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Michael G. Kasolas, Trustee

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

In re  
FOX ORTEGA ENTERPRISES, INC., dba  
PREMIER CRU,  
  
Debtors.

Case No. 16-40050-WJL  
  
Chapter 7

MICHAEL G. KASOLAS, Trustee,  
  
Plaintiff,  
  
vs.  
  
IONIA ATLANTIC IMPORTS, LLC, a  
Missouri limited liability company; BRYN L.  
HENLEY, an individual; NATHAN P.  
WOODHOUSE, an individual; BOB  
BOFMAN, an individual,  
  
Defendants.

Adversary Proceeding No.

**COMPLAINT OF TRUSTEE MICHAEL  
G. KASOLAS AGAINST IONIA  
ATLANTIC IMPORTS, LLC, HENLEY  
AND WOODHOUSE (1) TO AVOID AND  
RECOVER FRAUDULENT TRANSFERS  
(Cal. Civ. Code § 3439.04), (2) TO AVOID  
AND RECOVER FRAUDULENT  
TRANSFERS (Cal. Civ. Code § 3439.05),  
(3) FOR MONEY HAD AND RECEIVED,  
AND (4) FOR CONVERSION, AND  
AGAINST BOFMAN (5) TO AVOID AND  
RECOVER FRAUDULENT TRANSFERS  
(Cal. Civ. Code § 3439.04), (6) TO AVOID  
AND RECOVER FRAUDULENT  
TRANSFERS (Cal. Civ. Code § 3439.05),  
AND (7) FOR MONEY HAD AND  
RECEIVED**

1 Plaintiff Michael G. Kasolas (“Trustee”), trustee of the chapter 7 bankruptcy estate of Fox  
2 Ortega Enterprises, Inc., dba Premier Cru (“Debtor”), alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. The Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy  
5 Code (Title 11 of the United States Code) on January 8, 2016 (“Petition Date”).

6 2. The Trustee is the duly qualified and acting trustee of the Debtor’s chapter 7 case.

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

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

10 5. Claims for Relief One, Two, Five and Six are core proceedings pursuant to 28  
11 U.S.C. § 157(b)(2)(A), (H) and (O), which seek relief under 11 U.S.C. §§ 544(b) and 550 and  
12 Rule 7001(1) of the Federal Rules of Bankruptcy Procedure. Claims for Relief Three, Four and  
13 Seven are claims that are related to a case under Title 11 of the United States Code.

14 6. Plaintiff consents to the entry of a final order or judgment by the Court on each of  
15 the claims pled herein.

16 **GENERAL ALLEGATIONS**

17 7. The Trustee is informed and believes and thereon alleges that defendant **Ionia**  
18 **Atlantic Imports, LLC (“Ionia Atlantic”)** is a limited liability company organized and existing  
19 under the laws of the State of Missouri, with its principal place of business at 8216 Brentwood  
20 Industrial Drive, Saint Louis, Missouri 63144, with a designated Charter Number of LC0809556  
21 and a registered office address of 2800 McNair Avenue, St. Louis, Missouri 63118.

22 8. The Trustee is informed and believes and thereon alleges that defendant **Bryn L.**  
23 **Henley (“Henley”)** is an individual residing in the State of Missouri and doing business under the  
24 fictitious business name of “Henley Fine Wines.”

25 9. The Trustee is informed and believes and thereon alleges that defendant **Nathan P.**  
26 **Woodhouse (“Woodhouse”)** is an individual residing in the State of Missouri and doing business  
27 under the fictitious business name of “Henley Fine Wines.”

28 10. The Trustee is informed and believes and thereon alleges that Henley and

1 Woodhouse, at all times relevant herein, did business together under the fictitious business name  
2 of “Henley Fine Wines” and maintained a principal place of business located at 2350 South Ninth  
3 Street, Saint Louis, Missouri 63104. In connection with said fictitious business name registration  
4 in the state of Missouri, Henley and Woodhouse maintained a designated address of 1201  
5 Missouri Avenue, Saint Louis, Missouri 63104.

