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UNITED STATES BANKRUPTCY COURT

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NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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In re

Case No. 16-40050-WJL

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FOX ORTEGA ENTERPRISES, INC.,  
dba PREMIER CRU,

Chapter 7

14

Debtor.

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Adversary Proceeding No.

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MICHAEL G. KASOLAS, Trustee,

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

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Plaintiff,

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vs.

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KEVIN CLARK,

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Defendant.

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Plaintiff Michael G. Kasolas (the "Trustee"), trustee of the above-captioned chapter 7

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bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru (the "Debtor"), alleges as

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follows:

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**JURISDICTION AND VENUE**

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73. 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”).

74. 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”).

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

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

77. 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.

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

79. Defendant KEVIN CLARK (“Defendant”) is an individual.

**FIRST CLAIM FOR RELIEF  
Avoidance and Recovery of Preferential Transfer**

80. On or about 12/10/2015, 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 \$13,447.27 (the “Transfer”). A detailed summary of the credits and wines constituting the Transfer is attached hereto as **Exhibit A**.

81. 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.

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

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

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

1           85.     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           86.     The Defendant received the credits and asserted dominion and control of the wine  
6 transferred and the Defendant was the immediate transferee of the Transfer under 11 U.S.C. §  
7 550(a)(1).

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

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

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

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

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

19           90.     The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. §  
20 550(a).

21           WHEREFORE, the Trustee prays for relief as follows:

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23                               **PRAYER FOR RELIEF**

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

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

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

28           26.     Determining that the Trustee may recover \$13,447.27 from Defendant; and

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

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

3 28. 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 29. Awarding costs of suit incurred herein; and

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

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9 Dated: December 18, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

10  
11 By: /s/ Albert Flor, Jr.

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

# **EXHIBIT A**

