

## NOTICE OF CLASS ACTION AND CLASS ACTION SETTLEMENT

**If you purchased bottles of wine from Premier Cru and have had your order filled but not delivered, you could receive money from a class action settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit that affects your rights. The settlement resolves a class action filed against the trustee appointed to manage the estate of Fox Ortega Enterprises, Inc., dba Premier Cru, which filed a voluntary chapter 7 petition for bankruptcy on January 8, 2016. The lawsuit disputes the assertion by the trustee, Michael G. Kasolas (the "Trustee"), of ownership of certain bottles of wine purchased by members of the class that were held in storage by Premier Cru at the time it declared bankruptcy and which the trustee intends to liquidate.
- The Court has not decided whether to finally approve the settlement. Relief will be made final only after the Court approves the settlement.

YOUR RIGHTS AND OPTIONS	
<b>DO NOTHING</b>	Do nothing. Receive your share of proceeds from the sale of the stored bottles. See section 13 below for more information about your settlement share.
<b>REDEEM SEGREGATED BOTTLES</b>	Redeem bottles that were pulled from the shelves and segregated for delivery to you as of January 8, 2016, in addition to receiving your share of proceeds from the sale of other stored bottles. See section 10 below for more information about how to redeem bottles.
<b>OBJECT TO THE TERMS OF THE SETTLEMENT</b>	File an objection that the settlement is unfair or inadequate. See section 12 below.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	Opt out of the settlement. Receive no benefits from the settlement. See sections 10 and 11 below for more information about how to opt out and the consequences if you do so.

**Please read this notice carefully. It describes your rights, and the steps you have to take, if any, to receive money from the settlement or to exclude yourself from the lawsuit.**

The date of this notice is May \_\_\_\_, 2016.

**EXHIBIT A**

## BASIC INFORMATION

### 1. Why did I receive this Notice?

Records show that you have purchased wine from Premier Cru (the "Debtor") and that the wine you purchased has been received but not shipped to you. A settlement has been reached in a class action lawsuit filed against the trustee appointed to manage the chapter 7 estate of Premier Cru, which filed for bankruptcy on January 8, 2016. This settlement may affect your legal rights and you have choices to make. Judge William J. Lafferty, III of the United States Bankruptcy Court for the Northern District of California, who is overseeing this class action, has authorized that you be sent this notice. The settlement agreement, motion requesting final approval and supporting documents has been posted on the website [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru) and can be reviewed there.

### 2. What is this class action about?

The class action, *Michael D. Podolsky v. Michael Kasolas, as Trustee*, Adversary Proceeding No. 16-04033 WJL, filed in the United States Bankruptcy Court for the Northern District of California, Oakland Division, disputes the assertion of the Trustee of ownership of bottles of wine stored by Premier Cru at the time it filed for bankruptcy. The lawsuit seeks to have the Bankruptcy Court quiet title in the bottles in favor of Premier Cru's customers, who have paid for but not received delivery of bottles that they ordered. The lawsuit is based on theories of special property, UCC identification, resulting trusts and other equitable remedies. The lawsuit also seeks to enjoin the trustee from selling the bottles.

### 3. How does the Trustee respond?

The Trustee has denied and continues to deny all of the allegations in the lawsuit. The Trustee contends that the bankruptcy estate owns all bottles of wine, and that he is therefore entitled to sell the bottles for the benefit of all unsecured creditors, whether or not they purchased those particular bottles.

### 4. What is a class action and who is involved?

In a class action lawsuit, one or more people called "class representatives" sue on behalf of other people who have similar claims. The class representative in this case is Michael D. Podolsky. The other individuals the class representatives represent constitute the "class" and are "class members." The class representative is also called the "plaintiff." The Trustee is the "defendant." The court resolves the issues for everyone in the class action except for those who request to exclude themselves, or "opting out."

### 5. What does the settlement provide?

The settlement provides for the sale of the wine held in the Trustee's possession to a bulk buyer. A portion of the proceeds from that sale will be distributed to class members that do not exclude themselves from this settlement. Class members whose wine had been designated and segregated for shipping as of January 8, 2016 will also have the opportunity to redeem those bottles.

Under the settlement, there are multiple categories of bottles: "Allocated Bottles," "New Bottles," "Purchased Bottles," "Oversubscribed Bottles," "Unassigned Bottles," "Segregated Bottles," and "Segregated Oversubscribed Bottles."

