

CHAD E. NYDEGGER, (BAR #9964); Email: cnydegger@wnlaw.com
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION
60 East South Temple, Suite 1000
Salt Lake City, UT 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707

Attorney for Excel Entertainment Group, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

EXCEL ENTERTAINMENT GROUP, INC.
a Utah corporation,

Plaintiff,

v.

ANCONNECT, LLC a Texas limited
liability company, and OUR ALCHEMY,
LLC a Delaware limited liability company,

Defendants.

Civil Action No. 2:16-cv-00698-BSJ

COMPLAINT

Judge Bruce S. Jenkins

BACKGROUND

This is a straight-forward case of breach of contract and unjust enrichment. Excel Entertainment Group, Inc. (“Excel Entertainment”) is a Utah company that markets and sells entertainment goods, such as motion pictures on DVD and Blu-ray. Excel Entertainment entered into a contract pursuant to which it sold and delivered DVDs and Blu-rays to the defendant ANconnect, LLC (“ANC”). Although ANC accepted delivery of those goods, it has not paid for them. Thus, ANC has breached its contract with Excel Entertainment, and has been unjustly

enriched by obtaining the benefit of the goods delivered to ANC by Excel Entertainment without paying for those goods.

In approximately July 2015, defendant Our Alchemy, LLC (“Alchemy”) assumed the contractual obligations of ANC to Excel Entertainment and the benefit that ANC received from the goods Excel Entertainment delivered to ANC under that contract. Alchemy also entered into its own contract with Excel Entertainment pursuant to which Excel Entertainment sold and delivered DVDs and Blu-rays directly to the defendant Alchemy. Although Alchemy accepted delivery of those goods, it has not paid for them or Excel Entertainment’s goods that Alchemy received from ANC. Thus, Alchemy has breached its contract with Excel Entertainment, and has been unjustly enriched by obtaining the benefit of Excel Entertainment’s goods delivered to Alchemy without paying Excel Entertainment for those goods.

In light of the foregoing, plaintiff Excel Entertainment alleges claims against defendants ANC and Alchemy as follows:

THE PARTIES

1. Plaintiff Excel Entertainment Group, Inc. (“Excel Entertainment”) is a Utah corporation engaged in marketing and selling motion pictures and other entertainment goods, with its principal place of business at 57 W. South Temple Street, Utah 84101.

2. Defendant ANconnect, LLC (“ANC”) is a Texas limited liability company engaged in distributing motion pictures and other entertainment goods, and on information and belief, has a principal place of business in Amarillo, Texas.

3. Defendant Our Alchemy, LLC (“Alchemy”) is a Delaware limited liability company engaged in distributing motion pictures and other entertainment goods, and on

information and belief, has a principal place of business at 5900 Wilshire Boulevard, 18th Floor, Los Angeles, California 90036.

NATURE OF THE ACTION

4. This is an action for breach of contract and unjust enrichment.

JURISDICTION AND VENUE

5. This Court has diversity jurisdiction over all claims asserted in this action pursuant to 28 U.S.C. §1332, because Excel Entertainment is a Utah citizen, ANC is a Texas citizen, and Alchemy is a citizen of Delaware and California. The amount in controversy exceeds the jurisdictional amount of \$75,000, excluding interest and costs, as further detailed below.

6. Alchemy and ANC each regularly conducts business with Excel Entertainment in Utah by purchasing entertainment goods from Excel Entertainment. Excel Entertainment's claims arise directly from Alchemy's and ANC's purchase of entertainment goods from Excel Entertainment. Accordingly, each of Alchemy and ANC is subject to personal jurisdiction in this Court.

7. Venue is proper in this Court under 28 U.S.C. §1391(b)(1) because defendants Alchemy and ANC each reside in Utah under 28 U.S.C. §1391(c)(2). Venue is also proper in this Court under 28 U.S.C. §1391(b)(2) because the events giving rise to Excel Entertainment's claims occurred within Utah.

GENERAL ALLEGATIONS

ANC Breached Its Contract with Excel Entertainment

8. Excel Entertainment markets and sells entertainment goods, including DVDs and Blu-Rays.

9. As early as 1999 Excel Entertainment began doing business with a ANC, which was then known as Anderson Merchandisers, LP.

10. On information and belief, Anderson Merchandisers, LP later converted to become Anderson Merchandisers, LLC, and in about April 2013 Anderson Merchandisers, LLC changed its name to ANconnect, LLC.

11. ANC, through its predecessors, has maintained its contractual relationship with Excel Entertainment for years by purchasing entertainment goods from Excel Entertainment since at least 1999.

