

1 Kathy Bazoian Phelps (148083)
2 **DIAMOND MCCARTHY LLP**
3 1999 Avenue of the Stars, Suite 1100
4 Los Angeles, CA 90067
5 Phone: (310) 651-2997
6 Email: kphelps@diamondmccarthy.com

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

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

15 In re
16 FOX ORTEGA ENTERPRISES, INC., dba
17 PREMIER CRU
18 Debtor.

19 Case No. 16-40050-WJL
20 Chapter 7

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

25 Adversary No. _____

26 vs.
27 PARK SMITH

28 **ORIGINAL COMPLAINT**

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

32 **INTRODUCTION**

33 1. This suit seeks the avoidance and recovery of transfers from Premier Cru to the
34 Defendant as well as the avoidance of certain obligations Premier Cru incurred in the Defendant’s
35 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 Park Smith is an individual and a citizen of New York. Defendant may
12 be served with process at 230 5th Avenue, Suite 1818, New York, New York 10001.

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

4 21. Multiple badges of fraud are present with respect to the transactions with and
5 transfers to the Defendant, including the following:

- 6 • Premier Cru was insolvent during the period of the transfers;
- 7 • Premier Cru had incurred, and was continuing to incur, substantial debt while it
8 was making its payments to the Defendant;
- 9 • The true nature of the transactions with the Defendant was concealed. Premier Cru
10 made false statements indicating that it was contractually entitled to receive the pre-
11 arrival wine from its suppliers and falsified accounting documentation to cover up
12 its fraudulent actions. Fox further admitted to making efforts to conceal the fraud
13 through false statements to customers regarding the status of their orders. As
14 admitted by Fox, his actions were undertaken with the intent to defraud customers;
- 15 • The transfers were made while Premier Cru was under threat of potential lawsuits.
16 Had Premier Cru's creditors discovered the fraud, Premier Cru and its principals
17 would have been subject to numerous lawsuits. In fact, Premier Cru's customers
18 repeatedly and regularly threatened the company with lawsuits where pre-arrival
19 wine was not delivered, and in some instances, actually filed suit;
- 20 • Premier Cru removed and concealed assets. Fox admitted that, in the face of
21 customer complaints, he caused Premier Cru to deliver wine to the complaining
22 customers that was paid for by other customers. Furthermore, Fox caused Premier
23 Cru to transfer large sums for his personal benefit as further described in his plea
24 agreement;
- 25 • Premier Cru incurred the obligations and made the transfers described herein for
26 less than reasonably equivalent value;
- 27 • As described in more detail above, the overall existence and cumulative effect of
28 the pattern, series of transactions, and Premier Cru's course of conduct indicate the
transactions with the Defendant were designed to defraud creditors. Premier Cru
incurred debt and faced financial difficulties, and as a result, entered into the
transactions with the Defendant and other customers in order to further the fraud;
- The general chronology of events and the transactions under inquiry indicate the
intent to defraud. Premier Cru entered into pre-arrival wine sales without having
the underlying right to receive the wine from its suppliers. The purpose of the
transactions was to provide liquidity to fuel the fraud and for Fox's improper
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;

- 1 • Premier Cru’s conduct was both exceptional and peculiar. Such conduct included
2 falsifying accounting documentation, making false statements to customers, and
3 generally utilizing payments from later customers to fulfill obligations owed to
4 prior customers;
- 5 • Premier Cru made false statements, concealed facts, and operated under false
6 pretenses. Among other things, Premier made misrepresentations concerning the
7 following: (a) its financial condition; (b) its contractual relationships with suppliers
8 and its right to receive the wines in question; (c) its inventory balances; and (d) the
9 purported reason for delays in wine delivery;
- 10 • The transactions with the customers for the fraudulent wine transactions, including
11 the Defendant, were questionable and not in ordinary course for a legitimate
12 business. Companies such as Premier Cru do not intentionally misrepresent their
13 inventory and contractual purchases from their vendors or alter documents to
14 support sales;
- 15 • Premier Cru entered into the transactions involved in the fraud under secrecy and
16 haste, and the transactions were unusual. Premier Cru disguised its pre-arrival
17 sales using falsified documentation and misrepresentations to its customers.
18 Furthermore, Premier Cru acted with haste in fulfilling fraudulent orders for those
19 customers that complained repeatedly or forcefully;
- 20 • Premier Cru was aware of its creditors’ claims against the company and that
21 Premier Cru was incapable of paying those claims.

