

Fill in this information to identify the case:

Debtor 1 Fox Ortega Enterprises, Inc

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of California

Case number 16-40050

LM 10:22 AM
FILED
FEB 1 2016
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

David Spellberg

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☒ No

☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

David Spellberg

Name

2485 Lantern Lane

Number Street

Naples

FL

34102

City

State

ZIP Code

Contact phone 239-777-9823

Contact email dspellberg@me.com

Where should payments to the creditor be sent? (if different)

Name

Number Street

City

State

ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known) _____

Filed on

MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>15,588.00</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Pre-ordered wine in 2011.</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☐ No

☒ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☒ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ 2,775.00

☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/20/2016
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name

David Spellberg

First name

Middle name

Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

2485 Lantern lane

Number

Street

Naples

FL

34102

City

State

ZIP Code

Contact phone

239-777-9823

Email dspellberg@me.com

PREMIER CRU

1011 University Avenue
Berkeley, CA 94710

(510) 644-9463 FAX (510) 647-3833

Sales Order

Page: 1

Order Number: 0000359350

Order Date: 7/16/2011

Web Order No: 82329

Salesperson: JG

Customer: 41425

Customer PO:

Sold To

David Spellberg
2485 Lantern Lane
Naples, FL 34102 USA

Ship To

David Spellberg
1132 Goodlette Rd
Naples, FL 34102 USA

Contact: David Spellberg
Phone: (239) 777-9823

This order has been paid by American Express - Thank You!

Item		Ordered	Quantity Shipped	Unit Price	Amount
44086	2010 Lafite Rothschild	12.00	0.00	1,299.00	15,588.00

Payments: 15,588.00

Net Order: 15,588.00

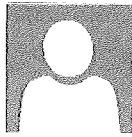
Freight: 0.00

Sales Tax: 0.00

7/16/2011	VUJE7B4B6E1E	*****4000	15,588.00
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USD 15,588.00

RE: Your Premier Cru Order 359350



James Gillerman Add to contacts 3/26/14

To: 'David Spellberg'

Hello David,

Your case of 2010 Lafite is still a pre-arrival wine here. Thanks for your patience. We are still a long way from receipt of all the 2010 Bordeaux, especially at the higher levels. It is however all wine we have purchased already, long before we sold it to you in fact. All these bottles are coming, and again thanks for your patience. We will get this collectible wine to your presently, imported and stored under temperature control.

We will try to e-mail you upon arrival here, then wait for your shipping instructions. We never ship automatically upon arrival here. Remember you can always see your orders and their arrival status back on the website at www.premiercru.net under your account. That will also convince you we have not forgotten about you and your order!

Thanks for your business, and once again your patience. These will be well worth the wait, especially at our pricing.

Regards,

James Gillerman

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James Gillerman

PREMIER CRU

1011 University Avenue

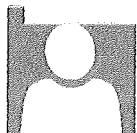
Berkeley, CA 94710 USA

Ph: 510-644-WINE (510-644-9463)

Fax: 510-647-3833

Email: james@premiercru.net

RE: Sales Order From Premier Cru at Premier Cru



james@premiercru.net Add to contacts 8/08/14

To: David Spellberg

Hello David,

As per my automated out of office response, I have been away until today, so I apologize for the tardy turnaround. I am not certain whether you also e-mailed sales@premiercru.net in my absence.

Your 12 x 2010 Lafite remain pre-arrivals, as shown on the website at www.premiercru.net under your account. Thanks for your continued patience. They will get here for you presently, and we will notify you once they do. We will not ship them automatically upon arrival here, but will let you know and wait for your specific shipping instructions. They are of course still VERY young wines: remember that Parker says of the wine "It will need at least 10-12 years of cellaring and keep for 50+ years".

These are bottles we have purchased and sold in extremely large quantities. We have had plenty of this wine arrive here already, nearly 500 bottles in fact, more than most other stores will sell in total; however we do allocate the arriving bottles in the order purchased from us. We still have almost 3 times that amount yet to arrive here, including your bottles. All are bottles we too have purchased, and all will get here in time. Again thanks for your patience.

It is always very challenging for us to guess how many of which specific bottles will get here when, to get to a specific place in the queue. Until your bottles are actually loaded on one of our refrigerated containers on the water from Europe, we are just guessing. Your bottles are not yet at that point. However we do expect massive additional amounts of 2010 Bordeaux to get here in the autumn months, but the end of the year. There is a good chance that will include your case. Again it is coming!

Thanks for your business. Remember you can always see your orders and their arrival status back on the website at www.premiercru.net under your account, so you will know we have not forgotten about you! You can even schedule shipment from there, once your bottles are here. Thanks again.

Regards,

James Gillerman

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James Gillerman

PREMIER CRU

1011 University Avenue

Berkeley, CA 94710 USA

Ph: 510-644-WINE (510-644-9463)

Fax: 510-647-3833

Email: james@premiercru.netWeb: www.premiercru.net

> Subject: RE: Sales Order From Premier Cru at Premier Cru
> Date: Sat, 17 Oct 2015 16:59:38 -0700
> From: peter@premiercru.net
> To: ecsdms@hotmail.com
>
> Hello David,
>
> I apologize that we are taking so long to delivery your 2010 Lafite.
> Unfortunately we have been taking longer than we had expected to
> fullfill this order. It is still our intention to deliver on this wine
> as we are waiting on an air freight and 2 containers before the end of
> the year. Please let me know how else I can help at this time.
>
> Sincerely,
> Peter N Powlovich
> Premier Cru - the world's finest wines
> 1011 University Avenue
> Berkeley, CA 94710 (directions)
> phone (510) 644-9463
> fax (510) 647-3833
> Peter@premiercru.net