

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

<i>In re</i> AMERICAN LASER SKIN CARE, LLC, <i>et al.</i> , Debtors. ALFRED T. GIULIANO, Chapter 7 Trustee of American Laser Skin Care, LLC, <i>et al.</i> , Plaintiff, v. Google, Inc., Defendant.	Case. No.: 14-12685 (BLS) (Jointly Administered) Chapter 7 Adv. Proc. No.
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COMPLAINT TO AVOID TRANSFERS
PURSUANT TO 11 U.S.C. §§ 547, 548, 549 AND 502 AND TO RECOVER
PROPERTY PURSUANT TO 11 U.S.C. §§ 550 and 553

Alfred T. Giuliano, Chapter 7 Trustee of the bankruptcy estates of the Debtors (as defined below) (the “Trustee” or “Plaintiff”), by his undersigned attorneys, in support of this complaint (the “Complaint”) to avoid and recover transfers against Google, Inc. (“Defendant”), hereby alleges upon information and belief that:

NATURE OF THE CASE

1. This Complaint seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property made by the above-captioned debtors (collectively, the “Debtors”) for or on account of an antecedent debt and to or for the benefit of Defendant during the ninety-day period prior to the Debtors’ bankruptcy petitions pursuant to 11 U.S.C. §§ 547 and 550. Subject to proof and to the extent applicable, the

Complaint also seeks to recover pursuant to 11 U.S.C. § 548 any transfer that may have been a fraudulent conveyance and pursuant to 11 U.S.C. § 549 any transfers on account of pre-petition debt that cleared post-petition. Subject to proof and to the extent applicable, this Complaint also seeks to recover property that was the subject of impermissible set-off pursuant to 11 U.S.C. § 553. To the extent that Defendant has filed a proof of claim or has otherwise requested payment from the Debtors' or the Debtors' Chapter 7 estates, (collectively, the "Claims"), this Complaint is not intended to be, nor should it be construed as, a waiver of Plaintiff's right to object to such Claims for any reason including, but not limited to, 11 U.S.C. § 502 (a) through (j) ("Section 502"), and such rights are expressly reserved. Notwithstanding this reservation of rights, certain relief pursuant to Section 502 may be sought by Plaintiff herein as further stated below.

STATUTORY PREDICATE, JURISDICTION AND VENUE

2. This is an adversary proceeding brought by Plaintiff: (i) for the avoidance and recovery of preferential transfers pursuant to section 547 of Title 11 of the United States Code (the "Bankruptcy Code"); (ii) to the extent applicable and subject to proof, for the avoidance and recovery of any transfer that may have been a fraudulent conveyance pursuant to 11 U.S.C. § 548; (iii) to the extent applicable and subject to proof, for the avoidance and recovery of any transfers on account of pre-petition debt that cleared post-petition pursuant to 11 U.S.C. § 549; (iv) to recover property pursuant to 11 U.S.C. § 550; (v) to the extent applicable and subject to proof, to recover property pursuant to 11 U.S.C. § 553 and (vi) for disallowance of Defendant's claims, if any, in the Debtors' bankruptcy cases pursuant to 11 U.S.C. § 502(d).

3. This Court has subject matter jurisdiction over this adversary proceeding, which arises under Title 11, or arises in or is related to a case under Title 11 in the United States Bankruptcy Court for the District of Delaware, In re American Laser Skin Care, LLC, *et al.*, Case No. 14-12685

(BLS) (Jointly Administered), Chapter 7, pursuant to 28 U.S.C. §§ 157 and 1334(b).

4. The claims and causes of action set forth herein concern the determination, allowance, disallowance, and amount of claims under 11 U.S.C. §§ 502, 547, 548, 549, 550 and 553. This adversary proceeding is a “core” proceeding to be heard and determined by the Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2).

5. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

6. This Court has personal jurisdiction over Defendant.

7. Defendant is subject to nationwide service of process pursuant to Rule 7004(d) of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

8. On December 4, 2014 (the “Petition Date”) the Debtors filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code. Thereafter, Alfred T. Giuliano was appointed as the Chapter 7 Trustee.

9. Upon information and belief, Defendant is either a corporation, partnership, governmental unit, individual, or entity, who transacted business in the United States with one or more of the Debtors and who received one or more transfers from one or more of the Debtors.

