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7  
8 *Special Litigation Counsel for*  
9 *Michael G. Kasolas, Chapter 7 Trustee*  
10 *For Fox Ortega Enterprises, Inc.*  
11 *Db a Premier Cru*

12 UNITED STATES BANKRUPTCY COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 OAKLAND DIVISION

17 In re

18 FOX ORTEGA ENTERPRISES, INC., dba  
19 PREMIER CRU

20 Debtor.

Case No. 16-40050-WJL

Chapter 7

21 MICHAEL G. KASOLAS, Chapter 7 Trustee  
22 for Fox Ortega Enterprises, Inc. dba Premier  
23 Cru

24 Plaintiff

Adversary No. \_\_\_\_\_

25 vs.

26 GREG KURDOGLANYAN

**ORIGINAL COMPLAINT**

27 Plaintiff Michael G. Kasolas, the Chapter 7 Trustee (the “**Trustee**”) for Fox Ortega  
28 Enterprises, Inc. dba Premier Cru (“**Premier Cru**” or the “**Debtor**”), brings this adversary  
proceeding against Greg Kurdoglanyan (“**Defendant**”) and alleges as follows:

**INTRODUCTION**

1. This suit seeks the avoidance and recovery of transfers from Premier Cru to the  
Defendant as well as the avoidance of certain obligations Premier Cru incurred in the Defendant’s  
favor. These transfers and obligations were part of a fraudulent scheme involving the sale of wine

1 that caused the loss of tens of millions of dollars. At the time of the Premier Cru's bankruptcy,  
2 approximately 4,500 customers had not received pre-arrival wine for which that had already paid,  
3 with losses reaching \$45 million.

4 2. Transfers to the Defendant and the obligations incurred by Premier Cru were made  
5 as part of the fraud and with the actual intent to hinder, delay, or defraud Premier Cru's creditors.  
6 Premier Cru incurred obligations in favor of the Defendant for the purpose of acquiring funds  
7 necessary for the continuation of the fraud. Later, Premier Cru made transfers to the Defendant  
8 with the purpose of concealing the ongoing fraud, to lull customers into a false sense that Premier  
9 Cru was a legitimate business, to cause the customers to continue to purchase wine from Premier  
10 Cru, and to prevent them from complaining to law enforcement authorities.

11 3. The Trustee requests that this Court grant relief that will return the value of the  
12 transfers to the Defendant that were made as a part of the scheme. Specifically, the Trustee seeks  
13 the avoidance and recovery of the transfers made and obligations incurred that are identified below  
14 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04.

#### 15 JURISDICTION AND VENUE

16 4. This is an adversary proceeding, pursuant to Federal Rule of Bankruptcy  
17 Procedure, which relates to the Chapter 7 proceeding captioned *In re Fox Ortega Enterprises, Inc.,*  
18 *dba Premier Cru*, Case No. 16-40050-WJL (Bankr. N.D. Cal., Oakland Div.).

19 5. This Court has subject matter jurisdiction over this action pursuant to section 28  
20 U.S.C. § 1334(b) and 28 U.S.C. § 157(a), in that this adversary proceeding arises in, arises under,  
21 and/or relates to Premier Cru's chapter 7 case.

22 6. This adversary proceeding is a core proceeding under section 157(b)(2) of Title 28  
23 of the United States Code, such that this Court has jurisdiction to hear and determine this  
24 proceeding and to enter an appropriate order and judgment. To the extent necessary, the Trustee  
25 consents to entry of a final order or judgment by this Court.

26 7. The Defendant's forum-related activities give rise to the action before the Court.  
27 The Defendant purposefully directed his activities and consummated the transactions described  
28 below within California, thereby invoking the benefits and protection of California law. As

1 reflected in the applicable terms and conditions for the transactions described below, “[a]ny wine  
2 sold to you by Premier Cru is sold in California, and title passes to you, the buyer, in California.”  
3 Furthermore, the Trustee’s claims arise out of or relate to the Defendant’s forum-related activities.

4 8. This Court is the proper venue for this adversary proceeding pursuant to 28 U.S.C.  
5 § 1409(a) because the Debtor’s chapter 7 case is pending in this judicial district.

## 6 **PARTIES**

7 9. The Trustee is the duly appointed chapter 7 trustee for the bankruptcy estate of  
8 Premier Cru. Premier Cru entered bankruptcy proceedings on January 8, 2016 (the “**Petition**  
9 **Date**”), at which time the Trustee was appointed by the Court. The Trustee is duly authorized and  
10 empowered to pursue any and all claims of the Debtor’s estate.