22 **CLAIMS FOR RELIEF**

23 **Count I – Actual Intent Fraudulent Transfer**
24 **Under 11 U.S.C. § 548(a)(1)(A)**
25 **(Wine Transfers)**

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

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

24 24. Premier Cru transferred the at least 156 bottles of wine to the Defendant in the two
25 years prior to the Petition Date (the “**548 Transfers**”). The 548 Transfers are more fully
described in Exhibit A, which is attached hereto.

26 25. The 548 Transfers were made within two years of the Petition Date.

1 26. The aggregate amount of the 548 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 27. The 548 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 548 Transfers. This pattern of conduct of using new
11 money to fund the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud
12 whereby funds received from later fraudulent transactions were used to fund prior obligations.

13 28. Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its
14 creditors through the fraudulent scheme. Therefore, the 548 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 29. 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 548 Transfers.

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

23 31. 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 548 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 Transfers)**

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

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

3 34. Premier Cru transferred the 548 Transfers to the Defendant as detailed above.

4 35. Premier Cru also transferred at least 2030 bottles of wine to the Defendant during
5 the seven years prior to the Petition Date (the “**Additional Wine Transfers**”). The Additional
6 Wine Transfers are more fully described in Exhibit B, which is attached hereto.

7 36. The 548 Transfers and the Additional Wine Transfers (collectively, the “**Total**
8 **Transfers**”) were made within seven years of the Petition Date.

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

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

21 39. Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its
22 creditors through the fraudulent scheme. Therefore, the Total Transfers were made with the actual
23 intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or
24 after the date of the transfer.

25 40. As stated above, there are a multitude of badges of fraud present with respect to the
26 transactions with the Defendant. The existence and sheer number of the badges of fraud present in
27 this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering
28 into and making the Total Transfers.

1 41. Defendant was the initial transferee of the Total Transfers as the Defendant
2 received the wine and funds transferred directly from Premier Cru.

3 42. Pursuant to California Civil Code § 3439.04(a)(1) et seq. and 11 U.S.C. §§ 544 &
4 550, the Trustee is entitled to judgment avoiding and recovering the value of the Total Transfers
5 from the Defendant.

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

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

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

13 45. Premier Cru incurred obligations to the Defendant relating to 1467 bottles of wine
14 during the seven years prior to the Petition Date (the “**Obligations**”). The Obligations are more
15 fully described in Exhibit D, which is attached hereto.

16 46. The Obligations were incurred within seven years of the Petition Date.

17 47. The aggregate amount of the Obligations 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 48. The Obligations were incurred as a part of the fraud at Premier Cru. Premier Cru
21 entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the
22 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham
23 transactions provided Premier Cru with the funds it required to satisfy already existing obligations
24 that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional
25 transactions with other customers at a later time that ultimately provided the company with the
26 funds necessary to satisfy the Obligations. This pattern of conduct of using new money to fund
27 the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby funds
28 received from later fraudulent transactions were used to fund prior obligations.

1 49. Moreover, Fox's plea agreement evidences Premier Cru's intent to defraud its
2 creditors through the fraudulent scheme. Therefore, the Obligations were incurred with the actual
3 intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or
4 after the date of the transfer.

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

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

11 **Count IV – Constructive Fraudulent Transfer**
12 **Under 11 U.S.C. § 548(a)(1)(B)**
13 **(Wine Transfers)**

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

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

18 54. Premier Cru made the 548 Transfers to the Defendant.

19 55. The aggregate amount of the 548 Transfers may be in excess of the above-stated
20 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part
21 of the scheme are ascertained.

22 56. Premier Cru received less than reasonably equivalent value in exchange for the 548
23 Transfers.

24 57. The 548 Transfers were made at a time when Premier Cru (a) was insolvent; (b)
25 was engaged in business or a transaction, or was about to engage in business or a transaction, for
26 which any property remaining with the debtor was an unreasonably small capital; or (b) intended
27 to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts
28 matured.

