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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

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11 In re
12 FOX ORTEGA ENTERPRISES, INC., dba
PERMIER CRU,
13 Debtors.

Case No. 16-40050-WJL
Chapter 7

**COMPLAINT TO AVOID AND
RECOVER PREFERENTIAL
TRANSFERS**

14
15 MICHAEL G. KASOLAS, Trustee,
16 Plaintiff,
17 vs.
18 VIEUX VINS, INC., a Connecticut
corporation,
19 Defendant.

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

3 **JURISDICTION AND VENUE**

4 1. This is an adversary proceeding, pursuant to the Federal Rules of Bankruptcy
5 Procedure (“Fed. R. Bankr. P.”), which relates to the Chapter 7 proceeding captioned *In re Fox*
6 *Ortega Enterprises, Inc., dba Premier Cru*, Case No. 16-40050-WJL (Bankr. N.D. Cal., Oakland
7 Div.) (the “Bankruptcy Case”). The above-captioned Court has jurisdiction over this matter
8 pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a).

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

10 3. The claim stated herein is a core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A),
11 (F) and (O), which seeks relief under 11 U.S.C. §§ 547(b), 502(d) and 550 and Fed. R. Bankr. P.
12 Rule 7001(1).

13 4. Plaintiff consents to the entry of a final order or judgment by the Bankruptcy Court
14 on the claim pled herein.

15 **GENERAL ALLEGATIONS**

16 5. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy
17 Code (Title 11 of the United States Code) on January 8, 2016 (“Petition Date”), commencing this
18 Bankruptcy Case.

19 6. The Trustee is the duly appointed trustee of the Debtor’s Bankruptcy Case.

20 7. The Trustee is informed and believes and thereon alleges that defendant **Vieux**
21 **Vins, Inc. (“Defendant”)** is a Connecticut corporation, doing business as “The Rare Wine Co.,”
22 organized and existing under the laws of the State of Connecticut, doing business in the City of
23 Brisbane, California. The Trustee is informed and believes and thereon alleges that Defendant
24 maintains a place of business at 280 Valley Drive, Brisbane, California 94005.

25 8. The Debtor transferred an interest of the Debtor in certain property belonging to the
26 Debtor to Defendant, including, but not limited to, certain funds of the Debtor by way of the
27 following payments to Defendant, as more particularly set forth below:

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Date	Check #/Wire #	Transfers	Credit re New Value	Amount of Preference after New Value Credit
11/18/2015	57936	\$ 5,590.00		\$ -
11/20/2015	57855	\$ 6,012.00		
11/24/2015			\$ 8,094.00	\$ 3,508.00
11/27/2015	57896	\$ 14,032.00		\$ 14,032.00
12/2/2015	57899	\$ 7,000.00		\$ 7,000.00
12/3/2015	57922	\$ 3,669.00		\$ 3,669.00
12/4/2015	58028	\$ 8,094.00		\$ 8,094.00
12/8/2015	58034	\$ 792.00		\$ 792.00
9.		\$ 45,189.00	\$ 8,094.00	\$ 37,095.00

10. As set forth above, the transfers (the “Transfers”) totaled not less than \$45,189.00.

FIRST CLAIM FOR RELIEF

[Avoid and Recover Preferential Transfers

Under 11 U.S.C. §§ 547(b) and 550]

11. The Trustee re-alleges and incorporates by this reference Paragraphs 1 through 10 above, as though fully set forth herein.

12. The Transfers were made to or for the benefit of a creditor, namely, the Defendant, who, at the time of the Transfers, was owed money by the Debtor.

13. The Transfers were made on account of an antecedent debt owed by the Debtor before such Transfers was made.

14. The Transfers were made while the Debtor was insolvent.

15. The Transfers was made on or within 90 days before the Petition Date.

16. The Transfers enabled Defendant to receive more than Defendant would receive if (a) the case was a case under Chapter 7 of Title 11; (b) the Debtor had not made the Transfer; and (c) the Defendant received payment of such debt to the extent provided by the provisions of Title 11.

17. As to the transfers made on or about 11/18/2015 (\$5,590.00) and 11/20/2015 (\$6,012.00), the Trustee is informed and believes and thereon alleges that not less than \$3,508.00 constitute preferential transfers to the extent that \$8,094.00 worth of new value was given to or for the benefit of the Debtor after those transfers (\$5,590.00 plus \$6,012.00 less \$8,094.00 equals \$3,508.00), in which case, the total avoidable and recoverable preferential Transfers total not less than **\$37,095.00**.

1 18. The Defendant had dominion and control of the property transferred and the
2 Defendant was the initial transferee of the Transfers under 11 U.S.C. § 550(a)(1).

3 19. The Trustee's investigation is ongoing, and the Trustee may not be currently aware
4 of all transfers that may have been made to Defendant during the 90 day period prior to the
5 Petition Date. The Trustee will amend this Complaint to include any newly discovered transfers
6 that are avoidable.

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

8 **PRAYER FOR RELIEF**

9 The Trustee requests judgment against Defendant for the following relief:

- 10 1. For a judgment avoiding the Transfers, and each of them, under 11 U.S.C. § 547(b)
11 and recovering the value thereof under 11 U.S.C. § 550(a);
- 12 2. For a judgment determining that Defendant was the initial transferees under 11
13 U.S.C. § 550(a)(1) and granting recovery against Defendant in the amount of not less than
14 \$37,095.00, plus any additional amounts as may be established according to proof;
- 15 3. For an award of all recoverable prejudgment interest at the legal rate allowed by
16 law;
- 17 4. For allowable costs of suit incurred herein; and
- 18 5. For such further relief as may be just and proper.

19 Dated: January 8, 2018

WENDEL, ROSEN, BLACK & DEAN LLP

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By: /s/ Leonard E. Marquez

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Leonard E. Marquez
Attorneys for Plaintiff
Michael G. Kasolas, Trustee

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