

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: AFA Investment Inc., <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11 Case No. 12-11127 (MFW) (Jointly Administered)
AFA Investment Inc., et al., Debtors in Possession,  vs. AB Foods LLC,  Plaintiff,  Defendant.	Adv. No. <b>Refer to Summons</b>

**COMPLAINT TO AVOID TRANSFERS  
PURSUANT TO 11 U.S.C. § 547 AND TO RECOVER  
PROPERTY TRANSFERRED PURSUANT TO 11 U.S.C. § 550**

AFA Investment Inc., et al., the Debtors and Debtors in Possession in the above case (the “Debtors” or the “Plaintiff”), by and through its undersigned counsel, files this complaint (the “Complaint”) to avoid and recover transfers made to AB Foods LLC (the “Defendant”), and in support thereof alleges upon information and belief that:

**NATURE OF THE CASE**

1. Plaintiff 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 that occurred during the ninety (90) day period prior to the commencement of the Debtors’ bankruptcy proceedings pursuant to 11 U.S.C. §§ 547 and 550.

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<sup>1</sup> The Debtors are the following nine entities: AFA Investment Inc.; American Foodservice Corporation; American Fresh Foods, Inc.; American Fresh Foods, L.P.; AFA Foods, Inc.; American Fresh Foods, LLC; Fairbank Reconstruction Corporation; American Foodservice Investment Company, LLC; and United Food Group LLC.

**JURISDICTION AND VENUE**

2. This court has subject matter jurisdiction over this adversary proceeding, which arises under title 11, arises in, and relates to cases under title 11, in the United States Bankruptcy Court for the District of Delaware (the “Court”), Case No. 12-11127 (MFW), pursuant to 28 U.S.C. §§ 157 and 1334(b).

3. The statutory and legal predicates for the relief sought herein are sections 547 and 550 of the United States Code, 11 U.S.C. §§101-1532 (the “Bankruptcy Code”) and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

4. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter final orders for matters contained herein.

5. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff states that it does consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue is proper in the District of Delaware pursuant to 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

7. On April 2, 2012 (the “Petition Date”) the Debtors each commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code.

8. On April 3, 2012, the Court entered an order authorizing the joint administration of the chapter 11 cases for procedural purposes pursuant to Bankruptcy Rule 1015(b) [Docket No. 35].

9. On July 2, 2013 the Court entered an Order Approving Revised Global Settlement [Docket No. 1114] (the “Global Settlement Order”). Pursuant to the Global Settlement Order an Avoidance Action Committee was formed for the purpose of management of the prosecution of avoidance actions, including those asserted in this Complaint.

10. On January 18, 2013, the Debtors filed the Debtor’s First Amended Joint Chapter 11 Plan of Liquidation of Debtors and Debtors in Possession [Docket No. 1393] (the “Plan”). On March 7, 2014, the Court confirmed the Plan and entered the Order Granting Final Approval of Disclosure Statement and Confirming First Amended Joint Chapter 11 Plan of Liquidation of Debtors and Debtors in Possession [Docket No. 1499] (the “Confirmation Order”).

11. As of the date of this filing the Plan has not become Effective.

12. Pursuant to the Plan, general unsecured creditors of the Debtors are impaired and will not be paid in full.

### **THE PARTIES**

13. Plaintiff is authorized to commence suit on behalf of the Debtors’ Chapter 11 Estates and brings this action in accordance with the requirements of the Global Settlement Order and with the authorization of the Avoidance Action Committee appointed pursuant to the Global Settlement Order<sup>2</sup>.

14. Prior to the Petition Date the Debtors were among the largest ground beef processing enterprises in the United States. Annually, the Debtors processed more than 500 million pounds of ground beef products, which were distributed primarily to restaurants and

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<sup>2</sup> Pursuant to the Plan all Avoidance Action Claims, including those asserted herein will be vested in the Liquidating Debtors acting through David J. Beckman as Plan Administrator upon the Effective Date, as defined in the Plan and Confirmation Order. Upon the occurrence of the Effective Date, the causes of action set forth herein shall be prosecuted in accordance with the Plan, Global Settlement Order, Confirmation Order and any other applicable requirements. As of the date of this complaint, the effective date has not occurred.

retail grocery stores across the United States. The Debtors operated beef processing facilities in California, Georgia, New York, Pennsylvania and Texas and maintained headquarters in King of Prussia, Pennsylvania. As of the Petition Date, the Debtors had approximately 850 full time employees.

15. Debtor AFA Investment Inc. is the sole direct owner of Debtor AFA Foods, Inc., which in turn is the direct or indirect owner of each of the other Debtors.

16. Upon information and belief, at all relevant times, Defendant engages in the processing, marketing and sale of beef as well as offers beef and pork products. Upon further information and belief, Defendant's principal place of business is located at 1555 Shoreline Drive, 3rd Floor, Boise, ID 83702. Plaintiff is informed and believes and on that basis alleges that Defendant is a limited liability company residing in and subject to the laws of the State of Washington.