10. The Debtors, headquartered in Farmington Hills, Michigan, were formerly a leading provider of laser hair removal, skin rejuvenation, and other minimally-invasive cosmetic procedures across a nationwide network of 136 locations throughout 25 states. Due to, among other reasons, operational shortcomings and macroeconomic deterioration, which created substantial financial difficulties, the Debtors were forced to cease operations on November 14, 2014 and file these Chapter 7 cases on December 4, 2014.

11. Upon information and belief, Defendant operated a conducted business in the

Information/Software Services industry with one or more of the Debtors during the relevant time periods at issue in this Complaint.

12. During the course of their relationship, the parties engaged in numerous transactions which are reflected in purchase orders, invoices, communications and other documents (collectively, the "Agreements"). Pursuant to the Agreements, the Debtor as identified in particular on Exhibit "A" would pay the Defendant for such services.

13. As a result, during the ninety days prior to the Petition Date, the Debtors made payments to or for the benefit of the Defendant (collectively, the "Transfers"), including those identified on Exhibit "A" attached hereto. Exhibit "A" sets forth the details of each of the Transfers, including the identity of the transferor Debtor, check or payment number, payment date, clear date, and payment amount. The aggregate amount of the Transfers is not less than \$779,151.80.

14. On or about August 26, 2016, the Plaintiff sent a demand letter to Defendant seeking to recover the Transfers (the "Demand Letter"). Defendant either refused to respond to the Demand Letter or did not adequately provide defenses or a settlement offer sufficient to satisfy Plaintiff's demands.

CLAIMS FOR RELIEF
COUNT I

(Avoidance of Preferential Transfers - 11 U.S.C. § 547)

15. Plaintiff incorporates all preceding paragraphs as if fully re-alleged in this paragraph.

16. Within the ninety days prior to the Petition Date, the identified Debtor or Debtors made the Transfers to Defendant in the total amount of \$779,151.80 as more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference.

17. At the time of the Transfers, Defendant had a right to payment on account of an obligation owed to Defendant by one or more of the Debtors.

18. The Transfers were to or for the benefit of a creditor within the meaning of 11 U.S.C.

§547(b)(1).

19. The Transfers were for, or on account of, antecedent debts owed by one or more of the Debtors before the Transfers were made.

20. The Debtors were insolvent at all times during the period 90 days prior to and including the Petition Date.

21. As a result of the Transfers, Defendant received more than it would have received if: (i) the Debtors' cases were liquidated under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payment of its debts pursuant to the distribution provisions of the Bankruptcy Code.

22. In accordance with the foregoing, the Transfers are avoidable pursuant to 11 U.S.C. § 547(b).

23. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendant during the Preference Period. It is Plaintiff's intention to avoid and recover all transfers made by one or more of the Debtors of an interest of one or more of the Debtors in property to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this Complaint in order to include: (i) further information regarding the Transfers, (ii) additional Transfers, (iii) modifications of and/or revision to Defendant's name, (iv) additional defendants, and/or (v) additional causes of action (including, but not limited to, 11 U.S.C. §§ 542, 544, 545, 548, 549 and 553) (collectively, the "Complaint Amendments"), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Complaint Amendments to relate back to this original Complaint.

COUNT II
(Avoidance of Fraudulent Conveyances - 11 U.S.C. § 548(a)(1)(B))

24. Plaintiff hereby incorporates all preceding paragraphs as if fully re-alleged in this

paragraph.

25. To the extent that one or more of the Transfers were not on account of an antecedent debt or a prepayment for goods subsequently received, the Debtor which made the Transfer (as with respect to each such Transfer, the “Debtor Transferor”) did not receive reasonably equivalent value in exchange for such Transfer; and

- A. The Debtor Transferor was insolvent on the date that the Transfer was made or became insolvent as a result of the Transfer; or
- B. The Debtor Transferor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor Transferor was an unreasonably small capital; or
- C. The Debtor Transferor intended to incur, or believed that it would incur, debts that would be beyond the Debtor Transferor’s ability to pay as such debts matured.

26. The Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

**COUNT III
(Recovery of Post-Petition Transfers - 11 U.S.C. § 549)**

27. Plaintiff incorporates all preceding paragraphs as if fully re-alleged in this paragraph.

28. To the extent that the Transfers were made by one or more of the Debtors to Defendant on account of obligations that arose before the Petition Date and that cleared after the Petition Date, such Transfer(s) were unauthorized post-petition transfers and are avoidable under 11 U.S.C. § 549.