11 10. Defendant Greg Kurdoglanyan is an individual and a citizen of California.  
12 Defendant may be served with process at 3608 Angelus Avenue, Glendale, California 91208.

## 13 **GENERAL ALLEGATIONS**

### 14 **I. Premier Cru’s Operations**

15 11. Premier Cru was founded in 1980 by John Fox (“**Fox**”) and Hector Ortega as a  
16 seller of top-quality wines in the Bay Area. During all relevant times, Fox owned equity in  
17 Premier Cru and served as its President. Fox made all significant business decisions for Premier  
18 Cru. Fox was the sole manager of the company’s finances, including payment of Premier Cru’s  
19 bills and expenses, as well as obtaining business loans and financing from banks or individuals to  
20 fund Premier Cru’s operations.

21 12. Premier Cru originally operated out of a small storefront in Oakland with a focus  
22 on hard to find and limited production offerings. As Premier Cru’s popularity grew, the company  
23 determined that it would begin purchasing its supply of wine from sources overseas and obtained  
24 its own import license. Premier Cru touted that it could eliminate the middle man while  
25 simultaneously increasing the allocation of hard to locate wines by supposedly sourcing its  
26 inventory directly.

1           13.     The Debtor generally sold wine in two ways. First, the company sold wine that  
2 was, or supposedly was, physically held in Premier Cru's inventory. Second, Premier Cru sold  
3 wine on a "pre-arrival" basis, whereby customers paid for wine that was not in Premier Cru's  
4 physical possession but which Premier Cru represented it had already purchased.

5           14.     In the wine industry, there are generally two ways to purchase wine before it is  
6 released to the open market. "Wine futures" involve the purchase of wine while it is still in the  
7 barrel and before the wine is bottled. Because the purchaser must wait for the wine to age in the  
8 barrel, buyers can expect to wait years before receiving the wine they purchased. Premier Cru did  
9 not sell wine futures. In contrast, "pre-arrival" wines are sold to collectors months before a wine  
10 is released to the open market, but after the wine has actually been bottled. Unlike "wine futures,"  
11 there is generally less risk in pre-arrival purchasing because importers know exactly how many  
12 bottles they will receive from the supplier. Pre-arrival sales allow consumers to purchase difficult  
13 to locate wines at prices that are generally lower than what is found in the market. Premier Cru  
14 purportedly sold pre-arrival wines.

15           15.     Premier Cru sold pre-arrival wine through a website operated and maintained by  
16 Premier Cru or through salespeople who worked in the Premier Cru offices and reported to Fox.  
17 The "Terms and Conditions" associated with the sale of pre-arrival wine provided as follows:

18           The term "Pre-Arrival" is applied to wines we have purchased (typically abroad)  
19 that have not arrived yet. Depending on the particular wine, the arrival time is  
20 typically 6+ months to over two years (in the case of Bordeaux Futures, for  
example).

21           Many new releases of highly desirable, limited-production wines (ie – Burgundy,  
22 Rhone, Italian, etc.) are offered on a "Pre-Arrival" basis by our suppliers. These  
offerings typically take 6 to 18 months to arrive and are often the only way to  
23 source the wines before they sell out (and at optimal prices). We send an email  
notification when your wine arrives.

24           According to Fox, the majority of Premier Cru's revenue was derived from pre-arrival sales.

## 25           **II.     The Fraud**

26           16.     On or about August 11, 2016, Fox entered into a guilty plea in guilty plea in his  
27 criminal case [*United States v. John Fox*, Case No. CR 16-281 JD, N.D. Cal] and executed a Plea  
28

1 Agreement in which he admitted that he operated the Debtor as a fraudulent scheme. In his plea  
2 agreement, Fox admitted that he “devised a scheme to defraud, and a scheme for obtaining  
3 property by means of false and fraudulent pretenses, representations and omissions, through  
4 Premier Cru’s sale of pre-arrival wine.” Fox further admitted that his fraudulent conduct began as  
5 early as 1993 or 1994. Through Fox’s actions, Premier Cru engaged in a massive fraud whereby  
6 funds derived from later fraudulent wine sales were used to pay obligations that arose from earlier  
7 fraudulent transactions.

