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

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

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

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

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

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

15 7. Defendant WALTER McLALLEN (“Defendant”) is an individual.
16

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

17
18 8. On or about 1/6/2016, the Debtor made transfers in the form of wine shipped to
19 Defendant in the aggregate value of at least \$17,873.47 (the “Transfer”). A detailed summary of
20 the wines constituting the Transfer is attached hereto as **Exhibit A**.

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

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

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

25 12. The Transfer was made within 90 days of the Petition Date.
26
27
28

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 \$17,873.47 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
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	29641	03 Cote Rotie, Tardieu-Laurent	750 ml	6	79.95 \$ 479.70
wmcl	Walter McLallen	1/6/2016	PL-130933	11/30/2006	AMEX	11/30/2006	SO-0000245255	1/5/2016	PL-130933	31287	03 Ermitage Rouge Le Meal, Chapoutier	750 ml	12	209.95 \$ 2,519.40
wmcl	Walter McLallen	1/6/2016	PL-130933	11/30/2006	AMEX	11/30/2006	SO-0000245255	1/5/2016	PL-130933	31289	03 Ermitage Rouge Le Pavillon, Chapoutier	750 ml	6	269.95 \$ 1,619.70
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	31310	03 Ermitage Rouge Greffieux Magnum, Cha	1.5 L	2	289.95 \$ 579.90
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	33270	03 Hermitage Bessards, Delas	750 ml	6	109.95 \$ 659.70
wmcl	Walter McLallen	1/6/2016	PL-130933	11/15/2006	AMEX	11/15/2006	SO-0000244015	1/5/2016	PL-130933	33843	04 Charmes Chambertin, Dujac	750 ml	2	145 \$ 290.00
wmcl	Walter McLallen	1/6/2016	PL-130933	11/15/2006	AMEX	11/15/2006	SO-0000244015	1/5/2016	PL-130933	33844	04 Clos St. Denis, Dujac	750 ml	3	149.95 \$ 449.85
wmcl	Walter McLallen	1/6/2016	PL-130933	11/15/2006	AMEX	11/15/2006	SO-0000244015	1/5/2016	PL-130933	33845	04 Echezeaux, Dujac	750 ml	1	159.95 \$ 159.95
wmcl	Walter McLallen	1/6/2016	PL-130933	11/15/2006	AMEX	11/15/2006	SO-0000244015	1/5/2016	PL-130933	33846	04 Clos de la Roche, Dujac	750 ml	3	169.95 \$ 509.85
wmcl	Walter McLallen	1/6/2016	PL-130933	11/15/2006	AMEX	11/15/2006	SO-0000244015	1/5/2016	PL-130933	33847	04 Bonnes Mares, Dujac	750 ml	3	199.95 \$ 599.85
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	33957	03 Hermitage Marquis de la Tourette, Dela	750 ml	6	59.95 \$ 359.70
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34196	05 Gevrey Clos St. Jacques V.V., Laurent	750 ml	4	85 \$ 340.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34204	05 Vosne Romanee Reignots V.V., Laurent	750 ml	3	73.99 \$ 221.97
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34215	05 Charmes Chambertin V.V., Laurent	750 ml	3	69.95 \$ 209.85
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34217	05 Mazis Chambertin B V.V., Laurent	750 ml	4	75 \$ 300.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34218	05 Chambertin V.V., Laurent	750 ml	3	225 \$ 675.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34219	05 Clos de Beze V.V., Laurent	750 ml	3	225 \$ 675.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34223	05 Clos Vougeot V.V., Laurent	750 ml	4	79.95 \$ 319.80
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34225	05 Grands Echezeaux V.V., Laurent	750 ml	3	225 \$ 675.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/1/2006	AMEX	5/1/2006	SO-0000224599	1/5/2016	PL-130933	34228	05 Corton Charlemagne V.V., Laurent	750 ml	3	69.95 \$ 209.85
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	34405	03 Hermitage Bessards Magnum, Delas	1.5 L	1	225 \$ 225.00
wmcl	Walter McLallen	1/6/2016	PL-130933	5/19/2006	AMEX	5/19/2006	SO-0000226431	1/5/2016	PL-130933	34545	03 Ermitage l'Ermite 6 Liter, Chapoutier	6 L	1	2995 \$ 2,995.00
wmcl	Walter McLallen	1/6/2016	PL-130933	12/10/2010	AMEX	12/10/2010	SO-0000346501	1/5/2016	PL-130933	39428	07 Vieux Telegraphe Magnum	1.5 L	2	145 \$ 290.00
wmcl	Walter McLallen	1/6/2016	PL-130933	12/10/2010	AMEX	12/10/2010	SO-0000346501	1/5/2016	PL-130933	42747	09 Vieux Telegraphe	750 ml	12	59.99 \$ 719.88
wmcl	Walter McLallen	1/6/2016	PL-130933	12/10/2010	AMEX	12/10/2010	SO-0000346501	1/5/2016	PL-130933	42752	09 Chateauneuf Reservee, Pegau	750 ml	2	55 \$ 110.00
wmcl	Walter McLallen	1/6/2016	PL-130941	11/29/2011	AMEX	11/29/2011	SO-0000368124	1/5/2016	PL-130941	50785	2011 Chateauneuf du Pape Cuvee Reservee	750 ml	48	34.99 \$ 1,679.52
													<u>146</u>	<u>\$ 17,873.47</u>