12. Pursuant to the agreement between ANC and Excel Entertainment, ANC would place purchase orders for entertainment goods with Excel Entertainment.

13. Excel Entertainment would fulfill the purchase orders, and ANC would pay the good delivered. The invoices provided by Excel Entertainment set forth the terms for payment by ANC.

14. At times ANC would return unsold goods to Excel Entertainment.

15. Excel Entertainment would credit ANC's account for the returned products.

16. During the period from February to September 2015, ANC placed a number of purchase orders with Excel Entertainment for entertainment goods.

17. Excel Entertainment fulfilled those purchase orders and invoiced ANC for the goods shipped to, and accepted by, ANC.

18. The payment term of each Invoice was "Net 60" days.

19. The invoices to ANC during this period total \$830,980.20.
20. True and correct copies of those invoices are attached hereto as Exhibit A.
21. ANC made a partial payment of \$127,073.29 on June 19, 2015, towards Invoice No. 1419323.
22. Another payment of \$25,000 was made on behalf of ANC in September 2015, which payment is addressed further below.
23. The remaining amounts owing as reflected in the invoices in Exhibit A have not been paid.
24. Excel Entertainment has credited \$293,409.66 to ANC for returned goods that were delivered in connection with the invoices in Exhibit A.
25. Applying the partial payments and credits for returns, ANC has an outstanding balance with Excel Entertainment in the amount of \$385,497.25.
26. This outstanding balance is past due.
27. Thus, ANC has breached its contract by failing to pay the amounts due.
28. On May 2, 2016, Excel Entertainment sent a demand letter to ANC demanding payment of the invoices attached as Exhibit A. A true and correct copy of that letter, which includes the invoices, is attached hereto as Exhibit A.
29. Excel Entertainment received a delivery confirmation indicating that Wayne Novak signed for the demand letter delivered to ANC. A true and correct copy of the delivery confirmation is attached hereto as Exhibit B.
30. ANC has not responded to that letter and has not remedied its breach of contract by paying the outstanding balance it owes to Excel Entertainment.

Alchemy Breached Its Contract with Excel Entertainment

31. On information and belief, Alchemy assumed ANC's obligations and debts to Excel Entertainment in approximately July 2015.

32. Excel Entertainment received one payment of \$25,000 in connection with Alchemy's presumed assumption of ANC's obligations to Excel Entertainment. True and correct copies of documents pertaining to that payment of \$25,000 are attached hereto as Exhibit C.

33. Since approximately July 2015, Alchemy has maintained a contractual relationship with Excel Entertainment for purchasing entertainment goods from Excel Entertainment.

34. Pursuant to the contractual agreement between Alchemy and Excel Entertainment, Alchemy would place purchase orders for entertainment goods with Excel Entertainment.

35. Excel Entertainment would fulfill the purchase orders, and invoice Alchemy for the goods provided by Excel Entertainment. The invoices set forth the terms for payment by Alchemy.

36. During the period from approximately October to November 2015, Alchemy placed a number of purchase orders with Excel Entertainment for entertainment goods.

37. Excel Entertainment fulfilled those purchase orders and invoiced Alchemy for the goods shipped to, and accepted by, Alchemy.

38. True and correct copies of those invoices and corresponding delivery confirmations for the goods are attached hereto as Exhibit D.

39. The payment term of each Invoice was "3% 30, Net 60" days.

40. Alchemy has not paid any of the amounts owing as reflected in these invoices, which total \$452,577.20.

41. Alchemy has not returned any goods to Excel Entertainment.

42. This outstanding balance is past due.

43. Thus, Alchemy has breached its contract by failing to pay both the amounts due for goods that it received directly from Excel Entertainment, and for the amounts due under the Excel Entertainment's contract with ANC, to the extent Alchemy has assumed those obligations.

44. On May 2, 2016, Excel Entertainment sent a demand letter to Alchemy demanding payment of the outstanding invoices. A true and correct copy of that letter is attached hereto as Exhibit D.

45. Excel Entertainment received a delivery confirmation indicating that the demand letter had been successfully delivered to Alchemy and signed for. A true and correct copy of this delivery confirmation is attached hereto as Exhibit E.

46. Alchemy has not responded to the demand letter, and has not paid the amounts owing to Excel Entertainment.

CLAIM ONE

(Breach of Contract against ANC and Alchemy)

47. Excel Entertainment hereby incorporates the allegations of the preceding paragraphs 1-46 of this Complaint as though fully set forth in this claim.

