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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.

ROBERT WATT,

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

91. 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”).

92. 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”).

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

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

95. 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.

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

97. Defendant ROBERT WATT (“Defendant”) is an individual.

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

98. On or about 10/19/2015, the Debtor made transfers in the form of cash credits issued to Defendant and wine shipped to Defendant in the aggregate value of at least \$10,905.34 (the “Transfer”). A detailed summary of the credits and wines constituting the Transfer is attached hereto as **Exhibit A**.

99. 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 and money by the Debtor.

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

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

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

103. 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.

104. The Defendant received the credits and 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).

105. 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

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

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

108. 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:

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

32. Determining that the Trustee may recover \$10,905.34 from Defendant; and

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

2 **On the Second Claim for Relief:**

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

5 **On each Claim:**

6 35. Awarding costs of suit incurred herein; and

7 36. For any other relief that the Court Deems proper.

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9 Dated: December 18, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

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11 By: /s/ Albert Flor, Jr.

12 Albert Flor, Jr.
13 Attorneys for Plaintiff
14 Michael G. Kasolas, Trustee
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EXHIBIT A

CustID	CustName	ShipDate	Shipment	PMT Date	Tender Type	SO Date	Sales Order	PickDate	PickList	ItemID	Format	QtyShip	UnitPrice	ExtPrice
Rwatt	Robert Watt	11/17/2015	0000338066-SH	9/10/2010	AMEX	9/9/2010	SO-0000342642	11/16/2015	129587	41620 09 Smith Haut Lafitte Rouge	1.5 L	2	\$ 150.00	\$ 300.00
Rwatt	Robert Watt	11/17/2015	0000338066-SH	10/8/2010	AMEX	10/4/2010	SO-0000343672	11/16/2015	129587	41706 09 Haut Brion	750 ml	3	\$ 699.99	\$ 2,099.97
Rwatt	Robert Watt	10/19/2015	0000336766-SH	9/10/2010	AMEX	9/9/2010	SO-0000342642	10/16/2015	128558	41748 09 Branon	750 ml	6	\$ 50.00	\$ 300.00
Rwatt	Robert Watt	10/19/2015	0000336766-SH	9/10/2010	AMEX	9/9/2010	SO-0000342642	10/16/2015	128558	41570 09 Malescot St Exupery	750 ml	6	\$ 60.00	\$ 360.00
Rwatt	Robert Watt	10/19/2015	0000336766-SH	9/10/2010	AMEX	9/9/2010	SO-0000342642	10/16/2015	128558	41618 09 Smith Haut Lafitte Rouge	750 ml	6	\$ 80.00	\$ 480.00
Rwatt	Robert Watt	10/19/2015	0000336766-SH	10/22/2010	AMEX	10/22/2010	SO-0000344422	10/16/2015	128558	41630 09 Clinet 3 Liter	3 L	1	\$ 499.99	\$ 499.99
Rwatt	Robert Watt	10/19/2015	0000336766-SH	8/27/2009	AMEX	8/27/2009	SO-0000323316	10/16/2015	128558	38188 04 Barolo Sori Ginestra, Con	750 ml	2	\$ 79.99	\$ 159.98
Rwatt	Robert Watt	10/19/2015	0000336766-SH	3/26/2010	AMEX	3/26/2010	SO-0000334927	10/16/2015	128558	39983 08 Clinet	750 ml	6	\$ 55.99	\$ 335.94
Rwatt	Robert Watt	10/19/2015	0000336766-SH	8/11/2010	AMEX	8/11/2010	SO-0000341529	10/16/2015	128558	41533 09 Pontet Canet Magnum	1.5 L	2	\$ 290.00	\$ 580.00
Rwatt	Robert Watt	10/19/2015	0000336766-SH	12/6/2010	AMEX	12/6/2010	SO-0000346291	10/16/2015	128558	41605 09 Haut Bailly	750 ml	12	\$ 69.99	\$ 839.88
Rwatt	Robert Watt	10/19/2015	0000336766-SH	6/1/2011	AMEX	6/1/2011	SO-0000356970	10/16/2015	128558	41706 09 Haut Brion	750 ml	3	\$ 550.00	\$ 1,650.00
Rwatt	Robert Watt	10/19/2015	0000336766-SH	12/27/2010	AMEX	12/24/2010	SO-0000347526	10/16/2015	128558	42373 07 Flaccianello, Fontodi	750 ml	6	\$ 49.99	\$ 299.94
Rwatt	Robert Watt	10/19/2015	0000336766-SH	3/9/2012	AMEX	3/8/2012	SO-0000376419	10/16/2015	128558	43919 2010 Smith Haut Lafitte	750 ml	12	\$ 39.99	\$ 479.88
Rwatt	Robert Watt	10/19/2015	0000336766-SH	4/26/2012	AMEX	4/26/2012	SO-0000380546	10/16/2015	128558	43927 2010 Montrose	750 ml	12	\$ 99.99	\$ 1,199.88
Rwatt	Robert Watt	10/19/2015	0000336766-SH	4/26/2012	AMEX	4/26/2012	SO-0000380546	10/16/2015	128558	44063 2010 Ducru Beaucaillou	750 ml	12	\$ 109.99	\$ 1,319.88
												91		\$ 10,905.34