1 58. Defendant was the initial transferee of the 548 Transfers as the Defendant received
2 the wine and funds transferred directly from Premier Cru.

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

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

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

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

12 62. Premier Cru made the Total Transfers to the Defendant.

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

16 64. Premier Cru received less than reasonably equivalent value in exchange for the
17 Total Transfers.

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

23 66. Defendant was the initial transferee of the Total Transfers as the Defendant
24 received the wine and funds transferred directly from Premier Cru.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
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)**

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

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

70. Premier Cru incurred the Obligations.

71. 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.

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

73. 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.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Entering an order of judgment avoiding the 548 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

548 Wine Transfers

CustName	ShipDate	SalesOrder	Description	Qty		
				Shipped	Unit Value	Total Value
Park Smith	7/18/2014	SO-0000374470	09 Haut Brion	6	\$ 1,001.62	\$ 6,009.72
Park Smith	7/18/2014	SO-0000376139	09 La Mission Haut Brion	6	\$ 721.17	\$ 4,327.02
Park Smith	7/18/2014	SO-0000376139	09 Haut Brion	6	\$ 1,001.62	\$ 6,009.72
Park Smith	7/18/2014	SO-0000378992	2010 Chateauneuf Clos des Papes, Avril	30	\$ 138.99	\$ 4,169.70
Park Smith	7/18/2014	SO-0000378992	2010 Chateauneuf Clos des Papes, Avril	30	\$ 149.95	\$ 4,498.50
Park Smith	7/18/2014	SO-0000378992	2010 Chateauneuf Clos des Papes Magnum	6	\$ 299.99	\$ 1,799.94
Park Smith	7/18/2014	SO-0000430387	2010 Chateauneuf Reservee, Pegau	72	\$ 59.63	\$ 4,293.36
				156		\$ 31,107.96

