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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.
ROLLAND MO,
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

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

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

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

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

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

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

16 7. Defendant ROLLAND MO ("Defendant") is an individual.

FIRST CLAIM FOR RELIEF Avoidance and Recovery of Preferential Transfer

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20 8. On or about December 1, 2015, the Debtor made transfers in the form of cash
21 credits issued to Defendant and wine shipped to Defendant in the aggregate value of at least
22 \$11,971.14 (the "Transfer"). A detailed summary of the credits and wines constituting the
23 Transfer is attached hereto as **Exhibit A**.

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

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

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

28 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 received the credits and asserted dominion and control of the wine transferred and the Defendant was the initial 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 Defendant 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 \$11,971.14 from Defendant; and

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

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

3 4. 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 5. Awarding costs of suit incurred herein; and

7 6. For any other relief that the Court deems proper.

8
9 Dated: December 19, 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
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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
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53146 2011 Robert Sinskey POV Lc 750 ml		12	\$ 36.99	\$ 443.88
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53150 2012 White Rock Claret Nap 750 ml		3	\$ 36.99	\$ 110.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53089 2014 Vouvray Demi-Sec 'Le 750_ml		1	\$ 38.99	\$ 38.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53090 2014 Vouvray Demi-Sec 'Clc 750_ml		1	\$ 38.99	\$ 38.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53091 05 Vouvray Demi-Sec Le Mc 750 ml		1	\$ 49.99	\$ 49.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53074 07 Montelena Chardonnay 750 ml		3	\$ 59.99	\$ 179.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53077 2010 Montelena Chardonne 750 ml		2	\$ 45.00	\$ 90.00
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53078 2011 Montelena Chardonne 750 ml		4	\$ 45.00	\$ 180.00
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53042 2012 Lucienne Pinot Noir Sr 750 ml		4	\$ 34.99	\$ 139.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53054 2014 Dolceto d'Alba, Sandrc 750_ml		5	\$ 20.99	\$ 104.95
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	53073 06 Montelena Chardonnay l 750 ml		5	\$ 59.99	\$ 299.95
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52747 2013 Taken Cabernet Napa 750 ml		4	\$ 36.99	\$ 147.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52752 03 Rioja Reserva 'Vina Tond 375_ml		4	\$ 21.99	\$ 87.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52785 2012 Round Pond Reserve C 750 ml		7	\$ 109.99	\$ 769.93
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52682 2012 Hall Merlot Napa Valle 750 ml		12	\$ 32.99	\$ 395.88
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52703 06 Pepper Bridge Reserve R 750 ml		1	\$ 59.99	\$ 59.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52719 2013 Shafer Merlot Napa Vc 750 ml		8	\$ 54.99	\$ 439.92
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52598 2013 Morgon Vieilles Vigne: 750_ml		1	\$ 18.99	\$ 18.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52669 2012 Mouton Noir 'Oregogr 750 ml		1	\$ 44.99	\$ 44.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52677 2012 Deovlet 'Sonny Boy' R 750 ml		5	\$ 36.99	\$ 184.95
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52574 2012 Domaine Eden Pinot N 750 ml		1	\$ 32.99	\$ 32.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52575 2011 Domaine Eden Cabern 750 ml		5	\$ 32.99	\$ 164.95
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52586 2012 Selene Merlot 'Frediar 750 ml		4	\$ 32.99	\$ 131.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52456 2013 Brouilly 'La Croix des R 750_ml		2	\$ 32.99	\$ 65.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52456 2013 Brouilly 'La Croix des R 750_ml		10	\$ 32.99	\$ 329.90
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52537 07 Jones Family Cabernet (t 750 ml		4	\$ 59.99	\$ 239.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52404 2011 Mathis Grenache 'Son 750 ml		2	\$ 28.99	\$ 57.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52404 2011 Mathis Grenache 'Son 750 ml		6	\$ 28.99	\$ 173.94
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52455 2013 Brouilly 'Vieilles Vigne: 750_ml		10	\$ 29.99	\$ 299.90
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52173 2011 Sasyr (Sangiovese/Syr 5 L		2	\$ 99.99	\$ 199.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52308 94 Coteaux de Languedoc S 750 ml		3	\$ 85.00	\$ 255.00
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52315 2012 Emerson Brown Caber 750 ml		1	\$ 56.99	\$ 56.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52105 2012 Santenay 'Clos Rousse 750 ml		10	\$ 43.99	\$ 439.90
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52160 2011 Fleurie 'Clepsydre', An 750 ml		3	\$ 27.99	\$ 83.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52172 2013 Chianti Classico 5 Liter 5 L		2	\$ 99.99	\$ 199.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51944 2013 Round Pond Estate Ca 750 ml		12	\$ 52.99	\$ 635.88
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51962 2012 Snowden Cabernet Sa 750 ml		2	\$ 44.99	\$ 89.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	52010 2012 Lutum Pinot Noir 'La R 750 ml		2	\$ 46.99	\$ 93.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51493 2012 Marsannay, Sylvain Pa 750 ml		3	\$ 38.99	\$ 116.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51782 2013 Domaine Drouhin Pinc 750 ml		2	\$ 37.99	\$ 75.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51925 2012 Savigny-les-Beaune, J 750 ml		7	\$ 29.99	\$ 209.93
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51396 2012 Savennieres-Coulee d 750 ml		1	\$ 86.99	\$ 86.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51461 2011 Sigalas Rabaud 750 ml		9	\$ 55.00	\$ 495.00
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51493 2012 Marsannay, Sylvain Pa 750 ml		9	\$ 38.99	\$ 350.91
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51390 2011 Pic St Loup Grand Cuv 750 ml		1	\$ 24.99	\$ 24.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51394 2012 Savennieres Le Vieux C 750 ml		1	\$ 35.99	\$ 35.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51395 2012 Savennieres-Roche au 750 ml		1	\$ 54.99	\$ 54.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51314 2012 Pouilly Fuisse Pierrefol 750 ml		1	\$ 36.99	\$ 36.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51362 2012 Cotes-du-Roussillon R 750 ml		2	\$ 23.99	\$ 47.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51364 2010 St Joseph Coteaux, Eri 750 ml		4	\$ 27.95	\$ 111.80
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51017 2010 Nuits-St-Georges Aux , 750 ml		3	\$ 52.99	\$ 158.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51035 2011 J. Christopher Pinot N 750 ml		2	\$ 45.99	\$ 91.98
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51179 2011 Bandol Cuvee Fontane 750 ml		7	\$ 27.99	\$ 195.93
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	50704 2012 Cotes de Nuits Village: 750 ml		5	\$ 35.99	\$ 179.95
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51017 2010 Nuits-St-Georges Aux , 750 ml		1	\$ 52.99	\$ 52.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	51017 2010 Nuits-St-Georges Aux , 750 ml		4	\$ 52.99	\$ 211.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	50161 2011 Macon-Charnay, Manc 750 ml		4	\$ 13.99	\$ 55.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	50164 2011 Pic St Loup Metairies c 750 ml		8	\$ 29.99	\$ 239.92

