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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 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 In re  
16 FOX ORTEGA ENTERPRISES, INC., dba  
17 PREMIER CRU  
18 Debtor.  
19  
20 MICHAEL G. KASOLAS, Chapter 7 Trustee  
21 for Fox Ortega Enterprises, Inc. dba Premier  
22 Cru  
23 Plaintiff  
24 vs.  
25 WILLIAM GLADSTONE  
26 INTERNATIONAL MARKETING INC. d/b/a  
27 WILLIAM GLADSTONE IMPORTS

Case No. 16-40050-WJL  
Chapter 7

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

**ORIGINAL COMPLAINT**

28  
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 William Gladstone International Marketing, Inc. d/b/a William Gladstone  
32 Imports (“**Defendant**”) and alleges as follows:

1

**INTRODUCTION**

2           1.       This suit seeks the avoidance and recovery of transfers from Premier Cru to the  
3 Defendant as well as the avoidance of certain obligations Premier Cru incurred in the Defendant’s  
4 favor. These transfers and obligations were part of a fraudulent scheme involving the sale of wine  
5 that caused the loss of tens of millions of dollars. At the time of the Premier Cru’s bankruptcy,  
6 approximately 4,500 customers had not received pre-arrival wine for which that had already paid,  
7 with losses reaching \$45 million.

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

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

19

**JURISDICTION AND VENUE**

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

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

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

3 7. The Defendant's forum-related activities give rise to the action before the Court.  
4 The Defendant purposefully directed its activities and consummated the transactions described  
5 below within California, thereby invoking the benefits and protection of California law. As  
6 reflected in the applicable terms and conditions for the transactions described below, "[a]ny wine  
7 sold to you by Premier Cru is sold in California, and title passes to you, the buyer, in California."  
8 Furthermore, the Trustee's claims arise out of or relate to the Defendant's forum-related activities.

9 8. This Court is the proper venue for this adversary proceeding pursuant to 28 U.S.C.  
10 § 1409(a) because the Debtor's chapter 7 case is pending in this judicial district.

## 11 **PARTIES**

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

16 10. Defendant William Gladstone International Marketing is a corporation formed  
17 under the laws of Hawaii. Defendant may be served with process through its registered agent,  
18 William Gladstone, at 501 Sumner Street, #502, Honolulu, Hawaii 96817.

## 19 **GENERAL ALLEGATIONS**

### 20 **I. Premier Cru's Operations**

21 11. Premier Cru was founded in 1980 by John Fox ("**Fox**") and Hector Ortega as a  
22 seller of top-quality wines in the Bay Area. During all relevant times, Fox owned equity in  
23 Premier Cru and served as its President. Fox made all significant business decisions for Premier  
24 Cru. Fox was the sole manager of the company's finances, including payment of Premier Cru's  
25 bills and expenses, as well as obtaining business loans and financing from banks or individuals to  
26 fund Premier Cru's operations.  
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1           12. Premier Cru originally operated out of a small storefront in Oakland with a focus  
2 on hard to find and limited production offerings. As Premier Cru’s popularity grew, the company  
3 determined that it would begin purchasing its supply of wine from sources overseas and obtained  
4 its own import license. Premier Cru touted that it could eliminate the middle man while  
5 simultaneously increasing the allocation of hard to locate wines by supposedly sourcing its  
6 inventory directly.

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

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

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

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

27           Many new releases of highly desirable, limited-production wines (ie – Burgundy,  
28           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

1 source the wines before they sell out (and at optimal prices). We send an email  
2 notification when your wine arrives.

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

4 **II. The Fraud**

5 16. On or about August 11, 2016, Fox entered into a guilty plea in guilty plea in his  
6 criminal case [*United States v. John Fox*, Case No. CR 16-281 JD, N.D. Cal] and executed a Plea  
7 Agreement in which he admitted that he operated the Debtor as a fraudulent scheme. In his plea  
8 agreement, Fox admitted that he “devised a scheme to defraud, and a scheme for obtaining  
9 property by means of false and fraudulent pretenses, representations and omissions, through  
10 Premier Cru’s sale of pre-arrival wine.” Fox further admitted that his fraudulent conduct began as  
11 early as 1993 or 1994. Through Fox’s actions, Premier Cru engaged in a massive fraud whereby  
12 funds derived from later fraudulent wine sales were used to pay obligations that arose from earlier  
13 fraudulent transactions.

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

1 obligations for its pre-arrival customers. Fox further admitted that “customers paid Premier Cru  
2 for wine that [he] knew Premier Cru could not deliver to them and which they never received” and  
3 that his false statements were made “with the intent to defraud Premier Cru’s customers.” At the  
4 time of the bankruptcy, approximately 4,500 customers had not received pre-arrival wine for  
5 which that had already paid.