6 11. The Trustee is informed and believes and thereon alleges that Henley and  
7 Woodhouse, whether as partners or otherwise, are jointly and severally liable for the business  
8 debts and obligations of the “Henley Fine Wines” business operation. Hereinafter, Henley and  
9 Woodhouse and their joint business enterprise and/or venture are sometimes referred to as  
10 “Henley Fine Wines.”

11 12. The Trustee is informed and believes and thereon alleges that Woodhouse is the  
12 registered agent of Ionia Atlantic with a registered address of 2800 McNair Avenue, St. Louis,  
13 Missouri 63118.

14 13. The Trustee is informed and believes and thereon alleges that defendant **Bob**  
15 **Bofman (“Bofman”)** is an individual residing in the State of Illinois.

16 14. The Trustee is informed and believes and thereon alleges that Bofman, at all times  
17 relevant herein, did business under the fictitious business names “DSL Global Wine Company”  
18 and/or “DSL Global Wine & Spirits Company” and maintained a principal place of business  
19 located at 781 S. Midlothian Road, Suite 352, Mundelein, Illinois 60060. The Trustee is informed  
20 and believes and thereon alleges that “DSL Global Wine Company” may have been the name of a  
21 Texas business entity affiliated with Bofman, but the corporate status of such entity has been  
22 revoked.

23 15. The Trustee is informed and believes and thereon alleges that Bofman, whether as a  
24 sole proprietor or otherwise, is personally liable for the business debts and obligations of the  
25 business operation he ran under the names “DSL Global Wine Company” and/or “DSL Global  
26 Wine & Spirits Company.”

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1           16.     The Debtor was founded in 1980 and opened its first store on Piedmont Avenue in  
2 Oakland, California, where it was in the business of selling fine wines. In the 1990s, with the  
3 explosion of the internet, the Debtor rose to national prominence on the wine scene. With its  
4 increasing popularity, the Debtor began importing more wines from sources overseas and  
5 eventually outgrew its space on Piedmont Avenue. In 1998, the Debtor relocated to a much larger  
6 store in Emeryville, California and remained at that location for over 10 years. In late 2010, the  
7 Debtor moved to a state of the art building on University Avenue in Berkeley, California. The  
8 Debtor shipped wine throughout the United States and sourced wine from international as well as  
9 domestic United States suppliers.

10           17.     John Fox ("Fox") was the Debtor's president from 1980 through the Petition Date.

11           18.     From at least 2010 through the Petition Date, Fox ran the debtor as a fraudulent  
12 scheme by selling millions of dollars of phantom "pre-arrival" wine that he never purchased and  
13 diverting money coming in from current customers to obtain wine for prior customers who had  
14 never received their wine. On or about August 11, 2016, Fox entered into a guilty plea in his  
15 criminal case (*United States v. John Fox*, United States District Court, Northern District of  
16 California, Oakland Division, Case No. CR 16-281 JD). Based on the Plea Agreement, Fox was  
17 sentenced to incarceration in federal prison.

18           19.     Among the suppliers or wine brokers to the Debtor was Ionia Atlantic, Henley Fine  
19 Wines and/or Bofman. Bofman assisted with the arrangement of the purchase of wines through  
20 Ionia Atlantic and Henley Fine Wines for delivery to the Debtor or its customers for Debtor's  
21 benefit.

22           20.     In the course of the Debtor's dealing with Ionia Atlantic and Henley Fine Wines,  
23 the Debtor distributed monies or goods to said defendants, including, but not limited to, the  
24 following: (i) not less than \$730,735.95 in direct payments to Ionia Atlantic between  
25 approximately June 2013 and September 2015; (ii) \$15,525.15 in credit card or other online  
26 payments to Ionia Atlantic on or about April 30, 2015; (iii) \$4,644.00 in wines provided by the  
27 Debtor on or about April 14, 2014 in payment of its account with Ionia Atlantic; and  
28 (iv) \$60,000.00 in disbursements to Henley Fine Wines on or about May 27, 2015. Such

1 distribution of monies or goods (the “Payments”) to Ionia Atlantic and Henley Fine Wines totaled  
2 not less than \$810,905.10. Some of the disbursement of monies by way of the Payments to  
3 Henley Fine Wines were on account of orders placed with or through Ionia Atlantic.

