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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re

FOX ORTEGA ENTERPRISES, INC.,  
dba PREMIER CRU,

Debtor.

Case No. 16-40050-WJL

Chapter 7

MICHAEL G. KASOLAS, Trustee,

Plaintiff,

vs.

UNIVERSAL CARD INC., a California  
corporation, dba Merchant Services of Irvine,

Defendant.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND  
RECOVER PREFERENTIAL  
TRANSFERS AND DISALLOW CLAIM**

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

**JURISDICTION AND VENUE**

1. The Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code (Title 11 of the United States Code) on January 8, 2016 ("Petition Date").

1           2.     The Trustee is the duly qualified and acting trustee of the Debtor's chapter 7 case.  
2           3.     This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b)  
3 and 28 U.S.C. §157.  
4           4.     Venue is proper pursuant to 28 U.S.C. §1409(a).  
5           5.     This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (F) and (O).  
6           6.     The Trustee consents to the entry of a final order by the above-entitled Bankruptcy  
7 Court.

8                               **FIRST CLAIM FOR RELIEF**  
9                               **Avoidance and Recovery of Preferential Transfer**

10           7.     From October 10, 2015, through January 8, 2016, the Debtor transferred the  
11 aggregate amount of \$101,226.21 of its funds (the "Transfers") to pay for chargeback liabilities  
12 under certain credit cards being processed or serviced by Defendant UNIVERSAL CARD INC., a  
13 California corporation, dba Merchant Services of Irvine (the "Defendant").

14           8.     Trustee is informed and believes and thereon alleges that under the parties'  
15 Merchant Agreement, the Debtor was obligated to the Defendant to pay the valid chargeback  
16 obligations owed to its customers and that to the extent it did not pay such valid chargeback  
17 obligations, it would be indebted to the Defendant.

18           9.     Trustee is informed and believes and thereon alleges that Defendant agreed to  
19 indemnify the credit card issuers from any failure by the Debtor to pay its chargeback obligations.

20           10.    The Debtor made the Transfers to or for the benefit of a creditor, namely the  
21 Defendant, who at the time of each Transfer was the Debtor's credit card processor for Visa,  
22 Mastercard and Discovery Card accounts under its merchant agreement(s) with the Debtor.

23           11.    The Transfers were made on account of an antecedent debts.

24           12.    The Transfers were made while the Debtor was insolvent.

25           13.    The Transfers were made within 90 days of the Petition Date.

26           14.    The Transfers enabled Defendant to receive more than it would have received if:  
27 (a) the case was a case under chapter 7 of Title 11; (b) the Debtor had not made the Transfer; and  
28 (c) Defendant received payment of such debt to the extent provided by the provisions of Title 11.

15. The Trustee's investigation is ongoing and to the extent the Trustee discovers additional transfers to or for the benefit of the Defendant within the 90 day period prior to the Petition Date, the Trustee will amend this complaint to include such transfers as part of this claim.

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

**SECOND CLAIM FOR RELIEF**  
**Disallowance of Claims Under 11 U.S.C. §502(d)**

16. The Trustee re-alleges and incorporates by reference paragraphs 1-15 of this Complaint.

17. The Transfer is avoidable under 11 U.S.C. §547 (a) or is recoverable under 11 U.S.C. §550(a).

18. The Defendant refuses to pay the amount for which it is liable under 11 U.S.C. §550 (a) despite the Trustee's demands.

WHEREFORE, the Trustee prays for relief as follows:

**PRAYER FOR RELIEF**

The Trustee seeks judgment against Defendant as follows:

**On the First Claim for Relief:**

1. Avoiding the Transfers under 11 U.S.C. §547(b);
2. Determining under 11 U.S.C. §550(a) that the Trustee may recover \$101,226.21 from Defendant plus such additional amounts as may be recoverable according to proof;
3. Awarding pre-judgment interest at the legal rate from the date of demand.

**On the Second Claim for Relief:**

4. Disallowing under Bankruptcy Code §502(d) any claim filed by Defendant.

**On each Claim:**

5. Awarding costs of suit incurred herein; and,
6. For any other relief that the Court deems proper.

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1 Dated: December 29, 2017  
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WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