8       17. According to Premier Cru, the pre-arrival wines were wines that the company had  
9 supposedly already contracted to purchase from its suppliers. Premier Cru further represented that  
10 it would deliver the pre-arrival wines to customers within a time period of approximately six  
11 months to two years after customers had paid for the wine. These representations were false at  
12 the time they were made for at least two reasons. First, Fox admitted to falsifying purchase orders  
13 for wine that Premier Cru had not contracted to purchase and then entering that wine into Premier  
14 Cru’s inventory records for sale to its customers. He stated that Premier Cru “priced these wines  
15 at prices below the market price, knowing that [he] had not and would not need to actually pay for  
16 this wine from any vendors.” Second, Fox stated that Premier Cru contracted with “foreign  
17 suppliers . . . to purchase wine, generally with the promise to pay those foreign suppliers within 30  
18 days.” Fox did so even where he “knew that Premier Cru would not be able to make payment  
19 within 30 days, or ever” because he (a) “embezzled money from Premier Cru’s business accounts  
20 that [he] should have used to pay Premier Cru’s suppliers” or (b) “diverted money coming in from  
21 current customers to obtain wine for prior customers who had never received their wine.” In  
22 either event, the end result was the same—Premier Cru did not have the wine required to fulfill the  
23 obligations for its pre-arrival customers. Fox further admitted that “customers paid Premier Cru  
24 for wine that [he] knew Premier Cru could not deliver to them and which they never received” and  
25 that his false statements were made “with the intent to defraud Premier Cru’s customers.” At the  
26 time of the bankruptcy, approximately 4,500 customers had not received pre-arrival wine for  
27 which that had already paid.

1           18.     The fraud was unsustainable on its face because the funds Premier Cru received  
2 from its customers were less than the cost of purchasing wine at a later date to fulfill the  
3 outstanding orders. Due to the rarity of the wines at issue, purchasing wines on the open market  
4 after their release is far more costly than sourcing the wines from appropriate oversea suppliers on  
5 a pre-arrival basis. Furthermore, Premier Cru sometimes offered pre-arrivals at a price lower than  
6 the current market for pre-arrivals. This act of undercutting the market assisted in raising funds  
7 while simultaneously increasing the gap between Premier Cru's assets and its obligations. To  
8 make matters worse, Premier Cru's Fox removed millions of dollars from the company, further  
9 reducing the funds available to satisfy Premier Cru's obligations. Because Premier Cru was not  
10 generating sufficient revenue from the pre-arrival sales to ultimately purchase wine for its  
11 customers, the company was forced to enter into an increasing number of fraudulent, pre-arrival  
12 sales to fill the financial gap and generate the funds required to purchase wine for its existing  
13 customers. As Premier Cru's liquidity and its ability to enter into a sufficient number of new pre-  
14 arrival transactions declined, Premier Cru was forced to declare bankruptcy in 2016.

15           19.     Prior to 2015, Premier Cru was able to conceal its fraud from its creditors.  
16 According to Fox, his efforts to conceal the fraud included (a) offering falsified excuses and  
17 promises for wine that Premier Cru would not be delivered; (b) delivering wine that was  
18 purchased by other customers; and (c) purchasing wine at retail prices for use in fulfilling  
19 outstanding orders. Fox admitted that he "took these and other actions to "conceal [Premier  
20 Cru's] ongoing fraud, to lull customers into a false sense that Premier Cru was a legitimate  
21 business, to cause [its] customers to continue to purchase wine from Premier Cru, and to prevent  
22 them from complaining to law enforcement authorities." Furthermore, Premier Cru concealed its  
23 fraud by making cash disbursements to customers whose orders were not fulfilled, often in  
24 amounts greater than what customers had originally paid for their alleged pre-arrival orders.

25           20.     The sales and subsequent transfers to the Defendant were made as a part of the  
26 fraud and with the actual intent to hinder, delay, or defraud Premier Cru's creditors. Premier Cru  
27 made the transfers and incurred the obligations with the purpose of concealing the ongoing fraud,  
28 lulling customers into a false sense that Premier Cru was a legitimate business, causing customers

1 to continue to purchase wine from Premier Cru, and preventing customers from complaining to  
2 law enforcement authorities by paying them cash settlements.

