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

Special Litigation Counsel for
Michael G. Kasolas, Chapter 7 Trustee
For Fox Ortega Enterprises, Inc.
Dba Premier Cru

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re FOX ORTEGA ENTERPRISES, INC., dba PREMIER CRU Debtor.	Case No. 16-40050-WJL Chapter 7
MICHAEL G. KASOLAS, Chapter 7 Trustee for Fox Ortega Enterprises, Inc. dba Premier Cru Plaintiff vs. PATRICK ALBRIGHT	Adversary No. ___________________ **ORIGINAL COMPLAINT**

Plaintiff Michael G. Kasolas, the Chapter 7 Trustee (the "**Trustee**") for Fox Ortega Enterprises, Inc. dba Premier Cru ("**Premier Cru**" or the "**Debtor**"), brings this adversary proceeding against Patrick Albright ("**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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

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

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

PARTIES

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

10. Defendant Patrick Albright is an individual and a citizen of California. Defendant may be served with process at 10 Spyglass Court, Napa, California 94558.

GENERAL ALLEGATIONS

I. Premier Cru's Operations

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

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

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

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

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

> The term "Pre-Arrival" is applied to wines we have purchased (typically abroad) that have not arrived yet. Depending on the particular wine, the arrival time is typically 6+ months to over two years (in the case of Bordeaux Futures, for example).
>
> Many new releases of highly desirable, limited-production wines (ie – Burgundy, 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 source the wines before they sell out (and at optimal prices). We send an email notification when your wine arrives.

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

II. <u>The Fraud</u>

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

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

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

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

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

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

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

21. Defendant was aware of issues at Premier Cru prior to receiving transfers from the Debtor. For instance, the Defendant had a particularly difficult time in receiving delivery of his 2009 Leroy. On December 11, 2013, Defendant told Fox that he "need[ed] an answer here before [he] pursue[d] legal options." After Fox attempted to blame the delay on a supplier wanting to defer the sale for "tax reasons," Defendant told Fox that it was "probably one of the most absurd excuses [he] ha[d] read in quite some time" and noted that he "bought these wines in july 2002." He also stated the following on December 17, 2013: "The problem is, I was told that you already owned these wines when I purchased them eighteen months ago."

22. As a vendor of wines, Defendant further knew of Premier Cru's practice of not paying its vendors. On October 18, 2011, the parties discussed Premier Cru's outstanding payable to Defendant, and Fox informed Defendant that the "check goes in the mail tomorrow for the first invoice." Clearly, that did not happen. On February 6, 2011, Defendant wrote the following email to Fox concerning payment:

> John -
> One last chance to make this good before I take this take into the public domain.
>
> And to the US Attorney's office . . .
>
> Patrick

III. <u>Badges of Fraud Related to the Transactions with the Defendant</u>

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

- Premier Cru was insolvent during the period of the transfers;
- Premier Cru had incurred, and was continuing to incur, substantial debt while it was making its payments to the Defendant;
- The true nature of the transactions with the Defendant was concealed. Premier Cru made false statements indicating that it was contractually entitled to receive the pre-arrival wine from its suppliers and falsified accounting documentation to cover up its fraudulent actions. Fox further admitted to making efforts to conceal the fraud

through false statements to customers regarding the status of their orders. As admitted by Fox, his actions were undertaken with the intent to defraud customers;

- The transfers were made while Premier Cru was under threat of potential lawsuits. Had Premier Cru's creditors discovered the fraud, Premier Cru and its principals would have been subject to numerous lawsuits. In fact, Premier Cru's customers repeatedly and regularly threatened the company with lawsuits where pre-arrival wine was not delivered, and in some instances, actually filed suit;

- Premier Cru removed and concealed assets. Fox admitted that, in the face of customer complaints, he caused Premier Cru to deliver wine to the complaining customers that was paid for by other customers. Furthermore, Fox caused Premier Cru to transfer large sums for his personal benefit as further described in his plea agreement;

- Premier Cru incurred the obligations and made the transfers described herein for less than reasonably equivalent value;

- As described in more detail above, the overall existence and cumulative effect of 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;

- 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)

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

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

26. Premier Cru transferred the at least 343 bottles of wine to the Defendant in the two years prior to the Petition Date (the "**548 Wine Transfers**"). The 548 Wine Transfers are more fully described in Exhibit A, which is attached hereto.