"Allocated Bottles" are those bottles as of January 8, 2016 for which there was a code entry in the Debtor's computer inventory system associating a wine by variety and vintage that was in the warehouse, with a particular purchaser or particular purchasers.

"New Bottles" are any bottles received by Debtor within 90 days preceding the January 8, 2016, including a container shipment of bottles received by the Debtor as of November 12, 2015.

"Purchased Bottles" are bottles in the warehouse that had been Allocated to specific customers' orders, or for which specific customers otherwise received notification of order fulfillment, other than New Bottles, with no competing purchasers.

"Oversubscribed Bottles" are bottles in the warehouse corresponding to specific orders, other than New Bottles, that had been Allocated to more purchasers than bottles.

"Unassigned Bottles" are bottles in the warehouse that were not Purchased Bottles, Oversubscribed Bottles, Segregated Bottles or New Bottles.

"Segregated Bottles" are Purchased Bottles, and any other bottles that, although not Allocated, that have been designated for shipping to a particular customer without any competing purchasers, that were pulled off the shelves and segregated for delivery or pickup as of January 8, 2016.

"Segregated Oversubscribed Bottles" are Oversubscribed Bottles that were pulled off the shelves and segregated for delivery or pickup as of the January 8, 2016.

Under the settlement, the Trustee will use his best efforts to obtain an aggregate, gross purchase price of no less than \$5,000,000 for all the bottles in the warehouse excluding the bottles allocated to those who have elected to exclude themselves from the settlement. The net proceeds of that sale will then be distributed to class members and to the bankruptcy estate, pursuant to various formulae set forth in the settlement. Those formulae will vary among different categories of bottles (e.g., Purchased Bottles, Oversubscribed Bottles, etc.), based on varying strengths of legal arguments pertaining to ownership and equitable remedies.

For more information on whether you are a class member and/or also a member of the subclass, and on which categories of bottles correspond to your purchase orders, see section 9. For more information about the allocation of the proceeds from the sale, see section 13 below. For more information about how to redeem bottles, see section 10 below.

#### **6. Why is the lawsuit being settled?**

The legal arguments and disputes between the Trustee and the plaintiff, concerning ownership under the Uniform Commercial Code and various equitable remedy doctrines, are extremely complicated, numerous and difficult to resolve. In all likelihood, nonconsensual resolution of those disputes would consume many months or years of litigation, at much

greater expense and at significant risk of loss. In addition, the bottles of wine in question would need to be stored and preserved at substantial cost throughout the litigation, and the Trustee's limited funds and other resources, and lack of long-term warehouse occupancy, would make such storage and preservation highly problematic and unlikely. As a result, at the end of the litigation, there might be nothing left of value to recover, despite prevailing on the issues.

For those reasons, the Bankruptcy Court urged the parties to enter into judicial mediation, and the Trustee and plaintiff, together with some individual class members, did so. In that mediation, after extensive negotiations and the exchange of information and documents, the Class plaintiff and the Trustee agreed to settle the claims rather than go to trial. The settlement represents a compromise of disputed claims and is not an admission by either the Trustee or the plaintiff as to ownership of the bottles. The parties and their attorneys believe that the settlement is in your best interests given the risks and expense of either litigating the class action further or your asserting your own ownership claims in the Bankruptcy Court.

**7. Has the Court decided who is right?**

No. The Court has not decided anything yet, only that you should get a copy of this notice so that you can decide whether to remain in the class, and so that you can review the settlement and determine whether you want to object or redeem bottles.

**8. Who will administer the settlement?**

The Trustee will administer the settlement, with the assistance of individuals familiar with the Debtor's inventory and computer systems. The Trustee is an independent person appointed by the Office of the United States Trustee (a division of the U.S. Department of Justice) to administer certain bankruptcy cases pending in the Bankruptcy Court. Any questions regarding determination of awards and allocations should be presented to the Trustee at the following email address: [classactionquestions@premiercru.net](mailto:classactionquestions@premiercru.net).

**YOUR RIGHTS AND OPTIONS**

**9. Am I part of the class or subclass in this case?**

The class certified by the Court consists of all persons who at any time (a) ordered wine from Debtor, (b) paid for their purchase(s), (c) received written notification from Debtor that their order(s) had been filled, or were otherwise "Allocated" a bottle of wine, and (d) whose wine remains in the custody and control of Trustee and is identifiable as corresponding to such order(s) in Debtor's computer inventory system.

The court also certified a subclass consisting all class members holding an interest in either Segregated Bottles or Segregated Oversubscribed Bottles.