3         21. Defendant was aware of issues at Premier Cru prior to receiving transfers from the  
4 Debtor. More specifically, beginning at least as early as April 2013, Defendant began to question  
5 when certain of his wines would be delivered, stating that he was “very concerned.” After  
6 receiving no response, Defendant followed up on May 3, 2013. Premier Cru responded, providing  
7 various dates for an anticipated arrival. On the following day, Defendant stated that he knew a  
8 “few people who [he] spoke with who have purchased futures wines from Premier Cru and were  
9 very disappointed and angry because they pain in full for there [sic] wines and waited for 2 to 4  
10 years and never got there [sic] wines.” Defendant further acknowledged that other retailers had  
11 already delivered the 2009 Bordeaux’s to their clients over a year earlier, including on his own  
12 orders. Defendant further stated that “[t]here is no reason why a futures wine should not be  
13 delivered within 2 years after its [sic] purchased and released unless Premier Cru is selling wines  
14 more then they bought and promising wines that are never there to begin with.”

15         22. Defendant continued to request information regarding the delivery of his wines  
16 from at least December 2013 through April 2014 to no avail. In May 16, 2014, Defendant began  
17 to threaten to contact his attorney about filing suit and to “notify [his] friends at CNN news about  
18 Pemi[e]r Cru and its business practice.” Defendant reiterated that he was aware of other  
19 customers having the same issue and had “sued Premier Cru for this exact reason.” When  
20 Defendant’s wine had not arrived by the June 2014 agreed date, Defendant gave a deadline of  
21 December 2014 for the arrival of all remaining wine ordered. If Premier Cru did not deliver wines  
22 by that time, the Defendant stated he wanted “a full refund based on current wine prices selling in  
23 the market place.”

24         23. Premier Cru did not meet the December deadline to deliver Defendant’s remaining  
25 wines. During December 2014, Defendant sent several emails to Premier Cru requesting  
26 information on his wines. On December 11, 2014, Defendant stated that he did not “have a good  
27 feeling about what is going on with [his] wines.”  
28

1           24.     During February 2015, Premier Cru agreed that it would pay \$52,000.00 to  
2 Defendant for the undelivered wines. However, Premier Cru delayed in making payment as well.  
3 On March 2, 2015, Defendant emailed to confirm that he would “get [his] funds by tomorrow as  
4 per [the] agreement \$52,000.” On Wednesday, March 4, 2015, after Premier Cru failed to make  
5 payment, the Defendant stated that his “attorney will file a class action lawsuit with other  
6 members” and “make sure [his] case gets all the national attention” if the funds were not received  
7 by Friday. On March 11, 2015, Defendant again asked when he would get his payment. On  
8 March 16, 2015, Premier Cru told Defendant a \$10,000 wire was sent, and that “the balance is to  
9 be paid via wire by Friday.” On March 17, 2015, the Defendant sent the following email:

10           **From:**                     GREG K <gregsfishing@hotmail.com>  
11           **Sent:**                     Tuesday, March 17, 2015 1:00 AM  
12           **To:**                       Mederick Ravel  
13           **Subject:**                NO FUNDS HAVE BEEN WIRED

14           One more time the lies continue on and on . There is NO \$10.000 wire into my account today. I ,am trying not  
15           too get any more upset then I,am now . You have the owner of Premier Cru contact my attorney . His Name is  
16           Gene Alkana . You guys are really very dishonest .

17           This Friday hell will brake loose if I dont get paid. This is it Mederick. We will file for a major lawsuit . I had  
18           enough of your games.

19           Greg Kurdoglanyan.

20 Defendant would eventually receive payment of \$52,000.00 in two installments: (a) a \$45,000.00  
21 check which was cashed on or about March 25, 2017; and (b) a \$7,000 check that was cashed on  
22 or about April 23, 2015. Both of these payments were made at a time when Premier Cru’s bank  
23 records indicate that numerous checks were being returned for “non-sufficient funds.”

### 24           **III.     Badges of Fraud Related to the Transactions with the Defendant**

25           25.     Multiple badges of fraud are present with respect to the transactions with and  
26 transfers to the Defendant, including the following:

- 27           • Premier Cru was insolvent during the period of the transfers;
- 28           • Premier Cru had incurred, and was continuing to incur, substantial debt while it  
            was making its payments to the Defendant;