4 21. Although not less than \$810,905.10 in Payments was distributed to Ionia Atlantic  
5 and Henley Fine Wines via cash payments or in goods, the Debtor received only \$568,041.83  
6 worth of wine, with associated fees and/or charges, as a result of its dealings with Ionia Atlantic  
7 and Henley Fine Wines.

8 22. The Trustee is informed and believes and thereon alleges that the Debtor did not  
9 receive delivery of any wines or other goods or services in exchange for the balance of the  
10 Payments made to Ionia Atlantic and Henley Fine Wines, in the amount of not less than  
11 \$242,863.27, as set forth below:

Payments Made by Debtor	\$810,905.10
Wine Delivered to Debtor or Debtor’s Customers	\$568,041.83
<b>Payments for Which Debtor Received No Value:</b>	<b>\$242,863.27</b>

16 23. Accordingly, the Debtor did not receive wines or other consideration for a  
17 significant portion of the Payments made. The transfers made of the Debtor’s funds to the Ionia  
18 Atlantic and Henley Fine Wines, and/or each of them, for which the Debtor did not receive any  
19 wine or other consideration are referred to hereinafter as the “Ionia Atlantic / Henley Transfers.”

20 24. In addition, the Debtor distributed monies which totaled not less than \$38,000.00 to  
21 Bofman between June 24, 2015 and November 30, 2015 (the “Bofman Transfers”). The Trustee is  
22 informed and believes and thereon alleges that the Debtor did not receive delivery of any wines or  
23 other goods or services in exchange for the Bofman Transfers.

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27 **FIRST CLAIM FOR RELIEF**

28 **[Avoid and Recover Fraudulent Transfers Under Cal.**

**Civ. Code § 3439.04 *et seq.*; 11 U.S.C. §§ 544(b) and 550]**

**(Against Ionia Atlantic, Henley and Woodhouse)**

25. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

26. Ionia Atlantic, Henley and Woodhouse were the initial transferee of each of the Ionia Atlantic / Henley Transfers made to them respectively.

27. The Debtor made the Ionia Atlantic / Henley Transfers:

(a) With actual intent to hinder, delay or defraud the Debtor's creditors; and/or

(b) Without receiving a reasonably equivalent value in exchange for the Ionia Atlantic / Henley Transfers, and the Debtor either:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that the Debtor would incur, debts beyond the Debtor's ability to pay as they became due.

28. The Trustee may invoke 11 U.S.C. § 544(b) to avoid the Ionia Atlantic / Henley Transfers under California Civil Code § 3439 *et seq.* because when the subject Ionia Atlantic / Henley Transfers were made at least one creditor holding an unsecured claim that is allowable in the Case under 11 U.S.C. § 502 held a claim against the Debtor.

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

**SECOND CLAIM FOR RELIEF**

**[Avoid and Recover Fraudulent Transfers Under Cal.**

**Civ. Code § 3439.05 *et seq.*; 11 U.S.C. §§ 544(b) and 550]**

**(Against Ionia Atlantic, Henley and Woodhouse)**

29. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

30. Ionia Atlantic, Henley and Woodhouse were the initial transferee of each of the Ionia Atlantic / Henley Transfers made to them respectively.

1           31.     The Debtor made the Ionia Atlantic / Henley Transfers without receiving a  
2 reasonably equivalent value in exchange for the Ionia Atlantic / Henley Transfers.

3           32.     The Debtor was insolvent at that time or the Debtor became insolvent as a result of  
4 the Ionia Atlantic / Henley Transfers.