#### **FACTUAL BACKGROUND**

17. Prior to the Petition Date, the Debtors, as a ground beef processing enterprise, maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services.

18. As a ground beef processing enterprise, the Debtors regularly purchased goods from various entities including vendors, creditors, suppliers and distributors. The Debtors, as a ground beef processing enterprise, also regularly paid for services used to facilitate their ground beef processing enterprise.

19. In the ordinary course of business, the Debtors maintained a cash management system<sup>3</sup> (the “Cash Management System”) whereby the Debtors funded all of their operations from one principal operating account (the “Master Operating Account”), which the Debtors maintained at Bank of America, N.A. (“Bank of America”). The Master Operating Account was the focal point of the Cash Management System. Funds were advanced into the Master Operating Account from a revolving credit facility with the Debtors’ pre-petition first lien lenders (the “Revolver”). The Master Operating Account funded all of the Debtors’ other accounts.

20. In addition to the Master Operating Account, the Debtors maintained approximately nine other bank accounts in the ordinary course of their business, including various deposit accounts and disbursement accounts (collectively with the Master Operating Account, the “Bank Accounts”). From the Bank Accounts, the Debtors managed their daily cash receipts and disbursements. The Debtors used the Bank Accounts to collect, transfer and disburse funds generated from operations on a daily basis and record such collections, transfers and disbursements.

21. Cash generated from the operations of the Debtors’ business was received by wire transfer, check or automated clearing house transfer into certain lockboxes and deposited into one of two blocked depository accounts at Bank of America (together the “Depository Accounts”). All funds held in the Depository Accounts were swept automatically into an account maintained by General Electric Capital Corporation at the end of each business day and used to pay down advances under the Revolver.

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<sup>3</sup> Additional detail concerning the Debtors’ Cash Management System is contained in the Motion of the Debtors for an Order (I) Approving the Continued Use of the Debtors’ Cash Management System and (II) Granting Related Relief [Docket No. 10] including Exhibits “A” and “B” thereto.

22. The Debtors manually transferred funds on a daily basis from the Master Operating Account into a disbursement account maintained at Bank of America, the last four digits of which are 1471 (the “Payables Account”). Funds in the Payables Account were used to pay vendors and suppliers for the Debtors’ facilities. The Payables Account was maintained in the name of AFA Foods, Inc. paying payables on behalf of each of the Debtors. The Debtors recorded in their books and records any receipts and/or disbursements made on behalf of a Debtor as intercompany balances.

23. The Debtors used the Cash Management System to streamline the collection, transfer, and disbursement of funds generated by the Debtors’ business operations, and the Debtors accurately recorded which entity had made such collections, transfers, and disbursements as they were made.

24. During the ninety (90) days before the Petition Date, that is between January 3, 2012, and April 2, 2012 (the “Preference Period”), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits or otherwise to certain entities<sup>4</sup>.

25. During the course of their relationship, the Debtors and Defendant entered into agreements, which are evidenced by invoices, communications and other documents (collectively, the “Agreements”). The details of each of the Agreements paid for during the Preference Period are set forth on the Statement of Account, which is attached hereto and

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<sup>4</sup> Pursuant to the Plan and Confirmation Order, the Debtors’ Estates will be substantively consolidated upon the Effective Date of the Plan. The information contained in Exhibit “A” remains factually correct as of the time of the filing of this Complaint however Plaintiff reserves the right on its own behalf, the behalf of the Plan Administrator and any other successor in interest to rely on the effect of the substantive consolidation on the claims asserted in the Complaint instead of those asserted in the Complaint and Exhibit “A” exclusively.

incorporated by reference as Exhibit "A." Such details include "Invoice Number," "Invoice Date," "Invoice Amount," and "Debtor(s) Incurring Antecedent Debt."

26. The Debtors and Defendant conducted business with one another through and including the Petition Date pursuant to the Agreements.

27. As identified in the Agreements, the Debtors purchased goods and/or services from Defendant.

28. Plaintiff has completed an analysis of all readily available information of the Debtors and is seeking to avoid all of the transfers of an interest of the Debtors' property made by the Debtors to Defendant within the Preference Period.

29. Plaintiff has determined that the Debtors made transfer(s) of an interest of the Debtors' property to or for the benefit of Defendant during the Preference Period through payments aggregating to an amount not less than \$422,081.64 (the "Transfer" or "Transfers"). The details of each Transfer are set forth on the Statement of Account, which is attached hereto and incorporated by reference as Exhibit "A." Such details include "Check Number," "Check Amount," "Check Clear Date," and "Debtor Transferor(s)."