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

20 19. Prior to 2015, Premier Cru was able to conceal its fraud from its creditors.  
21 According to Fox, his efforts to conceal the fraud included (a) offering falsified excuses and  
22 promises for wine that Premier Cru would not be delivered; (b) delivering wine that was  
23 purchased by other customers; and (c) purchasing wine at retail prices for use in fulfilling  
24 outstanding orders. Fox admitted that he “took these and other actions to “conceal [Premier  
25 Cru’s] ongoing fraud, to lull customers into a false sense that Premier Cru was a legitimate  
26 business, to cause [its] customers to continue to purchase wine from Premier Cru, and to prevent  
27 them from complaining to law enforcement authorities.” Furthermore, Premier Cru concealed its  
28

1 fraud by making cash disbursements to customers whose orders were not fulfilled, often in  
2 amounts greater than what customers had originally paid for their alleged pre-arrival orders.

3 20. The sales and subsequent transfers to the Defendant were made as a part of the  
4 fraud and with the actual intent to hinder, delay, or defraud Premier Cru's creditors. Premier Cru  
5 made the transfers and incurred the obligations with the purpose of concealing the ongoing fraud,  
6 lulling customers into a false sense that Premier Cru was a legitimate business, causing customers  
7 to continue to purchase wine from Premier Cru, and preventing customers from complaining to  
8 law enforcement authorities by paying them cash settlements.

9 21. The Defendant was aware of issues with Premier Cru prior to receiving transfers.  
10 For instance, on November 10, 2010, Denise Oullette, the Defendant's employee, wrote to  
11 Premier Cru with concerns about the 2007 Lafite that the Defendant ordered, including questions  
12 as to whether the wine existed:

13 We have yet to receive any valid proof that the 35 cases of 2007 Lafite wines that  
14 we have purchased from Premier Cru exist. We have been given numerous  
15 stories and promises of when these wines will arrive. You had confirmed with  
16 me last week that Seabrooks had picked up 5 cases of the 2007 Lafite in the UK  
17 with an additional 10 cases arriving this week and now you're telling me that you  
18 don't know where these cases are. William was given the same story 2 weeks  
19 ago. That is unacceptable. We've spoken with Seabrooks. If they had picked up  
20 those cases last week, they would now be available. We cannot continue to  
21 believe these broken promises. I've discussed this matter with William Gladstone.  
22 As I explained to you yesterday, our customer has turned this matter over to their  
23 attorneys. I have asked you repeatedly to follow up with me. I have asked you  
24 repeatedly to provide some form of paperwork showing that these wines exist.  
25 You have basically ignored my request. We will now work with our customer to  
26 pursue any means that are necessary to hold Premier Cru accountable.

27 According to an email from Michael Glasby of Premier Cru on November 30, 2010, William  
28 Gladstone subsequently called him was "threatening to get lawyers involved, to contest the credit  
card charge or to go public etc."

29 22. Mr. Gladstone would eventually "go public" with his experience. On Yelp, Mr.  
30 Gladstone wrote the following about Premier Cru:

31 They lie about everything. They have no shame to make promises that ; it is  
32 always someone else fault and we will get our wines next month. And this goes  
33 on month after month after month after month. They are shameless people who I

1 think are running a Ponzi scheme, living on other peoples money . . . During the  
2 almost 2 year we chased them for our wines, I remember meeting with clients in  
3 Macau, China, Singapore all who told me the same story how they could not get  
their paid for Lafite from Premier Cru. And asking if I could help.

4 I learned a lot about how they operate during this time, the reason the prices they  
5 offer are lower is they are doing some sort of Ponzi scheme and if you have to  
wait 2, 3 or 4 years until the prices go down, all the while they have your money.

6 Mr. Gladstone did not limit himself to Yelp when discussing Premier Cru. In other internet  
7 forums he described Premier Cru’s model as follows:

8 Premier Cru is committing fraud, they offer to sell wines they do not own. I know  
9 this for a fact. They do not have some unique business model. They simply have  
a Ponzi scheme model.

10 In another post that he later deleted, Mr. Gladstone elaborated on his experience:

11 When i was in Macau, I met with 3 different wholesalers who told me they were  
12 chasing Premier Cru for their purchases – could I help, I’ve received emails and  
13 phone calls from Miami, hong Kong and Singapore, everyone buys from them  
because they have the lowest advertised prices for E.P.