Exhibit B

Additional Wine Transfers

CustName	ShipDate	SalesOrder	Description	Qty		
				Shipped	Unit Value	Total Value
Park Smith	5/21/2009	SO-0000162118	01 Chateauneuf Felix 3 Lite, Bois de Bou	1	\$ 240.39	\$ 240.39
Park Smith	5/21/2009	SO-0000245411	05 Pichon Baron	12	\$ 113.83	\$ 1,365.96
Park Smith	5/21/2009	SO-0000245411	05 Mouton	12	\$ 516.67	\$ 6,200.04
Park Smith	5/21/2009	SO-0000245411	05 Lafite Rothschild	12	\$ 750.00	\$ 9,000.00
Park Smith	5/21/2009	SO-0000280455	06 Chateauneuf Deux Freres, Usseglio	24	\$ 85.00	\$ 2,040.00
Park Smith	5/21/2009	SO-0000280455	06 Chateauneuf Mon Aieul Mag, Usseglio	36	\$ 161.60	\$ 5,817.60
Park Smith	5/21/2009	SO-0000297708	05 Climens 1/2	24	\$ 54.76	\$ 1,314.24
Park Smith	5/21/2009	SO-0000304790	05 Ch Rayas	60	\$ 178.96	\$ 10,737.60
Park Smith	5/21/2009	SO-0000307077	06 Chateauneuf Combes des , Clos St Jean	24	\$ 55.42	\$ 1,330.08
Park Smith	5/21/2009	SO-0000307077	06 Chateauneuf Combes des , Clos St Jean	24	\$ 55.42	\$ 1,330.08
Park Smith	9/23/2009	SO-0000286435	03 Chateauneuf Reservee Magnum, Pegau	48	\$ 200.32	\$ 9,615.36
Park Smith	9/23/2009	SO-0000306339	07 Chateauneuf Deux Freres, Usseglio	24	\$ 119.53	\$ 2,868.72
Park Smith	9/23/2009	SO-0000318640	07 Chateauneuf Mon Aieul, Usseglio	60	\$ 72.78	\$ 4,366.80
Park Smith	1/28/2010	SO-0000307077	06 Chateauneuf Combes des , Clos St Jean	24	\$ 53.42	\$ 1,282.08
Park Smith	1/28/2010	SO-0000307082	07 Chateauneuf Combes des , Clos St Jean	72	\$ 93.48	\$ 6,730.56
Park Smith	1/28/2010	SO-0000307082	07 Chateauneuf Deus Ex Ma , Clos St Jean	72	\$ 93.48	\$ 6,730.56
Park Smith	1/28/2010	SO-0000325144	07 Chateauneuf V.V Magnum, Grand Veneur	18	\$ 119.53	\$ 2,151.54
Park Smith	1/28/2010	SO-0000325144	07 Chateauneuf Reserve, Clos du Caillou	36	\$ 79.46	\$ 2,860.56
Park Smith	6/23/2010	SO-0000260166	05 Chateauneuf du Pape V.V., Cristia	24	\$ 40.06	\$ 961.44
Park Smith	6/23/2010	SO-0000306339	07 Chateauneuf Deux Freres, Usseglio	12	\$ 145.57	\$ 1,746.84
Park Smith	6/23/2010	SO-0000313614	07 Chateauneuf da Capo, Pegau	6	\$ 265.76	\$ 1,594.56
Park Smith	6/23/2010	SO-0000318640	07 Chateauneuf Mon Aieul, Usseglio	60	\$ 62.77	\$ 3,766.20
Park Smith	6/23/2010	SO-0000326007	07 Chateauneuf Mon Aieul, Usseglio	24	\$ 62.77	\$ 1,506.48
Park Smith	6/23/2010	SO-0000338328	07 Chateauneuf Cornelia Consta, Solitude	33	\$ 69.11	\$ 2,280.63