27. In addition to the 548 Wine Transfers, Premier Cru made the following transfers to the Defendant's credit card (the "**548 Cash Transfers**"):

Date	Card	Amount
11/26/2014	AMEX	$4,118.00
12/29/2014	MC	$14,388.00
6/2/2015	AMEX	$10,799.82

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

29. The aggregate amount of the 548 Transfers 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.

30. The 548 Transfers were made as a part of the fraud at Premier Cru. Premier Cru entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the transactions generated cash through the alleged "sale" of the wine to the Defendant. These sham transactions provided Premier Cru with the funds it required to satisfy already existing obligations that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional transactions with other customers at a later time that ultimately provided the company with the funds necessary to purchase wine for the 548 Transfers. This pattern of conduct of using new money to fund the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby funds received from later fraudulent transactions were used to fund prior obligations.

31. Moreover, Fox's plea agreement evidences Premier Cru's intent to defraud its creditors through the fraudulent scheme. Therefore, the 548 Transfers were made with the actual intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or after the date of the transfer.

32. As stated above, there are a multitude of badges of fraud present with respect to the transactions with the Defendant. The existence and sheer number of the badges of fraud present in this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering into and making the 548 Transfers.

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

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

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

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

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

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

38. Premier Cru also transferred at least 187 bottles of wine to the Defendant during the seven years prior to the Petition Date (the "**Additional Wine Transfers"**). The Additional Wine Transfers are more fully described in Exhibit B, which is attached hereto.

39. In addition to the 548 Transfers and the Additional Wine Transfers, Premier Cru transferred $2,700.00 to the Defendant from its bank account on October 21, 2009 and $2,499.00 to the Defendant's AMEX credit card on May 9, 2013 (collectively, the "**Additional Cash Transfers**").

40. The 548 Transfers, Additional Wine Transfers, and the Additional Cash Transfers (collectively, the "**Total Transfers**") were made within seven years of the Petition Date.

41. The aggregate amount of the Total Transfers 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.

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

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

44. As stated above, there are a multitude of badges of fraud present with respect to the transactions with the Defendant. The existence and sheer number of the badges of fraud present in

this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering into and making the Total Transfers.

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

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

Count III – Actual Intent Fraudulent Transfer
Under 11 U.S.C. § 548(a)(1)(A)
(Obligations to the Defendant)

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

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

49. Premier Cru incurred obligations to transfer at least 109 bottles of wine to the Defendant in the two years prior to the Petition Date (the "**548 Obligations**"). The 548 Obligations are more fully described in Exhibit C, which is attached hereto.

50. The aggregate amount of the 548 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.

51. The 548 Obligations were incurred within two years of the Petition Date.

52. The 548 Obligations were made as a part of the fraud at Premier Cru. Premier Cru entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the transactions generated cash through the alleged "sale" of the wine to the Defendant. These sham transactions provided Premier Cru with the funds it required to satisfy already existing obligations that were part of the fraudulent scheme. Furthermore, Premier Cru entered into additional transactions with other customers at a later time that ultimately provided the company with the funds necessary to satisfy the 548 Obligations. This pattern of conduct of using new money to

fund the fulfillment of earlier obligations constitutes a Ponzi scheme or similar fraud whereby funds received from later fraudulent transactions were used to fund prior obligations.

53. Moreover, Fox's plea agreement evidences Premier Cru's intent to defraud its creditors through the fraudulent scheme. Therefore, the 548 Obligations were incurred with the actual intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to on or after the date of the transfer.

54. As stated above, there are a multitude of badges of fraud present with respect to the transactions with the Defendant. The existence and sheer number of the badges of fraud present in this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering into the sales and incurring the 548 Obligations.

55. Pursuant to 11 U.S.C. §§ 548(a)(1)(A), the Trustee is entitled to judgment avoiding the 548 Obligations.

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

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

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

58. Premier Cru incurred the 548 Obligations as detailed above.

59. Premier Cru also incurred obligations to the Defendant relating to 210 bottles of wine during the seven years prior to the Petition Date (the "**Additional Obligations**"). The Additional Obligations are more fully described in Exhibit D, which is attached hereto.

60. The 548 Obligations and the Additional Obligations (collectively, the "**Total Obligations**") were incurred within seven years of the Petition Date.