14 BUYER BEWARE,

15 We took a terrible loss of a large client in Malaysia, and one of our more frequent  
16 large clients in Hong Kong and China because of this delay, it was a terrible loss.  
17 2 years later when interest died down we did receive the wines. When the market  
price was reduced to half the value and obviously it was easier to purchase and  
get rid of us. Obviously new money had flowed in from other trusting souls.

18 In another deleted post, Mr. Gladstone wrote the following:

19 Absolutely is the answer to your question if I think they are a Pyramid scheme.  
20 They use person number 2’s money to purchase wine owed to person #1.

21  
22 **III. Badges of Fraud Related to the Transactions with the Defendant**

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

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



1 arrival wine from its suppliers and falsified accounting documentation to cover up  
2 its fraudulent actions. Fox further admitted to making efforts to conceal the fraud  
3 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;

- 4 • The transfers were made while Premier Cru was under threat of potential lawsuits.  
5 Had Premier Cru's creditors discovered the fraud, Premier Cru and its principals  
6 would have been subject to numerous lawsuits. In fact, Premier Cru's customers  
7 repeatedly and regularly threatened the company with lawsuits where pre-arrival  
8 wine was not delivered, and in some instances, actually filed suit;
- 9 • Premier Cru removed and concealed assets. Fox admitted that, in the face of  
10 customer complaints, he caused Premier Cru to deliver wine to the complaining  
11 customers that was paid for by other customers. Furthermore, Fox caused Premier  
12 Cru to transfer large sums for his personal benefit as further described in his plea  
13 agreement;
- 14 • Premier Cru incurred the obligations and made the transfers described herein for  
15 less than reasonably equivalent value;
- 16 • As described in more detail above, the overall existence and cumulative effect of  
17 the pattern, series of transactions, and Premier Cru's course of conduct indicate the  
18 transactions with the Defendant were designed to defraud creditors. Premier Cru  
19 incurred debt and faced financial difficulties, and as a result, entered into the  
20 transactions with the Defendant and other customers in order to further the fraud;
- 21 • The general chronology of events and the transactions under inquiry indicate the  
22 intent to defraud. Premier Cru entered into pre-arrival wine sales without having  
23 the underlying right to receive the wine from its suppliers. The purpose of the  
24 transactions was to provide liquidity to fuel the fraud and for Fox's improper  
25 diversions and embezzlement. Moreover, Premier Cru's entry into fraudulent pre-  
26 arrival wine sales naturally increased based upon its need to enter into more and  
27 more fraudulent transactions to pay for prior obligations;
- 28 • 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

1 inventory and contractual purchases from their vendors or alter documents to  
2 support sales;

- 3 • Premier Cru entered into the transactions involved in the fraud under secrecy and  
4 haste, and the transactions were unusual. Premier Cru disguised its pre-arrival  
5 sales using falsified documentation and misrepresentations to its customers.  
6 Furthermore, Premier Cru acted with haste in fulfilling fraudulent orders for those  
7 customers that complained repeatedly or forcefully;
- 8 • Premier Cru was aware of its creditors' claims against the company and that  
9 Premier Cru was incapable of paying those claims.

### 10 **CLAIMS FOR RELIEF**

#### 11 **Count I – Actual Intent Fraudulent Transfer** 12 **Under 11 U.S.C. § 548(a)(1)(A)** 13 **(Wine and Cash Transfers)**

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

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

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

21 27. The Transfers were made within two years of the Petition Date.

22 28. The aggregate amount of the 548 Transfers may be in excess of the above-stated  
23 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
24 of the scheme are ascertained.

25 29. The 548 Transfers were made as a part of the fraud at Premier Cru. Premier Cru  
26 entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the  
27 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham  
28 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

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

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

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

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

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

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

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

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

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

23 37. Premier Cru also transferred at least 541 bottles of wine to the Defendant during  
24 the seven years prior to the Petition Date (the "**Additional Wine Transfers**"). The Additional  
25 Wine Transfers are more fully described in Exhibit B, which is attached hereto.

26 38. The 548 Transfers and the Additional Wine Transfers (collectively, the "**Total**  
27 **Transfers**") were made within seven years of the Petition Date.  
28

1           39.     The aggregate amount of the Total 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           40.     The Total 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 Total 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           41.     Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its  
14 creditors through the fraudulent scheme. Therefore, the Total 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           42.     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 Total Transfers.

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

23           44.     Pursuant to California Civil Code § 3439.04(a)(1) et seq. and 11 U.S.C. §§ 544 &  
24 550, the Trustee is entitled to judgment avoiding and recovering the value of the Total Transfers  
25 from the Defendant.