48. ANC entered into a valid contract to purchase entertainment goods from Excel Entertainment.

49. Excel Entertainment performed all of its obligations under that contract by delivering the goods ordered for each purchase order placed by ANC as reflected in Exhibit A.

50. ANC accepted delivery of those goods.

51. ANC has breached its contract with Excel Entertainment by failing to pay the full amounts owing on the invoices in Exhibit A, less returns.

52. Alchemy assumed ANC's obligations under its contract with Excel Entertainment.

53. Alchemy has breached the contract with Excel Entertainment by failing to pay the amounts owing on the invoices in Exhibit A, less returns.

54. As a result of the breach of contract by ANC and Alchemy complained of herein, Excel Entertainment has been damaged in the amount of \$385,497.25.

CLAIM TWO

(Breach of Contract against Alchemy)

55. Excel Entertainment hereby incorporates the allegations of the preceding paragraphs 1-46 of this Complaint as though fully set forth in this claim.

56. Alchemy entered into a valid contract to purchase entertainment goods from Excel Entertainment.

57. Excel Entertainment performed all of its obligations under that contract by delivering the goods ordered for each purchase order placed by Alchemy as reflected in Exhibit D.

58. Alchemy accepted delivery of those goods.

59. Alchemy has breached its contract with Excel Entertainment by failing to pay the amounts owing on the invoices in Exhibit D, less returns.

60. As a result of the breach of contract by Alchemy complained of herein, Excel Entertainment has been damaged in the amount of \$452,577.20.

CLAIM THREE

(Unjust Enrichment against ANC and Alchemy)

61. Excel Entertainment hereby incorporates the allegations of the preceding paragraphs of this Complaint as though fully set forth in this claim.

62. Excel Entertainment provided valuable entertainment goods to ANC as reflected in the documents attached hereto as Exhibit A with the expectation that ANC would pay Excel Entertainment for those goods as reflected in those documents.

63. ANC acknowledged, accepted and benefited from those entertainment goods delivered by Excel Entertainment.

64. ANC has not paid the full amounts owing for those entertainment goods, and it would be unconscionable for ANC to enjoy the benefit of those entertainment goods it has not returned without paying for them.

65. Alchemy has assumed both the benefit of the goods that Excel Entertainment provided to ANC and ANC's obligation to pay Excel Entertainment for those goods.

66. Alchemy acknowledged, accepted and benefited from those entertainment goods.

67. Alchemy has not paid Excel Entertainment the full amounts owing for those entertainment goods, and it would be unconscionable for Alchemy to enjoy the benefit of those entertainment goods that have not been returned to Excel Entertainment without paying for them.

68. As a result of the unjust enrichment of ANC and Alchemy complained of herein, Excel Entertainment is entitled an award of \$385,497.25.

CLAIM FOUR

(Unjust Enrichment against Alchemy)

69. Excel Entertainment hereby incorporates the allegations of the preceding paragraphs 1-46 of this Complaint as though fully set forth in this claim.

70. Excel Entertainment provided valuable entertainment goods to Alchemy as reflected in the documents attached hereto as Exhibit D with the expectation that Alchemy would pay Excel Entertainment for those goods as reflected in those documents.

71. Alchemy acknowledged, accepted and benefited from those entertainment goods delivered by Excel Entertainment.

72. Alchemy has not paid for those entertainment goods, and it would be unconscionable for Alchemy to enjoy the benefit of those entertainment goods without paying for them.

73. As a result of the unjust enrich of Alchemy complained of herein, Excel Entertainment is entitled an award of \$452,577.20.

PRAYER FOR RELIEF

WHEREFORE, Excel Entertainment prays for entry of a final order and judgment against ANC and Alchemy that:

1. ANC and Alchemy are jointly and severally liable to Excel Entertainment for breach of contract and/or unjust enrichment as set forth in Claims One and Three in the amount of \$385,497.25;

2. Alchemy is liable to Excel Entertainment for breach of contract and/or unjust enrichment as set forth in Claims Two and Four in the amount of \$452,577.20;
3. Awards Excel Entertainment its reasonable attorneys' fees incurred in connection with this action;
4. Awards Excel Entertainment its costs of suit to the fullest extent permitted by law;
5. Awards Excel Entertainment pre-judgment and post-judgment interest to the fullest extent permitted by law; and
6. Excel Entertainment be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED this 24th day of June, 2016.

WORKMAN NYDEGGER

By /s/Chad E. Nydegger

CHAD E. NYDEGGER

Attorney for Excel Entertainment Group, Inc.