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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.  
HIROYUKI YOSHIDA,  
Defendant.

Case No. 16-40050-WJL

Chapter 7

Adversary Proceeding No.

**COMPLAINT TO AVOID AND  
RECOVER PREFERENTIAL  
TRANSFERS**

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. 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

1 Date”).

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

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

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

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

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

13       7.       Defendant HIROYUKI YOSHIDA (“Defendant”) is an individual.

14  
15                                   **FIRST CLAIM FOR RELIEF**  
16                                   **Avoidance and Recovery of Preferential Transfer**

17       8.       On or after October 10, 2015, the Debtor made transfers in the form of wine  
18 shipped to Defendant in the aggregate value of at least \$16,516.40 (the “Transfer”). A detailed  
19 summary of the wines constituting the Transfer is attached hereto as **Exhibit A**.

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

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

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

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

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

14. The Defendant 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.

**PRAYER FOR RELIEF**

The Trustee requests entry of judgment against Defendant as follows:

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 \$16,516.40 from Defendant; and
3. Awarding pre-judgment interest at the legal rate from the date of demand.
4. Disallowing any and all claims filed in the Case by Defendant pursuant to 11 U.S.C. § 502(d).
5. Awarding costs of suit incurred herein; and
6. For any other relief that the Court deems proper.

Dated: December 29, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

Mark S. Bostick  
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
42172	HiroYuki Yoshida	12/30/2015	0000339474-SH	2/5/2013	VISA	2/5/2013	SO-0000404331	12/30/2015	130812	43715 99 Pommard Grands Epenc 750 ml		12	\$ 125.00	\$ 1,500.00
42172	HiroYuki Yoshida	12/22/2015	0000339254-SH	2/5/2013	VISA	2/5/2013	SO-0000404331	12/21/2015	130589	43715 99 Pommard Grands Epenc 750 ml		12	\$ 125.00	\$ 1,500.00
42172	HiroYuki Yoshida	12/15/2015	0000338948-SH	12/1/2012	VISA	11/30/2012	SO-0000398223	12/12/2015	130390	43715 99 Pommard Grands Epenc 750 ml		12	\$ 125.00	\$ 1,500.00
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	8/9/2014	VISA	8/8/2014	SO-0000451978	12/7/2015	130166	38409 1908 Madeira Bual, d'Olive 750 ml		1	\$ 534.99	\$ 534.99
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	8/9/2014	VISA	8/8/2014	SO-0000451978	12/7/2015	130166	32218 1907 Madeira Malvasia, d'C 750 ml		2	\$ 641.99	\$ 1,283.98
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	8/9/2014	VISA	8/8/2014	SO-0000451978	12/7/2015	130166	32223 1912 Madeira Verdelho, d't 750 ml		2	\$ 485.99	\$ 971.98
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	8/23/2014	VISA	8/23/2014	SO-0000453076	12/7/2015	130166	38409 1908 Madeira Bual, d'Olive 750 ml		3	\$ 534.99	\$ 1,604.97
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	7/29/2015	VISA	7/29/2015	SO-0000485422	12/7/2015	130166	32223 1912 Madeira Verdelho, d't 750 ml		3	\$ 566.99	\$ 1,700.97
42172	HiroYuki Yoshida	12/8/2015	0000338690-SH	7/29/2015	VISA	7/29/2015	SO-0000485422	12/7/2015	130166	51160 1932 Madeira Verdelho, d't 750 ml		1	\$ 459.99	\$ 459.99
42172	HiroYuki Yoshida	12/1/2015	0000338422-SH	2/5/2013	VISA	2/5/2013	SO-0000404331	11/30/2015	129957	46954 01 Pommard Grands Epenc 750 ml		12	\$ 89.99	\$ 1,079.88
42172	HiroYuki Yoshida	11/24/2015	0000338298-SH	12/1/2012	VISA	11/30/2012	SO-0000398223	11/23/2015	129799	46959 02 Corton Renardes, Gaunc 750 ml		12	\$ 89.99	\$ 1,079.88
42172	HiroYuki Yoshida	11/17/2015	0000338058-SH	2/3/2012	VISA	2/3/2012	SO-0000373380	11/16/2015	129580	44651 05 Beaune Cuvee Nicolas R 750 ml		6	\$ 59.99	\$ 359.94
42172	HiroYuki Yoshida	11/17/2015	0000338058-SH	2/3/2012	VISA	2/3/2012	SO-0000373380	11/16/2015	129580	44652 05 Volnay Santenots Cuvee 750 ml		6	\$ 59.99	\$ 359.94
42172	HiroYuki Yoshida	11/10/2015	0000337693-SH	5/17/2014	VISA	5/16/2014	SO-0000445059	11/9/2015	129358	43711 08 Pommard Rugiens, Gaur 750 ml		12	\$ 89.99	\$ 1,079.88
42172	HiroYuki Yoshida	11/3/2015	0000337370-SH	12/1/2012	VISA	11/30/2012	SO-0000398223	11/2/2015	129072	43715 99 Pommard Grands Epenc 750 ml		12	\$ 125.00	\$ 1,500.00
													<b>108</b>	<b>\$ 16,516.40</b>