- 1 • The true nature of the transactions with the Defendant was concealed. Premier Cru  
2 made false statements indicating that it was contractually entitled to receive the pre-  
3 arrival wine from its suppliers and falsified accounting documentation to cover up  
4 its fraudulent actions. Fox further admitted to making efforts to conceal the fraud  
5 through false statements to customers regarding the status of their orders. As  
6 admitted by Fox, his actions were undertaken with the intent to defraud customers;
- 7 • The transfers were made while Premier Cru was under threat of potential lawsuits.  
8 Had Premier Cru's creditors discovered the fraud, Premier Cru and its principals  
9 would have been subject to numerous lawsuits. In fact, Premier Cru's customers  
10 repeatedly and regularly threatened the company with lawsuits where pre-arrival  
11 wine was not delivered, and in some instances, actually filed suit;
- 12 • Premier Cru removed and concealed assets. Fox admitted that, in the face of  
13 customer complaints, he caused Premier Cru to deliver wine to the complaining  
14 customers that was paid for by other customers. Furthermore, Fox caused Premier  
15 Cru to transfer large sums for his personal benefit as further described in his plea  
16 agreement;
- 17 • Premier Cru incurred the obligations and made the transfers described herein for  
18 less than reasonably equivalent value;
- 19 • As described in more detail above, the overall existence and cumulative effect of  
20 the pattern, series of transactions, and Premier Cru's course of conduct indicate the  
21 transactions with the Defendant were designed to defraud creditors. Premier Cru  
22 incurred debt and faced financial difficulties, and as a result, entered into the  
23 transactions with the Defendant and other customers in order to further the fraud;
- 24 • The general chronology of events and the transactions under inquiry indicate the  
25 intent to defraud. Premier Cru entered into pre-arrival wine sales without having  
26 the underlying right to receive the wine from its suppliers. The purpose of the  
27 transactions was to provide liquidity to fuel the fraud and for Fox's improper  
28 diversions and embezzlement. Moreover, Premier Cru's entry into fraudulent pre-  
arrival wine sales naturally increased based upon its need to enter into more and  
more fraudulent transactions to pay for prior obligations;
- Premier Cru's conduct was both exceptional and peculiar. Such conduct included  
falsifying accounting documentation, making false statements to customers, and  
generally utilizing payments from later customers to fulfill obligations owed to  
prior customers;
- Premier Cru made false statements, concealed facts, and operated under false  
pretenses. Among other things, Premier made misrepresentations concerning the  
following: (a) its financial condition; (b) its contractual relationships with suppliers  
and its right to receive the wines in question; (c) its inventory balances; and (d) the  
purported reason for delays in wine delivery;

- The transactions with the customers for the fraudulent wine transactions, including the Defendant, were questionable and not in ordinary course for a legitimate business. Companies such as Premier Cru do not intentionally misrepresent their inventory and contractual purchases from their vendors or alter documents to support sales;
- Premier Cru entered into the transactions involved in the fraud under secrecy and haste, and the transactions were unusual. Premier Cru disguised its pre-arrival sales using falsified documentation and misrepresentations to its customers. Furthermore, Premier Cru acted with haste in fulfilling fraudulent orders for those customers that complained repeatedly or forcefully;
- Premier Cru was aware of its creditors' claims against the company and that Premier Cru was incapable of paying those claims.

### **CLAIMS FOR RELIEF**

#### **Count I – Actual Intent Fraudulent Transfer Under 11 U.S.C. § 548(a)(1)(A) (Wine and Cash Transfers)**

26. The Trustee re-alleges and fully incorporates the allegations pleaded in the preceding paragraphs as if fully set forth herein.

27. The Debtor presently has one or more creditors whose claim arose either before or after the transfers to the Defendant.

28. Premier Cru transferred the at least 33 bottles of wine to the Defendant in the two years prior to the Petition Date (the “**Wine Transfers**”). The 548 Wine Transfers are more fully described in Exhibit A, which is attached hereto.

29. In addition to the 548 Wine Transfers, Premier Cru made the following transfers to the Defendant from its bank account (the “**Cash Transfers**”):

<b>Check Date</b>	<b>Amount</b>
3/16/2015	\$45,000.00
4/9/2015	\$7,000.00

30. The 548 Wine Transfers and the 548 Cash Transfers (collectively, the “**Transfers**”) were made within two years of the Petition Date.

1           31. The aggregate amount of the Transfers may be in excess of the above-stated  
2 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
3 of the scheme are ascertained.

4           32. The Transfers were made as a part of the fraud at Premier Cru. Premier Cru  
5 entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the  
6 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham  
7 transactions provided Premier Cru with the funds it required to satisfy already existing obligations  
8 that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional  
9 transactions with other customers at a later time that ultimately provided the company with the  
10 funds necessary to purchase wine for the Transfers. This pattern of conduct of using new money  
11 to fund the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby  
12 funds received from later fraudulent transactions were used to fund prior obligations.

13           33. Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its  
14 creditors through the fraudulent scheme. Therefore, the Transfers were made with the actual  
15 intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or  
16 after the date of the transfer.