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

1  
2  
3           45.     The Trustee re-alleges and fully incorporates the allegations pleaded in the  
4 preceding paragraphs as if fully set forth herein.

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

7           47.     Premier Cru incurred obligations to transfer at least 18 bottles of wine to the  
8 Defendant in the two years prior to the Petition Date (the “**548 Obligations**”). The 548  
9 Obligations are more fully described in Exhibit C, which is attached hereto.

10           48.     The aggregate amount of the 548 Obligations may be in excess of the above-stated  
11 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
12 of the scheme are ascertained.

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

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

23           51.     Moreover, Fox’s plea agreement evidences Premier Cru’s intent to defraud its  
24 creditors through the fraudulent scheme. Therefore, the 548 Obligations were incurred with the  
25 actual intent to hinder, delay, or defraud entities to which Premier Cru was or became indebted to  
26 on or after the date of the transfer.  
27  
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1 52. As stated above, there are a multitude of badges of fraud present with respect to the  
2 transactions with the Defendant. The existence and sheer number of the badges of fraud present in  
3 this matter indicate that Premier Cru intended to hinder, delay, or defraud its creditors in entering  
4 into the sales and incurring the 548 Obligations.

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

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

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

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

15 56. Premier Cru incurred the 548 Obligations as detailed above.

16 57. Premier Cru also incurred obligations to the Defendant relating to 547 bottles of  
17 wine during the seven years prior to the Petition Date (the “**Additional Obligations**”). The  
18 Additional Obligations are more fully described in Exhibit D, which is attached hereto.

19 58. The 548 Obligations and the Additional Obligations (collectively, the “**Total**  
20 **Obligations**”) were incurred within seven years of the Petition Date.

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

24 60. The Total Obligations were incurred as a part of the fraud at Premier Cru. Premier  
25 Cru entered into the underlying wine sales in furtherance of its fraudulent scheme. Each of the  
26 transactions generated cash through the alleged “sale” of the wine to the Defendant. These sham  
27 transactions provided Premier Cru with the funds it required to satisfy already existing obligations  
28 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

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

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

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

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

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

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

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

20 66. Premier Cru made the 548 Transfers to the Defendant.

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

24 68. Premier Cru received less than reasonably equivalent value in exchange for the 548  
25 Transfers.

26 69. The 548 Transfers were made at a time when Premier Cru (a) was insolvent; (b)  
27 was engaged in business or a transaction, or was about to engage in business or a transaction, for  
28 which any property remaining with the debtor was an unreasonably small capital; or (b) intended

1 to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts  
2 matured.

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

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

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

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

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

14 74. Premier Cru made the Total Transfers to the Defendant.

15 75. The aggregate amount of the Total Transfers 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 76. Premier Cru received less than reasonably equivalent value in exchange for the  
19 Total Transfers.

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

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



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

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

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

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

11 82. Premier Cru incurred the 548 Obligations.

12 83. The aggregate amount of the 548 Obligations may be in excess of the above-stated  
13 amount, and the Trustee may amend his Complaint as and when additional transfers made as a part  
14 of the scheme are ascertained.

15 84. Premier Cru received less than reasonably equivalent value in exchange for the 548  
16 Obligations.

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

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

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

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

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

3 89. Premier Cru incurred the Total Obligations.

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

7 91. Premier Cru received less than reasonably equivalent value in exchange for the  
8 Total Obligations.

9 92. The Total Obligations were incurred at a time when Premier Cru (a) was insolvent  
10 and/or was engaged or was about to engage in a business or a transaction for which the remaining  
11 assets of the debtor were unreasonably small in relation to the business or transaction; or (b)  
12 intended to incur, or believed or reasonably should have believed that it would incur, debts beyond  
13 its ability to pay as they became due.

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

16 **PRAYER**

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

- 19 • Entering an order of judgment avoiding the Total Obligations and Total Transfers  
20 under 11 U.S.C. § 544 and California Civil Code 3439.04(a)(1);
- 21 • Entering an order of judgment avoiding the Total Obligations and Total Transfers  
22 to the Defendant under 11 U.S.C. § 544 and California Civil Code 3439.04(a)(2);
- 23 • Entering an order of judgment avoiding the 548 Obligations and 548 Transfers to  
24 the Defendant under 11 U.S.C. § 548(a)(1)(A);
- 25 • Entering an order of judgment avoiding the 548 Obligations and 548 Transfers to  
26 the Defendant under 11 U.S.C. § 548(a)(1)(B);
- 27 • Entering an order permitting the Trustee to recover the value of the avoided  
28 transfers in an amount to be proven at trial;
- Prejudgment and post-judgment interest as allowed by law; and