Park Smith	11/2/2010	SO-0000280455	05 Chateauneuf Pure Mag, Barroche	2	\$ 240.00	\$ 480.00
Park Smith	11/2/2010	SO-0000280455	07 Chateauneuf Pure, Barroche	12	\$ 144.90	\$ 1,738.80
Park Smith	11/2/2010	SO-0000305989	07 Chateauneuf Mon Aieul Magnu, Usseglio	42	\$ 152.25	\$ 6,394.50
Park Smith	11/2/2010	SO-0000313614	07 Chateauneuf da Capo, Pegau	66	\$ 265.76	\$ 17,540.16
Park Smith	11/2/2010	SO-0000326007	07 Chateauneuf Mon Aieul, Usseglio	72	\$ 106.36	\$ 7,657.92
Park Smith	11/2/2010	SO-0000342212	07 Chateauneuf Capo Magnum, Pegau	18	\$ 547.55	\$ 9,855.90
Park Smith	7/13/2011	SO-0000171671	03 Chateauneuf Cuvee Capo Magnum, Pegau	8	\$ 1,146.69	\$ 9,173.52
Park Smith	7/13/2011	SO-0000280455	07 Chateauneuf Pure, Barroche	30	\$ 267.10	\$ 8,013.00
Park Smith	7/13/2011	SO-0000306048	07 Chateauneuf Barbe Rac, Chapoutier	36	\$ 79.39	\$ 2,858.04
Park Smith	7/13/2011	SO-0000306048	07 Chateauneuf Barbe Rac Mag, Chapoutier	18	\$ 324.80	\$ 5,846.40
Park Smith	7/13/2011	SO-0000317053	08 Pichon Lalande	24	\$ 62.00	\$ 1,488.00
Park Smith	7/13/2011	SO-0000352201	07 Chateauneuf Lucile Avril Mag, Durieu	24	\$ 62.77	\$ 1,506.48
Park Smith	10/10/2011	SO-0000363838	09 Chateauneuf V.V., Janasse	96	\$ 77.39	\$ 7,429.44
Park Smith	10/3/2012	SO-0000260166	05 Chateauneuf du Pape V.V., Cristia	24	\$ 107.63	\$ 2,583.12
Park Smith	10/3/2012	SO-0000306048	07 Chateauneuf Barbe Rac Mag, Chapoutier	6	\$ 149.58	\$ 897.48
Park Smith	10/3/2012	SO-0000317053	08 Margaux	12	\$ 550.77	\$ 6,609.24
Park Smith	10/3/2012	SO-0000317053	08 Latour	24	\$ 650.00	\$ 15,600.00
Park Smith	10/3/2012	SO-0000317053	08 Lafite Rothschild	72	\$ 1,000.00	\$ 72,000.00
Park Smith	10/3/2012	SO-0000317053	08 Haut Brion	12	\$ 475.00	\$ 5,700.00
Park Smith	10/3/2012	SO-0000317053	08 Palmer	12	\$ 195.00	\$ 2,340.00
Park Smith	10/3/2012	SO-0000318640	08 Troplong Mondot	12	\$ 95.00	\$ 1,140.00
Park Smith	10/3/2012	SO-0000318640	08 Montrose	24	\$ 99.99	\$ 2,399.76
Park Smith	10/3/2012	SO-0000318640	08 Cos d'Estournel	12	\$ 129.95	\$ 1,559.40
Park Smith	10/3/2012	SO-0000318640	08 Leoville las Cases	24	\$ 149.00	\$ 3,576.00
Park Smith	10/3/2012	SO-0000318640	08 Ducru Beaucaillou	24	\$ 83.47	\$ 2,003.28
Park Smith	10/3/2012	SO-0000357251	07 Cote Rotie La Mouline, Guigal	8	\$ 240.39	\$ 1,923.12
Park Smith	10/3/2012	SO-0000357251	07 Cote Rotie La Turque, Guigal	8	\$ 267.10	\$ 2,136.80