17           34. As stated above, there are a multitude of badges of fraud present with respect to the  
18 transactions with the Defendant. The existence and sheer number of the badges of fraud present in  
19 this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering  
20 into and making the Transfers.

21           35. Defendant was the initial transferee of the Transfers as the Defendant received the  
22 wine and funds transferred directly from Premier Cru.

23           36. Pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550, the Trustee is entitled to judgment  
24 avoiding and recovering the value of the Transfers from the Defendant.

25                           **Count II – Actual Intent Voidable Transfer**  
26                           **Under California Civil Code § 3439.04(a)(1) et seq.; 11 U.S.C. §§ 544 and 550**  
27                           **(Wine and Cash Transfers)**

28           37. The Trustee re-alleges and fully incorporates the allegations pleaded in the  
preceding paragraphs as if fully set forth herein.

1           38.     The Debtor presently has one or more creditors whose claim arose either before or  
2 after the transfers to the Defendant.

3           39.     Premier Cru transferred the Transfers to the Defendant as detailed above.

4           40.     The Transfers were made within seven years of the Petition Date.

5           41.     The aggregate amount of the Transfers may be in excess of the above-stated  
6 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
7 of the scheme are ascertained.

8           42.     The Transfers were made as a part of the fraud at Premier Cru. Premier Cru  
9 entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the  
10 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham  
11 transactions provided Premier Cru with the funds it required to satisfy already existing obligations  
12 that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional  
13 transactions with other customers at a later time that ultimately provided the company with the  
14 funds necessary to purchase wine for the Transfers. This pattern of conduct of using new money  
15 to fund the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby  
16 funds received from later fraudulent transactions were used to fund prior obligations.

17           43.     Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its  
18 creditors through the fraudulent scheme. Therefore, the Transfers were made with the actual  
19 intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or  
20 after the date of the transfer.

21           44.     As stated above, there are a multitude of badges of fraud present with respect to the  
22 transactions with the Defendant. The existence and sheer number of the badges of fraud present in  
23 this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering  
24 into and making the Transfers.

25           45.     Defendant was the initial transferee of the Transfers as the Defendant received the  
26 wine and funds transferred directly from Premier Cru.

1           46. Pursuant to California Civil Code § 3439.04(a)(1) et seq. and 11 U.S.C. §§ 544 &  
2 550, the Trustee is entitled to judgment avoiding and recovering the value of the Transfers from  
3 the Defendant.

4                                   **Count III – Actual Intent Voidable Transfer**  
5                                   **Under California Civil Code § 3439.04(a)(1) et seq.; 11 U.S.C. §§ 544 and 550**  
6                                   **(Obligations to Defendant)**

7           47. The Trustee re-alleges and fully incorporates the allegations pleaded in the  
8 preceding paragraphs as if fully set forth herein.

9           48. The Debtor presently has one or more creditors whose claim arose either before or  
10 after the transfers to the Defendant.

11           49. Premier Cru incurred obligations to the Defendant relating to 19 bottles of wine  
12 during the seven years prior to the Petition Date (the “**Obligations**”). The Obligations are more  
13 fully described in Exhibit B, which is attached hereto.

14           50. The Obligations were incurred within seven years of the Petition Date.

15           51. The aggregate amount of the Obligations may be in excess of the above-stated  
16 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
17 of the scheme are ascertained.

18           52. The Obligations were incurred as a part of the fraud at Premier Cru. Premier Cru  
19 entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the  
20 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham  
21 transactions provided Premier Cru with the funds it required to satisfy already existing obligations  
22 that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional  
23 transactions with other customers at a later time that ultimately provided the company with the  
24 funds necessary to satisfy the Obligations. This pattern of conduct of using new money to fund  
25 the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby funds  
26 received from later fraudulent transactions were used to fund prior obligations.

27           53. Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its  
28 creditors through the fraudulent scheme. Therefore, the Obligations were incurred with the actual

1 intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or  
2 after the date of the transfer.

3 54. As stated above, there are a multitude of badges of fraud present with respect to the  
4 transactions with the Defendant. The existence and sheer number of the badges of fraud present in  
5 this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering  
6 into the sales and incurring the Obligations.

7 55. Pursuant to California Civil Code § 3439.04(a)(1) et seq. and 11 U.S.C. §§ 544, the  
8 Trustee is entitled to judgment avoiding the Obligations.

9 **Count IV – Constructive Fraudulent Transfer**  
10 **Under 11 U.S.C. § 548(a)(1)(B)**  
11 **(Wine and Cash Transfers)**

12 56. The Trustee re-alleges and fully incorporates the allegations pleaded in the  
13 preceding paragraphs as if fully set forth herein.