5           33.     The Trustee may invoke 11 U.S.C. § 544(b) to avoid the Ionia Atlantic / Henley  
6 Transfers under California Civil Code § 3439 *et seq.* because when the subject Ionia Atlantic /  
7 Henley Transfers were made at least one creditor holding an unsecured claim that is allowable in  
8 the Case under 11 U.S.C. § 502 held a claim against the Debtor.

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

10                               **THIRD CLAIM FOR RELIEF**

11                               **(Money Had and Received)**

12                               **(Against Ionia Atlantic, Henley and Woodhouse)**

13           34.     The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24  
14 above, as though fully set forth herein.

15           35.     Ionia Atlantic, Henley, Woodhouse, and/or each of them, received money, by  
16 virtue of the Ionia Atlantic / Henley Transfers, that was intended to be used for the benefit of the  
17 Debtor, including, but not limited to, for the payment of wine orders placed with said defendants,  
18 and/or each of them, and for the shipment or release of wines purchased by the Debtor.

19           36.     The money was not used for the benefit of the Debtor.

20           37.     Ionia Atlantic, Henley, Woodhouse, and/or each of them, have not given the  
21 money to the Debtor or the Trustee.

22           38.     The Trustee hereby demands delivery of the wines for which the Debtor paid or  
23 else repayment of the money paid to said defendants for which the Debtor did not receive  
24 consideration.

25           39.     As a direct and proximate result of the above acts or omissions on the part of the  
26 Ionia Atlantic, Henley, Woodhouse, and/or each of them, the Debtor has suffered damages of not  
27 less than \$242,863.27.

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

**FOURTH CLAIM FOR RELIEF**

**(Conversion)**

**(Against Ionia Atlantic, Henley and Woodhouse)**

40. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

41. To the extent that the Debtor paid for wines that Ionia Atlantic, Henley, Woodhouse, and/or each of them, failed to deliver to the Debtor or to the Debtor's customers for the Debtor's benefit, such wines were the personal property of the Debtor and, upon the filing of the Debtor's petition in bankruptcy, became the property of the bankruptcy estate. Said wines are referred to hereinafter as the "Undelivered Paid Wines."

42. The Trustee is informed and believes and thereon alleges that some of the Undelivered Paid Wines was held by Ionia Atlantic, Henley, Woodhouse, and/or each of them, and/or other third parties, and said defendants purported to cancel certain of the Orders and resold or otherwise disposed of the Undelivered Paid Wines, purportedly to "credit" the proceeds against amounts allegedly due and owing from the Debtor. Any purported resale or other disposition of such Undelivered Paid Wines was wrongful and not authorized by the Debtor or the Trustee.

43. Ionia Atlantic, Henley, Woodhouse, and/or each of them, wrongfully converted the Undelivered Paid Wines to their own use and benefit, in violation of the Debtor's and/or the Trustee's ownership and/or right of possession.

44. As a direct and proximate result of the above acts or omissions on the part of the Ionia Atlantic, Henley, Woodhouse, and/or each of them, the Debtor has suffered damages of not less than \$242,863.27.

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

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**FIFTH CLAIM FOR RELIEF**

**[Avoid and Recover Fraudulent Transfers Under Cal.**



**Civ. Code § 3439.04 *et seq.*; 11 U.S.C. §§ 544(b) and 550]**

**(Against Bofman)**

45. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

46. Bofman was the initial transferee of each of the Bofman Transfers made to him.

47. The Debtor made the Bofman Transfers:

(a) With actual intent to hinder, delay or defraud the Debtor's creditors; and/or

(b) Without receiving a reasonably equivalent value in exchange for the Bofman Transfers, and the Debtor either:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that the Debtor would incur, debts beyond the Debtor's ability to pay as they became due.

48. The Trustee may invoke 11 U.S.C. § 544(b) to avoid the Bofman Transfers under California Civil Code § 3439 *et seq.* because when the subject Bofman Transfers were made at least one creditor holding an unsecured claim that is allowable in the Case under 11 U.S.C. § 502 held a claim against the Debtor.