Premier Cru's records indicate that you may be a member of the class. You can check to see if you are also part of the subclass by going to [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru). You will need your account number in order to access your personal information.

How do I participate in the settlement?

**You do not need to do anything to participate.** You will automatically receive a settlement payment from the proceeds of the sale by the Trustee of the wine and release claims against the Trustee unless you request to be excluded from the lawsuit.

If you are eligible to redeem a bottle, you must submit your request to redeem the bottle that is received by the Trustee within 30 days of the date of this notice, or by June \_\_\_\_, 2016. You can check to see if you are eligible to redeem any bottles, and where to send your redemption request, by going to [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru). You will need your account number in order to access your personal information. Only Segregated Bottles can be redeemed, and only by customers for whom those bottles were segregated.

To redeem bottles, you must submit to the Trustee your written election, by downloading the appropriate form from [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru), to redeem a bottle together with a payment to Trustee of an amount equal to 20% of the price originally paid by that person to purchase the redeemed bottle, together with the sales taxes. You must also cause the redeemed bottle to be shipped to your prio to August 31, 2016, at your own cost of shipping and after payment of a reasonable handling fee to the trustee's bulk buyer. If you do not cause the bottle to be shipped by then, your right to that bottle will be forfeited and assigned to the Trustee, absent consent of the buyer and the Trustee. Moreover, you will have no right to reimbursement of any funds you paid to redeem a bottle.

If you have asserted, or wish to assert, your own ownership rights against the Trustee in the Bankruptcy Court, see section 10 below to learn what you must do to be excluded from the settlement.

#### **10. How do I request to be excluded from the lawsuit?**

If you wish to be excluded from the lawsuit, you must write to the Trustee at the following address: P.O. Box 26650, San Francisco, CA 94126. Your request must include: (1) your name, (2) your address, (3) your dated signature, and (4) a written statement that you have reviewed this notice and wish to be excluded from the class. **To be effective, your request must be received within 30 days of the date of this notice, or by June \_\_\_\_, 2016.**

If you do not complete and timely mail a valid request to be excluded from the lawsuit, you will be bound by all terms and conditions of the settlement, including the release of claims set out in section 16. Alternatively, if you submit a timely and valid request to be excluded, you will not receive any money from the settlement, but you will retain the right to assert ownership of particular bottles of wine, as against the Trustee and other customers to whom those bottles were Allocated.

If the number of bottles allocated to individuals who opt out exceeds a certain percentage of the total bottles in the warehouse, the Trustee shall have the option to terminate the settlement in his sole discretion.

#### **11. What happens next if I choose to exclude myself from the settlement?**

If you choose to exclude yourself from the settlement, then any bottles that have been Allocated to you will not be sold by the Trustee, and they will instead be held by the Trustee, at least temporarily. You will then need to litigate your right to those bottles, either personally or through a lawyer, with the Trustee and with any competing purchasers, on your own in the Bankruptcy Court. Unless your assertion is quickly settled with the Trustee and any competing purchasers (likely on the same or lesser terms than the class settlement), the Trustee is likely to either abandon the bottles, leaving you to a dispute with other competing purchasers or with the warehouse lessor, or condition his further preservation of the bottles on you funding the cost of that preservation in advance. You will then need to address both the costs and risks of your litigation and the cost of bottle preservation.

**Class Counsel strongly advise you against excluding yourself from the Class for those important reasons.** Class Counsel are available to discuss with you the risks and consequences of exclusion from the class. You may contact Class Counsel for that purpose at the addresses identified elsewhere in this notice.

#### **12. May I object to the settlement?**

If you believe the settlement is unfair or inadequate, you may object, personally or through an attorney, by filing your objection with the Bankruptcy Court. You cannot object to the settlement **and** exclude yourself from the lawsuit – you can only do one or the other. Your objection must include: (1) your name, (2) the reasons why you object to the settlement, (3) a statement of whether you intend to appear at the final approval hearing, (4) a list of any documents or witnesses you contend support your objection, and (5) your dated signature. **To be effective, your objection must be filed with the Bankruptcy Court within 30 days following the date of this notice, or by June \_\_, 2016. Do not telephone the Court or Trustee's counsel.**

If the Court rejects your objection, you will still be bound by the terms of the settlement. You will not be able to exclude yourself from the settlement.