Park Smith	10/3/2012 SO-0000357251	07 Cote Rotie La Landonne, Guigal	8	\$	280.45	\$	2,243.60
Park Smith	10/3/2012 SO-0000375681	09 Pape Clement Blanc	12	\$	119.00	\$	1,428.00
Park Smith	8/16/2013 SO-0000280455	07 Chateauneuf Pure, Barroche	12	\$	267.10	\$	3,205.20
Park Smith	8/16/2013 SO-0000297708	07 Climens 1/2	24	\$	74.79	\$	1,794.96
Park Smith	8/16/2013 SO-0000372824	2010 Chateauneuf Cuvee V.V., Janasse	72	\$	113.52	\$	8,173.44
Park Smith	8/16/2013 SO-0000374470	09 Lynch Bages	12	\$	100.16	\$	1,201.92
Park Smith	8/16/2013 SO-0000374470	09 Montrose	12	\$	409.57	\$	4,914.84
Park Smith	8/16/2013 SO-0000374470	09 Leoville Poyferre	12	\$	190.50	\$	2,286.00
Park Smith	8/16/2013 SO-0000374470	09 La Mission Haut Brion	6	\$	734.52	\$	4,407.12
Park Smith	8/16/2013 SO-0000374470	09 Ducru Beaucaillou	8	\$	193.65	\$	1,549.20
Park Smith	8/16/2013 SO-0000374470	09 Pichon Lalande	8	\$	100.16	\$	801.28
Park Smith	8/16/2013 SO-0000374470	09 Mouton Rothschild	6	\$	734.52	\$	4,407.12
Park Smith	8/16/2013 SO-0000374470	09 Lafite Rothschild	6	\$	1,000.00	\$	6,000.00
Park Smith	8/16/2013 SO-0000374470	09 Latour	6	\$	934.85	\$	5,609.10
Park Smith	8/16/2013 SO-0000375681	09 Pontet Canet	12	\$	291.47	\$	3,497.64
Park Smith	8/16/2013 SO-0000375681	09 l'Evangile	12	\$	240.39	\$	2,884.68
Park Smith	8/16/2013 SO-0000375681	09 Beausejour Duffau	12	\$	401.95	\$	4,823.40
Park Smith	8/16/2013 SO-0000375681	09 Ducru Beaucaillou	4	\$	193.65	\$	774.60
Park Smith	8/16/2013 SO-0000375681	09 Pichon Lalande	4	\$	100.16	\$	400.64
Park Smith	8/16/2013 SO-0000375681	09 Cos d'Estournel	12	\$	231.04	\$	2,772.48
Park Smith	8/16/2013 SO-0000376139	09 Mouton Rothschild	6	\$	734.52	\$	4,407.12
Park Smith	8/16/2013 SO-0000376139	09 Lafite Rothschild	6	\$	1,000.00	\$	6,000.00
Park Smith	8/16/2013 SO-0000376139	09 Latour	6	\$	934.85	\$	5,609.10
Park Smith	8/16/2013 SO-0000377410	2010 Chateauneuf Cuvee V.V., Janasse	72	\$	113.52	\$	8,173.44
Park Smith	8/16/2013 SO-0000378992	2010 Chateauneuf Reservee, Pegau	72	\$	52.50	\$	3,780.00
Park Smith	8/16/2013 SO-0000380718	2010 Chateauneuf Cuvee V.V., Janasse	72	\$	113.52	\$	8,173.44
Park Smith	8/16/2013 SO-0000396913	2010 Chateauneuf Cuvee V.V., Janasse	72	\$	113.52	\$	8,173.44
			2030			\$	395,780.44

