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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 In re
13 FOX ORTEGA ENTERPRISES, INC.,
dba PREMIER CRU,
14
Debtor.
15
16 MICHAEL G. KASOLAS, Trustee,
17 Plaintiff,
18 vs.
19 DAVID CRAMER,
20 Defendant.

Case No. 16-40050-WJL

Chapter 7

Adversary Proceeding No.

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

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23 Plaintiff Michael G. Kasolas (the "Trustee"), trustee of the above-captioned chapter 7
24 bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru (the "Debtor"), alleges as
25 follows:
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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 DAVID CRAMER (“Defendant”) is an individual.

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

8. On or about 1/7/2016, the Debtor made transfers in the form of wine shipped to Defendant in the aggregate value of at least \$16,510.06 (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.

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

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

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

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

12 **SECOND CLAIM FOR RELIEF**
13 **Disallowance of Claim**

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

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

18 18. The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. §
19 550(a).

20 WHEREFORE, the Trustee prays for relief as follows:

21
22 **PRAYER FOR RELIEF**

23 The Trustee requests entry of judgment against Defendant as follows:

24 **On the First Claim for Relief:**

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

27 2. Determining that the Trustee may recover \$16,510.06 from Defendant; and

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

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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
2436	David Cramer	1/7/2016	0000339646-SH	6/14/2014	AMEX	12/10/2013	SO-0000430467	1/7/2016	130977	41671	09 Pape Clement	750 ml	9	\$ 99.99 \$ 899.91
2436	David Cramer	1/7/2016	0000339646-SH	4/25/2014	AMEX	4/25/2014	SO-0000443476	1/7/2016	130977	41957	09 Charmes Chambertin, Geantet-Pansiot	750 ml	1	\$ 149.99 \$ 149.99
2436	David Cramer	1/7/2016	0000339646-SH	11/2/2014	AMEX	11/2/2014	SO-0000459938	1/7/2016	130977	46866	09 Cote Rotie d'Ampuis, Guigal	750 ml	36	\$ 79.99 \$ 2,879.64
2436	David Cramer	1/7/2016	0000339646-SH	9/21/2013	AMEX	9/21/2013	SO-0000423482	1/7/2016	130977	46679	2011 Puligny Perrieres, Boillot	750 ml	5	\$ 59.99 \$ 299.95
2436	David Cramer	1/7/2016	0000339646-SH	9/21/2013	AMEX	9/21/2013	SO-0000423482	1/7/2016	130977	46681	2011 Puligny Combettes, Boillot	750 ml	20	\$ 59.99 \$ 1,199.80
2436	David Cramer	1/7/2016	0000339646-SH	9/28/2013	Store Credit	9/28/2013	SO-0000424170	1/7/2016	130977	48565	2011 Puligny Montrachet, Sauzet	750 ml	12	\$ 29.99 \$ 359.88
2436	David Cramer	1/7/2016	0000339646-SH	8/24/2013	AMEX	8/24/2013	SO-0000421461	1/7/2016	130977	48120	2011 Volnay Chevret, N. Rossignol	750 ml	12	\$ 45.00 \$ 540.00
2436	David Cramer	1/7/2016	0000339646-SH	9/6/2013	AMEX	9/6/2013	SO-0000422314	1/7/2016	130977	48193	2010 Cote Rotie, Jamet	750 ml	12	\$ 99.99 \$ 1,199.88
2436	David Cramer	1/7/2016	0000339646-SH	9/6/2013	AMEX	9/6/2013	SO-0000422314	1/7/2016	130977	48357	09 Cote Rotie, Jamet	750 ml	12	\$ 89.99 \$ 1,079.88
2436	David Cramer	1/7/2016	0000339646-SH	10/3/2012	AMEX	10/2/2012	SO-0000393313	1/7/2016	130977	46676	2011 Meursault Charmes, Boillot	750 ml	12	\$ 59.99 \$ 719.88
2436	David Cramer	1/7/2016	0000339646-SH	10/3/2012	AMEX	10/2/2012	SO-0000393313	1/7/2016	130977	46678	2011 Puligny Mouchere, Boillot	750 ml	12	\$ 69.99 \$ 839.88
2436	David Cramer	1/7/2016	0000339646-SH	11/14/2012	AMEX	11/13/2012	SO-0000397008	1/7/2016	130977	46866	09 Cote Rotie d'Ampuis, Guigal	750 ml	36	\$ 99.99 \$ 3,599.64
2436	David Cramer	1/7/2016	0000339646-SH	11/30/2011	Store Credit	11/30/2011	SO-0000368201	1/7/2016	130977	40859	06 Ermitage Ex Voto Rouge, Guigal	750 ml	9	\$ 179.99 \$ 1,619.91
2436	David Cramer	1/7/2016	0000339646-SH	6/14/2012	AMEX	6/14/2012	SO-0000383683	1/7/2016	130977	43906	2010 Malescot St Exupery	750 ml	12	\$ 69.99 \$ 839.88
2436	David Cramer	1/7/2016	0000339646-SH	6/14/2012	AMEX	6/14/2012	SO-0000383683	1/7/2016	130977	43952	2010 d'Issan	750 ml	6	\$ 46.99 \$ 281.94
												206	\$ 16,510.06	

SO-0000368201	11/30/2011	3119.76	2600 Store Credit	31
SO-0000368201	11/30/2011	3119.76	519.76 AMEX	36
SO-0000383683	6/14/2012	6503.28	6503.28 AMEX	36
SO-0000383683	6/19/2012	6503.28	6503.28 VISA	30
SO-0000393313	10/3/2012	2459.76	2459.76 AMEX	36
SO-0000397008	11/14/2012	3599.64	3599.64 AMEX	36
SO-0000421461	8/24/2013	1080	1080 AMEX	36
SO-0000422314	9/6/2013	2279.76	2279.76 AMEX	36
SO-0000423482	9/21/2013	2159.64	2159.64 AMEX	36
SO-0000424170	9/28/2013	359.88	359.88 Store Credit	31
SO-0000430467	6/14/2014	1199.88	1199.88 AMEX	36
SO-0000443476	4/25/2014	149.99	149.99 AMEX	36
SO-0000459938	11/2/2014	2879.64	2879.64 AMEX	36