**COUNT IV
(Recovery of Avoided Transfers - 11 U.S.C. § 550)**

29. Plaintiff incorporates all preceding paragraphs as if fully re-alleged in this paragraph.

30. Plaintiff is entitled to avoid the Transfers pursuant to 11 U.S.C. § 547(b), or, in the alternative pursuant to 11 U.S.C. § 548 or 11 U.S.C. § 549.

31. Defendant was the initial transferee of the Transfers or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Transfers were made.

32. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant the Transfers, plus interest thereon to the date of payment and the costs of this action.

COUNT V
(Recovery of Impermissible Set-off - 11 U.S.C. § 553)

33. Plaintiff incorporates all preceding paragraphs as if fully re-alleged in this paragraph.

34. To the extent that the Defendant has offset a mutual debt owing to one or more of the Debtors against a claim against one or more of the Debtors on or within the Preference Period, the amount so offset is recoverable, pursuant to 11 U.S.C. § 553(b), to the extent that any insufficiency on the date of such set-off is less than the insufficiency on the later of (A) 90 days before the Petition Date; and (B) the first date during the 90 days immediately preceding the Petition Date on which there is an insufficiency (such amounts, the “Offset Amounts”).

COUNT VI
(Disallowance of all Claims - 11 U.S.C. § 502(d) and (j))

35. Plaintiff incorporates all preceding paragraphs as if fully re-alleged in this paragraph.

36. Defendant is an entity from which property is recoverable under 11 U.S.C. § 550.

37. Defendant is a transferee of Transfers avoidable under 11 U.S.C. § 547 or, in the alternative pursuant to 11 U.S.C. § 548 or 11 U.S.C. § 549.

38. Defendant has not paid the amount of the Transfers, or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

39. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee,

against the Debtors' estates or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Transfers, plus interest thereon and costs.

40. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant, and/or its assignee, against the Debtors' estates or Plaintiff previously allowed by the Debtors or the Plaintiff, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of all of the Transfers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant it the following relief against Defendant:

As to Counts I through VI, that the Court enter a judgment against Defendant:

- A. That Transfers in the amount of not less than \$779,151.80 be avoided under 11 U.S.C. § 547, or, in the alternative pursuant to 11 U.S.C. § 548 or 11 U.S.C. § 549;
- B. That the Transfers, to the extent that they are avoided pursuant to 11 U.S.C. § 547, § 548 or § 549 be recovered by Plaintiff pursuant to 11 U.S.C. § 550, together with interest thereon to the date of payment and the costs of this action;
- C. That any Offset Amounts be recovered by Plaintiff pursuant to 11 U.S.C. § 553;
- D. Disallowing, in accordance with 11 U.S.C. § 502(d), any Claims held by Defendant and/or its assignee until Defendant satisfies the judgment;
- E. Disallowing, in accordance with 11 U.S.C. § 502(j), any Claims held by Defendant and/or its assignee until Defendant satisfies the judgment;
- F. Awarding pre-judgment interest at the maximum legal rate running from the

date of each Transfer to the date of judgment herein;

- G. Awarding post judgment interest at the maximum legal rate running from the date of judgment herein until the date the judgment is paid in full, plus costs;
- H. Requiring Defendant to pay forthwith the judgment amount awarded in favor of Plaintiff;
- I. Granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: November 29, 2016

FLASTER/GREENBERG P.C.

By: /s/ William J. Burnett
William J. Burnett (No 4078)
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Exhibit "A"

Bankruptcy Case: American Laser Skincare, LLC, et al. (14-12685-BLS)
Transfer Date Range: 9/5/2014 through 12/3/2014

Google Inc.

1600 Amphitheatre Parkway
 Mountain View, CA 94043

Preferential Transfers:

Payment #	Payment Date	Clear Date	Payment Amount
1139203	09/05/2014	09/05/2014	80,000.00
1139652	09/19/2014	09/19/2014	90,000.00
1139853	09/26/2014	09/26/2014	90,000.00
1140008	10/03/2014	10/03/2014	100,000.00
1140713	10/16/2014	10/16/2014	154,000.00
1140983	10/24/2014	10/24/2014	65,151.80
1141333	10/31/2014	10/31/2014	100,000.00
1141369	11/07/2014	11/07/2014	100,000.00
TOTAL		8	779,151.80