Exhibit C

Obligations

Sales Order						
Sales Order	Date	Description	Quantity	Unit Price	Discount	Total Price
SO-0000313614	3/2/2009	07 Chateaufeuf da Capo, Pegau	6	\$250.00	\$30.00	\$1,470.00
SO-0000313614	3/2/2009	07 Chateaufeuf da Capo, Pegau	66	\$250.00	\$330.00	\$16,170.00
SO-0000317053	5/5/2009	08 Pichon Lalande	24	\$55.00	\$26.40	\$1,293.60
SO-0000317053	5/5/2009	08 Margaux	12	\$200.00	\$48.00	\$2,352.00
SO-0000317053	5/5/2009	08 Latour	24	\$195.00	\$93.60	\$4,586.40
SO-0000317053	5/5/2009	08 Lafite Rothschild	72	\$195.00	\$280.80	\$13,759.20
SO-0000317053	5/5/2009	08 Haut Brion	12	\$210.00	\$50.40	\$2,469.60
SO-0000317053	5/5/2009	08 Palmer	12	\$130.00	\$31.20	\$1,528.80
SO-0000318640	6/2/2009	07 Chateaufeuf Mon Aieul, Usseglio	60	\$90.00	\$108.00	\$5,292.00
SO-0000318640	6/2/2009	07 Chateaufeuf Mon Aieul, Usseglio	60	\$90.00	\$108.00	\$5,292.00
SO-0000318640	6/2/2009	08 Troplong Mondot	12	\$65.00	\$15.60	\$764.40
SO-0000318640	6/2/2009	08 Montrose	24	\$65.00	\$31.20	\$1,528.80
SO-0000318640	6/2/2009	08 Cos d'Estournel	12	\$95.00	\$22.80	\$1,117.20
SO-0000318640	6/2/2009	08 Leoville las Cases	24	\$114.00	\$54.72	\$2,681.28
SO-0000318640	6/2/2009	08 Ducru Beaucaillou	24	\$85.00	\$40.80	\$1,999.20
SO-0000325144	9/28/2009	07 Chateaufeuf V.V Magnum, Grand Veneur	18	\$170.00	\$61.20	\$2,998.80
SO-0000325144	9/28/2009	07 Chateaufeuf Reserve, Clos du Caillou	36	\$115.00	\$82.80	\$4,057.20
SO-0000326007	10/13/2009	07 Chateaufeuf Mon Aieul, Usseglio	24	\$95.00	\$45.60	\$2,234.40
SO-0000326007	10/13/2009	07 Chateaufeuf Mon Aieul, Usseglio	72	\$95.00	\$136.80	\$6,703.20
SO-0000338328	6/8/2010	07 Chateaufeuf Cornelia Consta, Solitude	33	\$79.00	\$52.14	\$2,554.86
SO-0000342212	8/31/2010	07 Chateaufeuf Capo Magnum, Pegau	18	\$650.00	\$234.00	\$11,466.00
SO-0000352201	3/11/2011	07 Chateaufeuf Lucile Avril Mag, Durieu	24	\$89.99	\$43.20	\$2,116.56
SO-0000357251	6/8/2011	07 Cote Rotie La Mouline, Guigal	8	\$265.00	\$42.40	\$2,077.60
SO-0000357251	6/8/2011	07 Cote Rotie La Turquie, Guigal	8	\$255.00	\$40.80	\$1,999.20
SO-0000357251	6/8/2011	07 Cote Rotie La Landonne, Guigal	8	\$275.00	\$44.00	\$2,156.00
SO-0000363838	10/5/2011	09 Chateaufeuf V.V., Janasse	96	\$95.00	\$182.40	\$8,937.60
SO-0000372824	1/26/2012	2010 Chateaufeuf Cuvee V.V., Janasse	72	\$100.00	\$144.00	\$7,056.00
SO-0000374470	2/11/2012	09 Lynch Bages	12	\$129.99	\$31.20	\$1,528.68
SO-0000374470	2/11/2012	09 Montrose	12	\$199.99	\$48.00	\$2,351.88
SO-0000374470	2/11/2012	09 Leoville Poyferre	12	\$149.99	\$36.00	\$1,763.88
SO-0000374470	2/11/2012	09 La Mission Haut Brion	6	\$799.99	\$96.00	\$4,703.94
SO-0000374470	2/11/2012	09 Ducru Beaucaillou	8	\$245.00	\$39.20	\$1,920.80
SO-0000374470	2/11/2012	09 Pichon Lalande	8	\$169.99	\$27.20	\$1,332.72
SO-0000374470	2/11/2012	09 Mouton Rothschild	6	\$799.99	\$96.00	\$4,703.94
SO-0000374470	2/11/2012	09 Lafite Rothschild	6	\$1,499.00	\$179.88	\$8,814.12
SO-0000374470	2/11/2012	09 Latour	6	\$1,299.00	\$155.88	\$7,638.12
SO-0000374470	2/11/2012	09 Haut Brion	6	\$899.99	\$108.00	\$5,291.94
SO-0000375681	3/1/2012	09 Pape Clement Blanc	12	\$139.99	\$33.60	\$1,646.28
SO-0000375681	3/1/2012	09 Pontet Canet	12	\$149.99	\$36.00	\$1,763.88
SO-0000375681	3/1/2012	09 l'Evangile	12	\$265.00	\$63.60	\$3,116.40
SO-0000375681	3/1/2012	09 Beausejour Duffau	12	\$189.99	\$45.60	\$2,234.28
SO-0000375681	3/1/2012	09 Ducru Beaucaillou	4	\$245.00	\$19.60	\$960.40
SO-0000375681	3/1/2012	09 Pichon Lalande	4	\$169.99	\$13.60	\$666.36
SO-0000375681	3/1/2012	09 Cos d'Estournel	12	\$297.99	\$71.52	\$3,504.36
SO-0000376139	3/5/2012	09 Mouton Rothschild	6	\$799.99	\$96.00	\$4,703.94
SO-0000376139	3/5/2012	09 Lafite Rothschild	6	\$1,499.00	\$179.88	\$8,814.12
SO-0000376139	3/5/2012	09 Latour	6	\$1,299.00	\$155.88	\$7,638.12
SO-0000376139	3/5/2012	09 La Mission Haut Brion	6	\$799.99	\$96.00	\$4,703.94
SO-0000376139	3/5/2012	09 Haut Brion	6	\$899.99	\$108.00	\$5,291.94
SO-0000377410	3/19/2012	2010 Chateaufeuf Cuvee V.V., Janasse	72	\$100.00	\$144.00	\$7,056.00
SO-0000378992	4/10/2012	2010 Chateaufeuf Reservee, Pegau	72	\$70.00	\$100.80	\$4,939.20
SO-0000378992	4/10/2012	2010 Chateaufeuf Clos des Papes, Avril	30	\$90.00	\$54.00	\$2,646.00

SO-0000378992	4/10/2012	2010 Chateauneuf Clos des Papes, Avril	30	\$90.00	\$54.00	\$2,646.00
SO-0000378992	4/10/2012	2010 Chateauneuf Clos des Papes Magnum	6	\$180.00	\$21.60	\$1,058.40
SO-0000380718	4/30/2012	2010 Chateauneuf Cuvee V.V., Janasse	72	\$110.00	\$158.40	\$7,761.60
SO-0000396913	11/12/2012	2010 Chateauneuf Cuvee V.V., Janasse	72	\$110.00	\$158.40	\$7,761.60
SO-0000430387	12/10/2013	2010 Chateauneuf Reservee, Pegau	72	\$75.00	\$108.00	\$5,292.00
			1467		\$4,916.70	\$240,916.74