Mark S. Bostick  
Attorneys for Plaintiff  
Michael G. Kasolas, Trustee

# EXHIBIT A

| SEQ#  |      |       |             | Payee              |              |
|-------|------|-------|-------------|--------------------|--------------|
| SEQ#  |      |       | Transaction | Last               |              |
| SEQ#  | BANK | ACCT# | Date        | Name/Business Name | Disbursement |
| SEQ#  |      |       |             |                    |              |
| 17236 | CBB  | 4184  | 10/22/2015  | Bankcard 244       | 2,549.92     |
| 17337 | CBB  | 4184  | 11/2/2015   | Bankcard 245       | 291.50       |
| 17348 | CBB  | 4184  | 11/2/2015   | Bankcard 244       | 14,613.97    |
| 17359 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 1,379.57     |
| 17360 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 1,379.63     |
| 17363 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 1,724.63     |
| 17366 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 2,890.67     |
| 17367 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 3,326.02     |
| 17368 | CBB  | 4184  | 11/3/2015   | Bankcard 244       | 6,619.28     |
| 17400 | CBB  | 4184  | 11/9/2015   | Bankcard 244       | 104.99       |
| 17402 | CBB  | 4184  | 11/9/2015   | Bankcard 244       | 224.99       |
| 17437 | CBB  | 4184  | 11/12/2015  | Bankcard 244       | 159.99       |
| 17438 | CBB  | 4184  | 11/12/2015  | Bankcard 244       | 259.98       |
| 17453 | CBB  | 4184  | 11/13/2015  | Bankcard 244       | 1,471.50     |
| 17461 | CBB  | 4184  | 11/13/2015  | Bankcard 244       | 3,547.80     |
| 17499 | CBB  | 4184  | 11/18/2015  | Bankcard 244       | 570.00       |
| 17504 | CBB  | 4184  | 11/18/2015  | Bankcard 244       | 2,111.81     |
| 17505 | CBB  | 4184  | 11/18/2015  | Bankcard 244       | 2,339.82     |
| 17523 | CBB  | 4184  | 11/19/2015  | Bankcard 244       | 1,900.00     |
| 17524 | CBB  | 4184  | 11/19/2015  | Bankcard 244       | 4,445.84     |
| 17527 | CBB  | 4184  | 11/20/2015  | Bankcard 244       | 641.57       |
| 17536 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 179.99       |
| 17537 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 270.00       |
| 17541 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 449.94       |
| 17542 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 467.94       |
| 17543 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 599.99       |
| 17545 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 629.94       |
| 17548 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 1,679.92     |
| 17551 | CBB  | 4184  | 11/23/2015  | Bankcard 244       | 3,119.88     |
| 17588 | CBB  | 4184  | 11/27/2015  | Bankcard 244       | 189.99       |
| 17618 | CBB  | 4184  | 11/30/2015  | Bankcard 244       | 4,976.81     |
| 17627 | CBB  | 4184  | 12/1/2015   | Bankcard 244       | 449.97       |
| 17650 | CBB  | 4184  | 12/2/2015   | Bankcard 245       | 221.18       |
| 17667 | CBB  | 4184  | 12/2/2015   | Bankcard 244       | 14,503.31    |
| 17689 | CBB  | 4184  | 12/7/2015   | Bankcard 244       | 599.94       |
| 17691 | CBB  | 4184  | 12/7/2015   | Bankcard 244       | 1,259.88     |
| 17693 | CBB  | 4184  | 12/7/2015   | Bankcard 244       | 3,498.83     |
| 17703 | CBB  | 4184  | 12/9/2015   | Bankcard 244       | 131.39       |
| 17704 | CBB  | 4184  | 12/9/2015   | Bankcard 244       | 599.94       |
| 17708 | CBB  | 4184  | 12/9/2015   | Bankcard 244       | 2,759.01     |
| 17722 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 49.81        |
| 17723 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 59.10        |
| 17724 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 59.13        |
| 17725 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 98.54        |
| 17726 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 113.87       |
| 17727 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 113.87       |
| 17728 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 131.38       |
| 17729 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 142.34       |
| 17730 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 147.80       |
| 17731 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 147.83       |
| 17732 | CBB  | 4184  | 12/11/2015  | Bankcard 244       | 149.45       |