14 57. The Debtor presently has one or more creditors whose claim arose either before or  
15 after the transfers to the Defendant.

16 58. Premier Cru made the Transfers to the Defendant.

17 59. The aggregate amount of the Transfers may be in excess of the above-stated  
18 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
19 of the scheme are ascertained.

20 60. Premier Cru received less than reasonably equivalent value in exchange for the  
21 Transfers.

22 61. The Transfers were made at a time when Premier Cru (a) was insolvent; (b) was  
23 engaged in business or a transaction, or was about to engage in business or a transaction, for which  
24 any property remaining with the debtor was an unreasonably small capital; or (b) intended to  
25 incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts  
26 matured.

27 62. Defendant was the initial transferee of the Transfers as the Defendant received the  
28 wine and funds transferred directly from Premier Cru.

1           63. Pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550, the Trustee is entitled to judgment  
2 avoiding and recovering the value of the Transfers from the Defendant.

3                                   **Count V – Constructive Voidable Transfer**  
4                                   **Under California Civil Code § 3439.04(a)(2) et seq.; 11 U.S.C. §§ 544 and 550**  
5                                   **(Wine and Cash Transfers)**

6           64. The Trustee re-alleges and fully incorporates the allegations pleaded in the  
7 preceding paragraphs as if fully set forth herein.

8           65. The Debtor presently has one or more creditors whose claim arose either before or  
9 after the transfers to the Defendant.

10          66. Premier Cru made the Transfers to the Defendant.

11          67. The aggregate amount of the Transfers may be in excess of the above-stated  
12 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
13 of the scheme are ascertained.

14          68. Premier Cru received less than reasonably equivalent value in exchange for the  
15 Transfers.

16          69. The Transfers were made at a time when Premier Cru (a) was insolvent and/or was  
17 engaged or was about to engage in a business or a transaction for which the remaining assets of the  
18 debtor were unreasonably small in relation to the business or transaction; or (b) intended to incur,  
19 or believed or reasonably should have believed that it would incur, debts beyond its ability to pay  
20 as they became due.

21          70. Defendant was the initial transferee of the Transfers as the Defendant received the  
22 wine and funds transferred directly from Premier Cru.

23          71. Pursuant to California Civil Code § 3439.04(a)(2) et seq. and 11 U.S.C. §§ 544 and  
24 550, the Trustee is entitled to judgment avoiding and recovering the value of the Transfers from  
25 the Defendant.  
26  
27  
28

**Count VI – Constructive Fraudulent Transfer**  
**Under California Civil Code § 3439.04(a)(2) et seq.; 11 U.S.C. §§ 544 and 550**  
**(Obligations to Defendant)**

72. The Trustee re-alleges and fully incorporates the allegations pleaded in the preceding paragraphs as if fully set forth herein.

73. The Debtor presently has one or more creditors whose claim arose either before or after the transfers to the Defendant.

74. Premier Cru incurred the Obligations.

75. The aggregate amount of the Obligations may be in excess of the above-stated amount, and the Trustee may amend his Complaint as and when additional transfers made as a part of the scheme are ascertained.

76. Premier Cru received less than reasonably equivalent value in exchange for the Obligations.

77. The Obligations were incurred at a time when Premier Cru (a) was insolvent and/or 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 (b) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

78. Pursuant to California Civil Code § 3439.04(a)(2) et seq. and 11 U.S.C. § 544, the Trustee is entitled to judgment avoiding the value of the Obligations from the Defendant.

**PRAYER**

Wherefore, the Trustee respectfully requests that the Court enter judgment and grant the following relief against the Defendant:

- Entering an order of judgment avoiding the Obligations and Transfers under 11 U.S.C. § 544 and California Civil Code 3439.04(a)(1);
- Entering an order of judgment avoiding the Obligations and Transfers to the Defendant under 11 U.S.C. § 544 and California Civil Code 3439.04(a)(2);
- Entering an order of judgment avoiding the Transfers to the Defendant under 11 U.S.C. § 548(a)(1)(A);



- Entering an order of judgment avoiding the Transfers to the Defendant under 11 U.S.C. § 548(a)(1)(B);
- Entering an order permitting the Trustee to recover the value of the avoided transfers in an amount to be proven at trial;
- Prejudgment and post-judgment interest as allowed by law; and
- All other relief to which the Trustee is entitled.