#### **13. How will my share of the settlement be calculated?**

Your share of the proceeds from the sale of the bottles will depend on a variety of factors, including how much you paid for the bottles and the category into which your bottles falls. For an estimate of your settlement share broken down by category, please go to [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru). You will need your account number in order to access your personal information. Please note that the amount you receive may be different depending on various factors, including the number of class members who request to be excluded from the class as well as the purchase price for which the bottles are sold. Neither the Trustee nor the class representative, nor any agent, counsel or representative, can provide certainty to you as to the actual distribution, and only an estimate is possible at this time.

#### **14. Will I have to pay taxes on my award?**

You should consult a tax professional for more information about your own specific situation.

**15. When will I receive my payment?**

Payments will be sent after the Court gives the settlement its final approval and the sale closes. If any objections are filed and an appeal is taken, if the sale is stayed by the Bankruptcy Court pending resolution of that appeal, or if the Trustee otherwise chooses to wait until resolution of the appeal before making distributions, then payments may be delayed until that appeal is resolved in favor of the settlement. The parties believe that such a delay is unlikely, but possible. Please be patient.

**RELEASE OF CLAIMS**

**16. What claims are being released as part of the settlement?**

Under the settlement, the Trustee will release all claims and causes of action, including without limitation any avoidance actions under Sections 544 *et seq.* of the Bankruptcy Code, against Class members solely to the extent that those claims or causes of action arise from or are related to such members' alleged rights or interests, or the creation of such rights or interests, in any bottles of wine that are the subject of this settlement.

Also, participating Class members' claims against the chapter 7 estate will be reduced by the mitigation of damages obtained through this settlement – by 80% of the original purchase price of Redeemed Bottles and by the amount of funds distributed to members. ANY CLASS MEMBERS WHO DO NOT AMEND THEIR PROOFS OF CLAIM BY OCTOBER 31, 2016 TO REFLECT SUCH REDUCTIONS WILL BE DEEMED TO HAVE WITHDRAWN THOSE PROOFS OF CLAIM IN THEIR ENTIRETIES.

**THE LAWYERS REPRESENTING YOU**

**17. Do I have a lawyer in this case?**

The Court has determined that the Meyers Law Group, P.C. and the law firm of Chavez & Gertler LLP are qualified to represent you and all of the class members. These firms are called "Class Counsel."

The contact information for all counsel is set forth below in section 22.

**18. May I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, you will be responsible for paying for that lawyer.

**19. How will Class Counsel be paid?**

You do not have to pay Class Counsel's fees and costs. The fees and expenses that the Court approves will be out of the proceeds of the sale of certain bottles. Class Counsel has reserved the right to seek up to 25% of the total proceeds to be distributed to class members from the sale of Purchased and Oversubscribed Bottles.

## FINAL SETTLEMENT APPROVAL HEARING

### 20. When will the Court consider whether to finally approve the settlement?

The Court will hold a hearing in Courtroom 220 of the United States Bankruptcy Court for the Northern District of California located at 1300 Clay Street, Oakland, California, 94612, on July \_\_\_\_\_, 2016 at \_\_\_\_\_ p.m, to decide whether to finally approve the settlement. At that time, the Court will also decide whether to approve Class Counsel's and Subclass Counsel's requests for attorneys' fees and reimbursement of costs. Counsels' motions for approval of attorneys' fees and reimbursement of costs will be filed by June \_\_\_\_, 2016.

**It is not necessary for you to appear at this hearing.** If you have timely submitted an objection to the settlement and a notice of intent to appear, you may appear at the hearing to argue your objection to the Court.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

### 21. What if the proposed settlement is not approved?

If the proposed settlement is not granted final approval, the settlement class that has been preliminarily certified will be decertified, the class action will proceed without further notice, and none of the agreements set forth in this notice will be valid or enforceable.

## FURTHER INFORMATION

### 22. How do I get more information?

This notice provides a summary of the basic terms of the settlement. For the settlement's complete terms and conditions, please consult the settlement agreement, which is available online at [www.BMCGroup.com/PremierCru](http://www.BMCGroup.com/PremierCru). You will need your account number in order to access your personal information. You can also view the entire case file by visiting the clerk of the court located at 1300 Clay Street, Suite 300, Oakland, CA 94612, or by contacting Class Counsel at the addresses provided below:

CHAVEZ & GERTLER LLP  
Mark A. Chavez  
42 Miller Ave.  
Mill Valley, CA 94941  
Tel: (415) 381-5599  
Fax: (415) 381-5572  
Email: [mark@chavezgertler.com](mailto:mark@chavezgertler.com)

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**PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, THE TRUSTEE, OR COUNSEL FOR THE TRUSTEE FOR INFORMATION REGARDING THIS SETTLEMENT.**