61. The aggregate amount of the Total 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.

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

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

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

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

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

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

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

68. Premier Cru made the 548 Transfers to the Defendant.

69. The aggregate amount of the 548 Transfers 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.

70. Premier Cru received less than reasonably equivalent value in exchange for the 548 Transfers.

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

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

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

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

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

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

76. Premier Cru made the Total Transfers to the Defendant.

77. The aggregate amount of the Total Transfers 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.

78. Premier Cru received less than reasonably equivalent value in exchange for the Total Transfers.

79. The Total Transfers were made 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.

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

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

Count VII – Constructive Fraudulent Transfer
Under 11 U.S.C. § 548(a)(1)(B)
(Obligations to Defendant)

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

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

84. Premier Cru incurred the 548 Obligations.

85. The aggregate amount of the 548 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.

86. Premier Cru received less than reasonably equivalent value in exchange for the 548 Obligations.

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

88. Pursuant to 11 U.S.C. §§ 548(a)(1)(B), the Trustee is entitled to judgment avoiding the 548 Obligations.

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

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

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

91. Premier Cru incurred the Total Obligations.

92. The aggregate amount of the Total 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.

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

94. The Total 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.

95. 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 Total 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 Total 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 Total 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 Obligations and 548 Transfers to the Defendant under 11 U.S.C. § 548(a)(1)(A);
- Entering an order of judgment avoiding the 548 Obligations and 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
Patrick Albright	1/21/2014	SO-0000434439	06 Barolo Riserva Monfortino, G. Contern	6	$ 375.00	$ 2,250.00
Patrick Albright	2/18/2014	SO-0000437254	2011 Montrachet, Leflaive	1	$ 2,990.00	$ 2,990.00
Patrick Albright	2/19/2014	SO-0000386899	09 Romanee St Vivant, Leroy	1	$ 1,769.00	$ 1,769.00
Patrick Albright	2/19/2014	SO-0000386899	09 Richebourg, Leroy	13	$ 2,122.00	$ 27,586.00
Patrick Albright	2/19/2014	SO-0000386899	09 Latricieres Chambertin, Leroy	3	$ 1,499.00	$ 4,497.00
Patrick Albright	3/25/2014	SO-0000440051	88 Lafite	5	$ 600.00	$ 3,000.00
Patrick Albright	6/3/2014	SO-0000445443	01 Montrachet, DRC	2	$ 3,369.00	$ 6,738.00
Patrick Albright	7/22/2014	SO-0000450087	85 Romanee Conti	1	$ 10,600.00	$ 10,600.00
Patrick Albright	7/22/2014	SO-0000450087	2010 Romanee Conti (slight stain)	1	$ 10,500.00	$ 10,500.00
Patrick Albright	10/2/2014	SO-0000386899	09 Richebourg, Leroy	10	$ 1,736.15	$ 17,361.50
Patrick Albright	10/2/2014	SO-0000414506	09 Musigny 3 Liter, Drouhin	1	$ 5,219.70	$ 5,219.70
Patrick Albright	10/2/2014	SO-0000444907	88 Mouton	5	$ 280.00	$ 1,400.00
Patrick Albright	10/2/2014	SO-0000444907	88 Cheval Blanc	3	$ 270.00	$ 810.00
Patrick Albright	10/2/2014	SO-0000446673	2000 Leoville Barton	12	$ 105.00	$ 1,260.00
Patrick Albright	10/2/2014	SO-0000449682	2011 La Tache Magnum	1	$ 4,700.00	$ 4,700.00
Patrick Albright	10/2/2014	SO-0000451444	02 Lafite Rothschild	6	$ 480.00	$ 2,880.00
Patrick Albright	10/2/2014	SO-0000454357	09 Puligny Enseigneres, Coche-Dury	2	$ 240.00	$ 480.00
Patrick Albright	11/24/2014	SO-0000461226	2011 Opus 1	24	$ 162.00	$ 3,888.00
Patrick Albright	11/26/2014	SO-0000386899	09 Romanee St Vivant, Leroy	1	$ 1,950.00	$ 1,950.00
Patrick Albright	11/26/2014	SO-0000386899	09 Latricieres Chambertin, Leroy	2	$ 1,595.00	$ 3,190.00
Patrick Albright	11/26/2014	SO-0000386899	09 Richebourg, Leroy	16	$ 1,736.15	$ 27,778.40
Patrick Albright	1/22/2015	SO-0000466847	2012 Clos de la Roche 3 Liter, Dujac	1	$ 2,350.00	$ 2,350.00
Patrick Albright	1/22/2015	SO-0000466846	2012 Montrachet, Leflaive	1	$ 2,950.00	$ 2,950.00
Patrick Albright	2/2/2015	SO-0000468337	09 Bonnes Mares, Roumier	14	$ 761.23	$ 10,657.22
Patrick Albright	3/16/2015	SO-0000470295	2011 Lail Cabernet J. Daniel Cuvee	12	$ 103.33	$ 1,239.96
Patrick Albright	3/16/2015	SO-0000472647	89 Haut Brion (OWC - PERFECT)	12	$ 950.00	$ 11,400.00
				343		**$ 169,444.78**