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|-------|-----|------|-------------------------|--------|
| 17733 | CBB | 4184 | 12/11/2015 Bankcard 244 | 149.45 |
| 17734 | CBB | 4184 | 12/11/2015 Bankcard 244 | 151.11 |
| 17735 | CBB | 4184 | 12/11/2015 Bankcard 244 | 164.22 |
| 17736 | CBB | 4184 | 12/11/2015 Bankcard 244 | 230.37 |
| 17738 | CBB | 4184 | 12/11/2015 Bankcard 244 | 273.74 |
| 17739 | CBB | 4184 | 12/11/2015 Bankcard 244 | 306.59 |
| 17740 | CBB | 4184 | 12/11/2015 Bankcard 244 | 425.09 |
| 17741 | CBB | 4184 | 12/11/2015 Bankcard 244 | 425.09 |
| 17750 | CBB | 4184 | 12/14/2015 Bankcard 244 | 41.26  |
| 17751 | CBB | 4184 | 12/14/2015 Bankcard 244 | 84.49  |
| 17752 | CBB | 4184 | 12/14/2015 Bankcard 244 | 104.00 |
| 17753 | CBB | 4184 | 12/14/2015 Bankcard 244 | 113.94 |
| 17754 | CBB | 4184 | 12/14/2015 Bankcard 244 | 119.94 |
| 17755 | CBB | 4184 | 12/14/2015 Bankcard 244 | 119.97 |
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| 17758 | CBB | 4184 | 12/14/2015 Bankcard 244 | 179.97 |
| 17759 | CBB | 4184 | 12/14/2015 Bankcard 244 | 217.50 |
| 17760 | CBB | 4184 | 12/14/2015 Bankcard 244 | 259.99 |
| 17761 | CBB | 4184 | 12/14/2015 Bankcard 244 | 303.99 |
| 17762 | CBB | 4184 | 12/14/2015 Bankcard 244 | 311.97 |
| 17763 | CBB | 4184 | 12/14/2015 Bankcard 244 | 324.00 |
| 17773 | CBB | 4184 | 12/15/2015 Bankcard 244 | 65.86  |
| 17774 | CBB | 4184 | 12/15/2015 Bankcard 244 | 95.38  |
| 17775 | CBB | 4184 | 12/15/2015 Bankcard 244 | 188.49 |
| 17785 | CBB | 4184 | 12/16/2015 Bankcard 244 | 181.99 |
| 17786 | CBB | 4184 | 12/16/2015 Bankcard 244 | 259.99 |
| 17787 | CBB | 4184 | 12/16/2015 Bankcard 244 | 292.48 |
| 17788 | CBB | 4184 | 12/16/2015 Bankcard 244 | 363.98 |
| 17789 | CBB | 4184 | 12/16/2015 Bankcard 244 | 374.47 |
| 17791 | CBB | 4184 | 12/16/2015 Bankcard 244 | 476.21 |
| 17792 | CBB | 4184 | 12/16/2015 Bankcard 244 | 566.91 |
| 17793 | CBB | 4184 | 12/16/2015 Bankcard 244 | 584.97 |
| 17798 | CBB | 4184 | 12/17/2015 Bankcard 244 | 262.73 |
| 17800 | CBB | 4184 | 12/17/2015 Bankcard 244 | 327.41 |
| 17802 | CBB | 4184 | 12/17/2015 Bankcard 244 | 525.53 |
| 17815 | CBB | 4184 | 12/18/2015 Bankcard 244 | 49.99  |
| 17816 | CBB | 4184 | 12/18/2015 Bankcard 244 | 57.74  |
| 17817 | CBB | 4184 | 12/18/2015 Bankcard 244 | 79.99  |
| 17818 | CBB | 4184 | 12/18/2015 Bankcard 244 | 95.53  |
| 17819 | CBB | 4184 | 12/18/2015 Bankcard 244 | 95.99  |
| 17820 | CBB | 4184 | 12/18/2015 Bankcard 244 | 99.99  |
| 17821 | CBB | 4184 | 12/18/2015 Bankcard 244 | 100.08 |
| 17822 | CBB | 4184 | 12/18/2015 Bankcard 244 | 103.99 |
| 17823 | CBB | 4184 | 12/18/2015 Bankcard 244 | 105.24 |
| 17824 | CBB | 4184 | 12/18/2015 Bankcard 244 | 107.99 |
| 17825 | CBB | 4184 | 12/18/2015 Bankcard 244 | 110.00 |
| 17826 | CBB | 4184 | 12/18/2015 Bankcard 244 | 119.98 |
| 17827 | CBB | 4184 | 12/18/2015 Bankcard 244 | 135.82 |
| 17835 | CBB | 4184 | 12/21/2015 Bankcard 244 | 44.46  |
| 17836 | CBB | 4184 | 12/21/2015 Bankcard 244 | 69.75  |
| 17837 | CBB | 4184 | 12/21/2015 Bankcard 244 | 77.98  |
| 17838 | CBB | 4184 | 12/21/2015 Bankcard 244 | 109.98 |
| 17839 | CBB | 4184 | 12/21/2015 Bankcard 244 | 119.98 |
| 17840 | CBB | 4184 | 12/21/2015 Bankcard 244 | 127.52 |
| 17851 | CBB | 4184 | 12/22/2015 Bankcard 244 | 54.74  |

101,226.21