
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	38411 Boston Boal Madeira, Rare \ 750 ml		1	\$ 42.50	\$ 42.50
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/21/2015	VISA	6/21/2015	SO-0000481939	10/29/2015	128953	41958 09 Beaune Greves l'Enfant J. 375 ml		10	\$ 45.00	\$ 450.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/20/2014	VISA	10/18/2014	SO-0000458449	10/29/2015	128953	50993 2012 Barbera d'Alba, Sandrc 750 ml		7	\$ 21.99	\$ 153.93
4058406436	Paul Basinski	12/9/2015	0000338472-SH	8/9/2014	VISA	8/9/2014	SO-0000451993	10/29/2015	128953	50463 2011 Bourgogne Blanc 'Perr 750 ml		12	\$ 33.99	\$ 407.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	9/11/2014	VISA	9/11/2014	SO-0000454986	10/29/2015	128953	50580 09 St Veran, Dominique Lafc 750 ml		79	\$ 17.54	\$ 1,385.66
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/20/2014	VISA	10/18/2014	SO-0000458449	10/29/2015	128953	50992 2012 Nebbiolo d'Alba Valme 750 ml		12	\$ 29.99	\$ 359.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	9/11/2014	VISA	9/11/2014	SO-0000454986	10/29/2015	128953	44312 09 Volnay Lurets, Dominique 750 ml		7	\$ 58.49	\$ 409.43
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/20/2014	VISA	10/18/2014	SO-0000458449	10/29/2015	128953	46216 Janisson-Baradon Brut Selec 375 ml		24	\$ 12.99	\$ 311.76
4058406436	Paul Basinski	12/9/2015	0000338472-SH	9/16/2014	VISA	9/16/2014	SO-0000454548	10/29/2015	128953	50158 2010 Puligny Champgain, Pa 750 ml		24	\$ 49.99	\$ 1,199.76
4058406436	Paul Basinski	12/9/2015	0000338472-SH	8/25/2012	VISA	8/24/2012	SO-0000390263	10/29/2015	128953	43899 2010 Le Dome 750 ml		6	\$ 79.99	\$ 479.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	8/27/2012	VISA	8/27/2012	SO-0000390385	10/29/2015	128953	43899 2010 Le Dome 750 ml		6	\$ 79.99	\$ 479.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/1/2011	VISA	10/1/2011	SO-0000363681	10/29/2015	128953	44220 09 Charmes Chambertin, Dr 750 ml		3	\$ 99.99	\$ 299.97
4058406436	Paul Basinski	12/9/2015	0000338472-SH	5/15/2009	VISA	5/15/2009	SO-0000317902	10/29/2015	128953	39314 07 Chateaufneuf du Pape, Cr 750 ml		3	\$ 17.00	\$ 51.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	2/17/2014	VISA	2/15/2014	SO-0000437575	10/29/2015	128953	40497 07 Chateaufneuf Cuvee Quar 750 ml		12	\$ 59.99	\$ 719.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	3/3/2012	VISA	3/3/2012	SO-0000376004	10/29/2015	128953	41296 09 Suduiraut 750 ml		6	\$ 79.99	\$ 479.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/18/2010	VISA	10/16/2010	SO-0000344215	10/29/2015	128953	41780 09 de Fieuzal Rouge 750 ml		6	\$ 25.99	\$ 155.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	1/18/2014	VISA	1/18/2014	SO-0000434609	10/29/2015	128953	49275 2012 Chablis Vaulorent, Fev 750 ml		12	\$ 37.04	\$ 444.48
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/29/2013	VISA	4/28/2013	SO-0000411441	10/29/2015	128953	47632 2011 Volnay Caillerets, Pous 750 ml		6	\$ 49.99	\$ 299.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/3/2013	VISA	6/2/2013	SO-0000414714	10/29/2015	128953	47725 05 Barde Haut Magnum 1.5 L		4	\$ 64.99	\$ 259.96
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/5/2013	VISA	10/5/2013	SO-0000424792	10/29/2015	128953	48580 2011 Chablis Vaudesirs, Bille 750 ml		6	\$ 39.99	\$ 239.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	5/25/2012	VISA	5/25/2012	SO-0000382395	10/29/2015	128953	45602 09 Morey Monts Luisants Bl 750 ml		6	\$ 39.99	\$ 239.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/6/2015	VISA	4/4/2015	SO-0000475228	10/29/2015	128953	46332 2010 Meursault Genevriere: 750 ml		6	\$ 79.99	\$ 479.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/6/2015	VISA	4/4/2015	SO-0000475228	10/29/2015	128953	46334 2010 Meursault Charmes, Je 750 ml		4	\$ 74.99	\$ 299.96
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/30/2012	VISA	6/29/2012	SO-0000385494	10/29/2015	128953	43919 2010 Smith Haut Lafitte 750 ml		14	\$ 69.99	\$ 979.86