4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	50182	2012 Porter Creek Pinot Noi 750 ml	1	\$	34.99	\$	34.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	49219	2012 Chanin Pinot Noir Los 750 ml	1	\$	47.99	\$	47.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	49961	2012 Saumur-Champigny Te 750 ml	1	\$	31.99	\$	31.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	50139	07 Sigalas Rabaud 750 ml	8	\$	57.99	\$	463.92
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	47208	06 Limoux Rouge, Baron'Arc 750 ml	4	\$	19.99	\$	79.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	47211	08 Domaine Cambrian La Pl 750 ml	3	\$	59.99	\$	179.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	48886	2011 Lioco Pinot Noir Sonor 750 ml	1	\$	37.99	\$	37.99
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	46190	07 Limoux Rouge, Domaine 750 ml	7	\$	19.99	\$	139.93
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	46190	07 Limoux Rouge, Domaine 750 ml	3	\$	19.99	\$	59.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	46231	09 Marsannay 'Champ Salor 750 ml	4	\$	37.99	\$	151.96
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	40371	06 Red Car Syrah Speakeasy 750 ml	1	\$	45.00	\$	45.00
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	45664	98 Plantieres du Haut Brion 750 ml	3	\$	79.99	\$	239.97
4932	Rolland Mo	12/1/2015	0000338806-SH	12/1/2015	Store Credit	12/1/2015	SO-0000495551	12/3/2015	130058	46190	07 Limoux Rouge, Domaine 750 ml	12	\$	19.99	\$	239.88
												<u>289</u>			<u>\$</u>	<u>11,971.14</u>