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

**SIXTH CLAIM FOR RELIEF**

**[Avoid and Recover Fraudulent Transfers Under Cal.**

**Civ. Code § 3439.05 *et seq.*; 11 U.S.C. §§ 544(b) and 550]**

**(Against Bofman)**

49. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

50. Bofman was the initial transferee of each of the Bofman Transfers made to him.

51. The Debtor made the Bofman Transfers without receiving a reasonably equivalent value in exchange for the Transfers.

52. The Debtor was insolvent at that time or the Debtor became insolvent as a result of the Bofman Transfers.

53. The Trustee may invoke 11 U.S.C. § 544(b) to avoid the Bofman Transfers under California Civil Code § 3439 *et seq.* because when the subject Bofman Transfers were made at least one creditor holding an unsecured claim that is allowable in the Case under 11 U.S.C. § 502 held a claim against the Debtor.

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

**SEVENTH CLAIM FOR RELIEF**

**(Money Had and Received)**

**(Against Bofman)**

54. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 24 above, as though fully set forth herein.

55. Bofman received money, by virtue of the Transfers, that was intended to be used for the benefit of the Debtor, including, but not limited to, for the payment of wine orders placed by or for the Debtor, and/or for the shipment or release of wines purchased by the Debtor.

56. The money was not used for the benefit of the Debtor.

57. Bofman has not given the money to the Debtor or the Trustee.

58. The Trustee hereby demands delivery of the wines for which the Debtor paid or else repayment of the money paid to Bofman for which the Debtor did not receive consideration.

59. As a direct and proximate result of the above acts or omissions on the part of the Bofman, the Debtor has suffered damages of not less than \$38,000.00.

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

**PRAYER FOR RELIEF**

The Trustee requests judgment against the defendants, and/or each of them, for the following relief:

**On the First Claim for Relief (Cal. Civ. Code § 3439.04; 11 U.S.C. §§ 544(b) and 550) against Ionia Atlantic, Henley and Woodhouse:**

1. For a judgment avoiding the Transfers, and each of them;

2. For a judgment granting recovery under 11 U.S.C. §550(a)(1) for the amount of the Transfers or for such other amount according to proof; and

**On the Second Claim for Relief (Cal. Civ. Code § 3439.05; 11 U.S.C. §§ 544(b) and 550) against Ionia Atlantic, Henley and Woodhouse:**

3. For a judgment avoiding the Transfers, and each of them;

4. For a judgment granting recovery under 11 U.S.C. §550(a)(1) for the amount of the Transfers or for such other amount according to proof; and

**On the Third Claim for Relief (Money Had and Received) against Ionia Atlantic, Henley and Woodhouse:**

5. For damages, according to proof;

**On the Fourth Claim for Relief (Conversion) against Ionia Atlantic, Henley and Woodhouse:**

6. For damages, according to proof;

**On the Fifth Claim for Relief (Cal. Civ. Code § 3439.04; 11 U.S.C. §§ 544(b) and 550) against Bofman:**

7. For a judgment avoiding the Transfers, and each of them;

8. For a judgment granting recovery under 11 U.S.C. §550(a)(1) for the amount of the Transfers or for such other amount according to proof; and

**On the Sixth Claim for Relief (Cal. Civ. Code § 3439.05; 11 U.S.C. §§ 544(b) and 550) against Bofman:**

9. For a judgment avoiding the Transfers, and each of them;

10. For a judgment granting recovery under 11 U.S.C. §550(a)(1) for the amount of the Transfers or for such other amount according to proof; and

**On the Seventh Claim for Relief (Money Had and Received) against Bofman:**

11. For damages, according to proof;

**On Each Claim:**

12. For allowable costs of suit incurred herein;

13. For an award of all recoverable prejudgment interest at the legal rate allowed by

1 law; and

2 14. For such further relief as may be just and proper.

3 Dated: January 4, 2018

WENDEL, ROSEN, BLACK & DEAN LLP

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By: /s/ Leonard E. Marquez

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Leonard E. Marquez

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Attorneys for Plaintiff

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Michael G. Kasolas, Trustee

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