Exhibit B

Additional Wine Transfers

CustName	ShipDate	SalesOrder	Description	Qty Shipped	Unit Value	Total Value
Patrick Albright	9/10/2009	SO-0000269447	05 Haut Brion	24	$ 727.85	$ 17,468.40
Patrick Albright	3/29/2010	SO-0000334827	49 Musigny V.V. (mint), Vogue	1	$ 5,600.00	$ 5,600.00
Patrick Albright	5/16/2011	SO-0000351199	09 Graacher Himmelreich Spa, W. Schaefer	12	$ 22.83	$ 273.96
Patrick Albright	5/16/2011	SO-0000351199	09 Graacher Domp Ausle #11 W. Schaefer	8	$ 44.50	$ 356.00
Patrick Albright	10/10/2012	SO-0000345890	09 Petrus	12	$ 1,400.00	$ 16,800.00
Patrick Albright	10/24/2012	SO-0000345890	09 Petrus	12	$ 1,400.00	$ 16,800.00
Patrick Albright	1/9/2013	SO-0000400452	09 Angelus 6 Liter	2	$ 2,225.00	$ 4,450.00
Patrick Albright	2/4/2013	SO-0000394623	09 Clos de la Roche V.V. Magnum, Ponsot	11	$ 970.14	$ 10,671.54
Patrick Albright	2/4/2013	SO-0000395333	09 Clos de la Roche V.V. Magnum, Ponsot	6	$ 970.14	$ 5,820.84
Patrick Albright	2/11/2013	SO-0000390867	07 Harlan Estate	6	$ 899.99	$ 5,399.94
Patrick Albright	3/8/2013	SO-0000344445	09 Petrus 6 Liter	1	$ 22,000.00	$ 22,000.00
Patrick Albright	4/2/2013	SO-0000408240	02 Romanee Conti	3	$ 9,500.00	$ 28,500.00
Patrick Albright	5/7/2013	SO-0000395333	2010 Chateauneuf Reservee, Pegau	60	$ 52.50	$ 3,150.00
Patrick Albright	5/7/2013	SO-0000405780	2010 Clos de la Roche 1/2, Dujac	6	$ 234.00	$ 1,404.00
Patrick Albright	5/7/2013	SO-0000409954	2010 Chambolle Amoureuses, Roumier	1	$ 700.00	$ 700.00
Patrick Albright	9/10/2013	SO-0000422287	82 Lafite	5	$ 1,800.00	$ 9,000.00
Patrick Albright	9/10/2013	SO-0000422288	82 Lafite (VHS)	1	$ 1,800.00	$ 1,800.00
Patrick Albright	9/10/2013	SO-0000422553	82 Lafite (VHS)	2	$ 1,800.00	$ 3,600.00
Patrick Albright	9/24/2013	SO-0000422289	2000 Mouton	12	$ 880.00	$ 10,560.00
Patrick Albright	12/11/2013	SO-0000427804	05 Clos de la Roche Magnum, Ponsot	1	$ 1,500.00	$ 1,500.00
Patrick Albright	12/23/2013	SO-0000413836	2010 Cheval Blanc 6 Liter	1	$ 13,950.00	$ 13,950.00
				187		**$ 179,804.68**

Exhibit C

548 Obligations

Sales Order	Sales Order Date	Description	Quantity	Unit Price	Total Price
SO-0000434439	1/18/2014	06 Barolo Riserva Monfortino, G. Contern	6	$ 425.00	$ 2,550.00
SO-0000437254	2/12/2014	2011 Montrachet, Leflaive	1	$ 2,999.99	$ 2,999.99
SO-0000440051	3/22/2014	88 Lafite	5	$ 468.75	$ 2,343.75
SO-0000444907	5/13/2014	88 Mouton	5	$ 299.99	$ 1,499.95
SO-0000444907	5/13/2014	88 Cheval Blanc	3	$ 299.99	$ 899.97
SO-0000445443	5/22/2014	01 Montrachet, DRC	2	$ 2,975.00	$ 5,950.00
SO-0000446673	6/7/2014	2000 Leoville Barton	12	$ 125.99	$ 1,511.88
SO-0000449682	7/15/2014	2011 La Tache Magnum	1	$ 5,500.00	$ 5,500.00
SO-0000450087	7/19/2014	85 Romanee Conti	1	$ 8,999.00	$ 8,999.00
SO-0000450087	7/19/2014	2010 Romanee Conti (slight stain)	1	$ 8,999.00	$ 8,999.00
SO-0000451444	8/2/2014	02 Lafite Rothschild	6	$ 499.99	$ 2,999.94
SO-0000454357	9/3/2014	09 Puligny Enseigneres, Coche-Dury	2	$ 299.99	$ 599.98
SO-0000461226	11/15/2014	2011 Opus 1	24	$ 185.00	$ 4,440.00
SO-0000466847	1/13/2015	2012 Clos de la Roche 3 Liter, Dujac	1	$ 2,999.99	$ 2,999.99
SO-0000466846	1/13/2015	2012 Montrachet, Leflaive	1	$ 3,699.00	$ 3,699.00
SO-0000468337	1/30/2015	09 Bonnes Mares, Roumier	14	$ 879.20	$ 12,308.80
SO-0000470295	2/15/2015	2011 Lail Cabernet J. Daniel Cuvee	12	$ 84.49	$ 1,013.88
SO-0000472647	3/9/2015	89 Haut Brion (OWC - PERFECT)	12	$ 1,099.99	$ 13,199.88
			109		**$ 82,515.01**