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- 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 Transfers

CustName	ShipDate	SalesOrder	Description	Qty		
				Shipped	Unit Value	Total Value
William Gladstone	1/10/2014	SO-0000430753	01 Lokoya Mount Veeder Cabernet	1	\$ 320.00	\$ 320.00
William Gladstone	1/10/2014	SO-0000430753	2010 Lail Cabernet J. Daniel Cuvee	5	\$ 103.33	\$ 516.65
William Gladstone	6/17/2014	SO-0000444522	07 Quilceda Creek Cabernet Galitzine	11	\$ 90.00	\$ 990.00
William Gladstone	7/16/2014	SO-0000449316	09 Screaming Eagle	3	\$ 1,280.00	\$ 3,840.00
William Gladstone	11/11/2014	SO-0000456720	03 Martinelli Zinfandel Jackass	4	\$ 30.00	\$ 120.00
				<u>24</u>		<u>\$ 5,786.65</u>

**Exhibit B**

**Additional Wine Transfers**

CustName	ShipDate	SalesOrder	Description	Qty		
				Shipped	Unit Value	Total Value
William Gladstone I	1/16/2011	SO-0000344459	07 Opus 1	18	\$ 131.52	\$ 2,367.36
William Gladstone I	1/16/2011	SO-0000344459	06 Opus 1	23	\$ 131.52	\$ 3,024.96
William Gladstone I	1/16/2011	SO-0000344572	06 Opus 1	60	\$ 131.52	\$ 7,891.20
William Gladstone I	5/5/2011	SO-0000355341	03 Vilmart Grand Cellier d'Or	8	\$ 60.00	\$ 480.00
William Gladstone I	6/30/2012	SO-0000334139	07 Lafite Rothschild	60	\$ 600.00	\$ 36,000.00
William Gladstone I	8/29/2012	SO-0000334139	07 Lafite Rothschild	60	\$ 600.00	\$ 36,000.00
William Gladstone I	8/31/2012	SO-0000334139	07 Lafite Rothschild	120	\$ 600.00	\$ 72,000.00
William Gladstone I	8/31/2012	SO-0000334984	07 Lafite Rothschild	180	\$ 600.00	\$ 108,000.00
William Gladstone I	1/22/2013	SO-0000402671	01 Heitz Cabernet Martha's Vineyard	12	\$ 93.47	\$ 1,121.64
				<b>541</b>		<b>\$ 266,885.16</b>

Exhibit C

548 Obligations

Sales Order					
Sales Order	Date	Description	Quantity	Unit Price	Total Price
SO-0000444522	5/8/2014	07 Quilceda Creek Cabernet Galitzine	11	\$ 135.00	\$ 1,485.00
SO-0000449316	7/10/2014	09 Screaming Eagle	3	\$ 1,599.00	\$ 4,797.00
SO-0000456720	9/30/2014	03 Martinelli Zinfandel Jackass	4	\$ 69.99	\$ 279.96
			<u>18</u>		<u>\$ 6,561.96</u>

**Exhibit D**

**Additional Obligations**

<b>Sales Order</b>	<b>Sales Order Date</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
SO-0000344459	10/23/2010	07 Opus 1	18	\$ 145.00	\$ 2,610.00
SO-0000344459	10/23/2010	06 Opus 1	23	\$ 139.99	\$ 3,219.77
SO-0000344572	10/26/2010	06 Opus 1	60	\$ 139.99	\$ 8,399.40
SO-0000355341	5/4/2011	03 Vilmart Grand Cellier d'Or	8	\$ 69.99	\$ 559.92
SO-0000334139	3/9/2010	07 Lafite Rothschild	60	\$ 407.95	\$ 24,477.00
SO-0000334139	3/9/2010	07 Lafite Rothschild	60	\$ 407.95	\$ 24,477.00
SO-0000334139	3/9/2010	07 Lafite Rothschild	120	\$ 407.95	\$ 48,954.00
SO-0000334984	3/29/2010	07 Lafite Rothschild	180	\$ 407.95	\$ 73,431.00
SO-0000402671	1/17/2013	01 Heitz Cabernet Martha's Vineyard	12	\$ 125.00	\$ 1,500.00
SO-0000430753	12/13/2013	01 Lokoya Mount Veeder Cabernet	1	\$ 399.99	\$ 399.99
SO-0000430753	12/13/2013	2010 Lail Cabernet J. Daniel Cuvee	5	\$ 129.99	\$ 649.95
			<b>547</b>		<b>\$ 188,678.03</b>