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/29/2013	VISA	4/28/2013	SO-0000411441	10/29/2015	128953	37263 06 Smith Haut Lafitte Blanc 750 ml		6	\$ 45.00	\$ 270.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/6/2015	VISA	4/4/2015	SO-0000475228	10/29/2015	128953	38621 05 Canon 750 ml		4	\$ 116.99	\$ 467.96
4058406436	Paul Basinski	12/9/2015	0000338472-SH	4/6/2015	VISA	4/4/2015	SO-0000475228	10/29/2015	128953	41296 09 Suduiraut 750 ml		6	\$ 79.99	\$ 479.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	12/12/2011	VISA	12/11/2011	SO-0000369118	10/29/2015	128953	43417 09 Gevrey Chambertin, Mor 750 ml		6	\$ 29.99	\$ 179.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	11/2/2014	VISA	11/2/2014	SO-0000459934	10/29/2015	128953	49877 2011 Gevrey Chambertin V.' 750 ml		12	\$ 49.99	\$ 599.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	11/2/2014	VISA	11/2/2014	SO-0000459934	10/29/2015	128953	44652 05 Volnay Santenots Cuvee 750 ml		12	\$ 49.99	\$ 599.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	5/18/2013	VISA	5/18/2013	SO-0000413445	10/29/2015	128953	47227 2011 Chablis Vaillons, Billau 750 ml		6	\$ 27.99	\$ 167.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/25/2012	VISA	6/25/2012	SO-0000384824	10/29/2015	128953	47519 2010 Cote Rotie, Jasmin 750 ml		6	\$ 45.00	\$ 270.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/25/2012	VISA	6/24/2012	SO-0000384797	10/29/2015	128953	43885 2010 Leoville Poyferre 750 ml		6	\$ 120.00	\$ 720.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	6/25/2012	VISA	6/24/2012	SO-0000384797	10/29/2015	128953	43919 2010 Smith Haut Lafitte 750 ml		10	\$ 99.00	\$ 990.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/26/2014	VISA	10/26/2014	SO-0000459105	10/29/2015	128953	43967 2010 Haut Bailly 750 ml		10	\$ 125.00	\$ 1,250.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/26/2014	VISA	10/26/2014	SO-0000459105	10/29/2015	128953	94805 94 Latour 750 ML		6	\$ 399.99	\$ 2,399.94
4058406436	Paul Basinski	12/9/2015	0000338472-SH	10/26/2014	VISA	10/26/2014	SO-0000459105	10/29/2015	128953	27144 02 Latour 750 ml		12	\$ 450.00	\$ 5,400.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	3/15/2015	VISA	3/14/2015	SO-0000473307	10/29/2015	128953	36818 05 Chambertin, Camille-Girc 750 ml		12	\$ 225.00	\$ 2,700.00
4058406436	Paul Basinski	12/9/2015	0000338472-SH	3/23/2015	VISA	3/21/2015	SO-0000474074	10/29/2015	128953	31340 02 Meursault Poruzot, F. Jol 750 ml		5	\$ 69.99	\$ 349.95
4058406436	Paul Basinski	12/9/2015	0000338472-SH	11/10/2014	VISA	11/8/2014	SO-0000460693	10/29/2015	128953	51112 2010 Chianti Classico Riserv 750 ml		12	\$ 18.99	\$ 227.88
4058406436	Paul Basinski	12/9/2015	0000338472-SH	7/28/2014	VISA	7/27/2014	SO-0000450951	10/29/2015	128953	CE538 70 Grahams 750 ML		12	\$ 125.00	\$ 1,500.00

4058406436 Paul Basinski	12/9/2015 0000338472-SH	9/2/2014 VISA	8/31/2014 SO-0000454099	10/29/2015 128953	16784 Bollinger Special Cuvee 750 ML	12	\$	39.99	\$	479.88
4058406436 Paul Basinski	12/9/2015 0000338472-SH	7/1/2015 VISA	6/30/2015 SO-0000482741	10/29/2015 128953	28112 01 Beaucastel 1/2 375 ml	9	\$	39.99	\$	359.91
4058406436 Paul Basinski	12/9/2015 0000338472-SH	5/16/2015 VISA	5/15/2015 SO-0000478800	10/29/2015 128953	41146 08 Puligny Folatieres, Leflaiv 750 ml	4	\$	143.99	\$	575.96
4058406436 Paul Basinski	12/9/2015 0000338472-SH	5/16/2015 VISA	5/15/2015 SO-0000478800	10/29/2015 128953	50003 2012 Beaune Cent Vignes 1/ 375 ml	6	\$	19.99	\$	119.94
4058406436 Paul Basinski	12/9/2015 0000338472-SH	7/31/2015 VISA	7/31/2015 SO-0000485485	10/29/2015 128953	52593 2010 Gattinara 'San Frances 750 ml	12	\$	53.99	\$	647.88
4058406436 Paul Basinski	12/9/2015 0000338472-SH	8/8/2015 VISA	8/7/2015 SO-0000486421	10/29/2015 128953	51340 2012 Chinon Les Cornuelles, 750 ml	12	\$	16.99	\$	203.88
4058406436 Paul Basinski	12/9/2015 0000338472-SH	8/8/2015 VISA	8/7/2015 SO-0000486495	10/29/2015 128953	52157 2013 Batard-Montrachet, Fr 750 ml	6	\$	197.24	\$	1,183.44
						<u>587</u>			<u>\$</u>	<u>39,469.52</u>