Dated: January 5, 2018

DIAMOND MCCARTHY LLP

By: /s/ Kathy Bazoian Phelps

KATHY BAZOIAN PHELPS

Attorneys for Michael Kasolas, Chapter 7  
Trustee for Fox Ortega Enterprises, Inc.  
dba Premier Cru

**Exhibit A**

**Wine Transfers**

<b>CustName</b>	<b>ShipDate</b>	<b>SalesOrder</b>	<b>Description</b>	<b>Qty Shipped</b>	<b>Unit Value</b>	<b>Total Value</b>
GREG KURDOGLANYAN	1/8/2014	SO-0000384056	09 Pontet Canet 3 Liter	1	\$ 730.00	\$ 730.00
GREG KURDOGLANYAN	1/8/2014	SO-0000384056	09 Cos d'Estournel Magnum	2	\$ 480.00	\$ 960.00
GREG KURDOGLANYAN	1/8/2014	SO-0000387729	09 Lynch Bages Magnum	1	\$ 395.00	\$ 395.00
GREG KURDOGLANYAN	1/8/2014	SO-0000387788	09 Lynch Bages Magnum	3	\$ 395.00	\$ 1,185.00
GREG KURDOGLANYAN	1/8/2014	SO-0000387788	09 Lynch Bages 3 Liter	1	\$ 825.00	\$ 825.00
GREG KURDOGLANYAN	1/8/2014	SO-0000388019	09 Cos d'Estournel Magnum	2	\$ 480.00	\$ 960.00
GREG KURDOGLANYAN	1/8/2014	SO-0000408950	04 Roederer Cristal	3	\$ 138.89	\$ 416.67
GREG KURDOGLANYAN	8/27/2014	SO-0000401454	2010 Margaux 3 Liter	1	\$ 5,597.19	\$ 5,597.19
GREG KURDOGLANYAN	8/27/2014	SO-0000402302	2010 Lafite Rothschild 3 Liter	1	\$ 5,499.99	\$ 5,499.99
GREG KURDOGLANYAN	8/27/2014	SO-0000405326	05 Roederer Cristal	1	\$ 179.00	\$ 179.00
GREG KURDOGLANYAN	8/27/2014	SO-0000405502	2010 Margaux 6 Liter	1	\$ 8,640.00	\$ 8,640.00
GREG KURDOGLANYAN	10/15/2014	SO-0000410857	2010 Lafite Rothschild Magnum	1	\$ 2,299.00	\$ 2,299.00
GREG KURDOGLANYAN	2/23/2015	SO-0000401454	2010 Margaux 3 Liter	1	\$ 5,599.99	\$ 5,599.99
				<b>33</b>		<b>\$ 33,286.84</b>

**Exhibit B****Obligations**

<b>Sales Order</b>					
<b>Sales Order</b>	<b>Date</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
SO-0000384056	6/16/2012	09 Pontet Canet 3 Liter	1	\$ 815.00	\$ 815.00
SO-0000384056	6/16/2012	09 Cos d'Estournel Magnum	2	\$ 599.99	\$ 1,199.98
SO-0000387729	7/29/2012	09 Lynch Bages Magnum	1	\$ 289.99	\$ 289.99
SO-0000387788	7/30/2012	09 Lynch Bages Magnum	3	\$ 289.99	\$ 869.97
SO-0000387788	7/30/2012	09 Lynch Bages 3 Liter	1	\$ 575.00	\$ 575.00
SO-0000388019	8/3/2012	09 Cos d'Estournel Magnum	2	\$ 599.99	\$ 1,199.98
SO-0000401454	12/31/2012	2010 Margaux 3 Liter	1	\$ 2,399.00	\$ 2,399.00
SO-0000401454	12/31/2012	2010 Margaux 3 Liter	1	\$ 2,399.00	\$ 2,399.00
SO-0000402302	1/10/2013	2010 Lafite Rothschild 3 Liter	1	\$ 3,225.00	\$ 3,225.00
SO-0000405326	2/16/2013	05 Roederer Cristal	1	\$ 135.00	\$ 135.00
SO-0000405502	2/19/2013	2010 Margaux 6 Liter	1	\$ 4,999.99	\$ 4,999.99
SO-0000408950	3/30/2013	04 Roederer Cristal	3	\$ 139.99	\$ 419.97
SO-0000410857	4/24/2013	2010 Lafite Rothschild Magnum	1	\$ 1,599.99	\$ 1,599.99
			<b>19</b>		<b>\$ 20,127.87</b>