Exhibit D

Additional Obligations

Sales Order	Sales Order Date	Description	Quantity	Unit Price	Total Price
SO-0000334827	3/24/2010	49 Musigny V.V. (mint), Vogue	1	$ 2,499.00	$ 2,499.00
SO-0000344445	10/23/2010	09 Petrus 6 Liter	1	$ 12,999.00	$ 12,999.00
SO-0000345890	11/24/2010	09 Petrus	12	$ 1,499.00	$ 17,988.00
SO-0000345890	11/24/2010	09 Petrus	12	$ 1,499.00	$ 17,988.00
SO-0000351199	2/23/2011	09 Graacher Himmelreich Spa, W. Schaefer	12	$ 21.99	$ 263.88
SO-0000351199	2/23/2011	09 Graacher Domp Ausle #11 W. Schaefer	8	$ 42.99	$ 343.92
SO-0000386899	7/19/2012	09 Romanee St Vivant, Leroy	1	$ 999.99	$ 999.99
SO-0000386899	7/19/2012	09 Richebourg, Leroy	13	$ 1,099.00	$ 14,287.00
SO-0000386899	7/19/2012	09 Latricieres Chambertin, Leroy	3	$ 999.99	$ 2,999.97
SO-0000386899	7/19/2012	09 Richebourg, Leroy	10	$ 1,099.00	$ 10,990.00
SO-0000386899	7/19/2012	09 Romanee St Vivant, Leroy	1	$ 999.99	$ 999.99
SO-0000386899	7/19/2012	09 Latricieres Chambertin, Leroy	2	$ 999.99	$ 1,999.98
SO-0000386899	7/19/2012	09 Richebourg, Leroy	16	$ 999.99	$ 15,999.84
SO-0000390867	9/4/2012	07 Harlan Estate	6	$ 525.00	$ 3,150.00
SO-0000394623	10/17/2012	09 Clos de la Roche V.V. Magnum, Ponsot	11	$ 599.99	$ 6,599.89
SO-0000395333	10/26/2012	09 Clos de la Roche V.V. Magnum, Ponsot	6	$ 699.99	$ 4,199.94
SO-0000395333	10/26/2012	2010 Chateauneuf Reservee, Pegau	60	$ 39.99	$ 2,399.40
SO-0000400452	12/27/2012	09 Angelus 6 Liter	2	$ 1,899.99	$ 3,799.98
SO-0000405780	2/22/2013	2010 Clos de la Roche 1/2, Dujac	6	$ 229.99	$ 1,379.94
SO-0000408240	3/23/2013	02 Romanee Conti	3	$ 9,500.00	$ 28,500.00
SO-0000409954	4/12/2013	2010 Chambolle Amoureuses, Roumier	1	$ 899.99	$ 899.99
SO-0000413836	5/24/2013	2010 Cheval Blanc 6 Liter	1	$ 4,999.99	$ 4,999.99
SO-0000414506	6/1/2013	09 Musigny 3 Liter, Drouhin	1	$ 3,699.00	$ 3,699.00
SO-0000422287	9/6/2013	82 Lafite	5	$ 2,199.00	$ 10,995.00
SO-0000422288	9/6/2013	82 Lafite (VHS)	1	$ 1,999.00	$ 1,999.00
SO-0000422289	9/6/2013	2000 Mouton	12	$ 1,099.00	$ 13,188.00
SO-0000422553	9/9/2013	82 Lafite (VHS)	2	$ 1,999.00	$ 3,998.00
SO-0000427804	11/12/2013	05 Clos de la Roche Magnum, Ponsot	1	$ 1,799.00	$ 1,799.00
			210		**$ 191,965.70**