30. 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 the Debtors of an interest of the Debtors in property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Transfer(s), (ii) additional transfers, (iii) modifications of and/or revision to Defendant's name, (iv) additional defendants, and/or (v) additional causes of action (*e.g.*, but not exclusively, 11 U.S.C. §§ 542, 544, 545, 548 and/or 549) (collectively, the "Amendments"),

that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

31. Plaintiff acknowledges that some of the Transfers might be subject to defenses under Bankruptcy Code section 547(c), for which Defendant bears the burden of proof under Section 547(g).

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)**

32. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

33. Each Transfer was made to Defendant by AFA Foods, Inc., identified on Exhibit “A” under the column heading “Debtor Transferor.” AFA Foods, Inc. made each Transfer on behalf of the Debtor identified on Exhibit “A” under the column heading “Debtor Incurring Antecedent Debt” pursuant to the Debtors’ Cash Management System.

34. Each Transfer was paid from the Payables Account described *supra*. See Exhibit “A.”

35. Each Transfer constituted a transfer of an interest in property of the Debtors as identified on Exhibit “A.”

36. During the Preference Period, Defendant was a creditor at the time of each Transfer by virtue of supplying goods and/or services identified in the Agreements to the Debtors identified on Exhibit “A” under the column heading “Debtor(s) Incurring Antecedent Debt” for which the identified Debtors were obligated to pay following delivery in accordance with the Agreements. See Exhibit “A.”



37. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1) because each Transfer either reduced or fully satisfied a debt or debts then owed by the Debtor(s) identified on Exhibit “A” under the column heading “Debtor(s) Incurring Antecedent Debt” to Defendant. See Exhibit “A.”

38. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtor(s) identified on Exhibit “A” under the column heading “Debtor(s) Incurring Antecedent Debt” to Defendant before such Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by the Debtor(s) identified on Exhibit “A” under column heading “Debtors Transferor(s).” See Exhibit “A.”

39. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

40. Each Transfer was made during the Preference Period. See Exhibit “A.”

41. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtor’s case was under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtor’s schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, the Debtor’s liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors’ bankruptcy estates.

42. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

## COUNT II

### **(Recovery of Avoided Transfers – 11 U.S.C. § 550)**

43. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein, to the extent they are not inconsistent with allegations contained in this Count.

44. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b) (the “Avoided Transfer(s)”).

45. Defendant was the initial transferee of the Avoided Transfer(s) or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoided Transfer(s) were made.

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

### **PRAYER FOR RELIEF**

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

As to Counts I and II, that the Court enter a judgment against Defendant:

- A. That the Avoided Transfer(s) avoidable under 11 U.S.C. § 547 in the total aggregate amount of not less than \$422,081.64 be avoided;
- B. That the Avoided Transfer(s), to the extent that they are avoided pursuant to 11 U.S.C. § 547, be recovered by Plaintiff pursuant to 11 U.S.C. § 550;
- C. That judgment be entered against Defendant in the amount of \$422,081.64 (the “Judgment”);
- D. Awarding pre-judgment interest at the maximum legal rate running from the date of the filing of the Complaint to the date of Judgment herein;

- E. 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;
- F. Requiring Defendant to pay forthwith the Judgment amount awarded in favor of Plaintiff; and
- G. Granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: March 28, 2014

Delaware Counsel

/s/ Frederick B. Rosner  
Frederick B. Rosner (DE 3995)  
Scott J. Leonhardt (DE 4885)  
Julia B. Klein (DE 5198)  
824 Market Street, Suite 810  
Wilmington, DE 19801  
Tel.: (302) 777-1111  
rosner@teamrosner.com  
leonhardt@teamrosner.com  
klein@teamrosner.com

and

Primary Counsel  
**(Please Contact Primary Counsel)**

Joseph L. Steinfeld, Jr., Esq., MN SBN  
0266292  
Kendra K. Bader, Esq., MN SBN 0391229  
2600 Eagan Woods Drive, Suite 400  
St. Paul, MN 55121  
Telephone: (651) 406-9665 ext. 870  
Fax: (651) 406-9676  
e-mail: kbader@askllp.com

and

Edward E. Neiger, Esq.  
Marianna Udem, Esq.  
Brigette G. McGrath, Esq.  
151 West 46th Street, 4th Fl.  
New York, NY 10036  
Telephone: (212) 267-7342  
Fax: (212) 918-3427

*Attorneys for Plaintiff, AFA Investment Inc., et al.*



ATTORNEYS AT LAW

2600 Eagan Woods Dr, Suite 400  
St. Paul, MN 55121  
651-406-9665

151 West 46th Street, 4th Floor  
New York, NY 10036  
212-267-7342

Defendant: **AB Foods LLC**  
Bankruptcy Case: **AFA Investment Inc.**  
Preference Period: **Jan 3, 2012 - Apr 2, 2012**

Transfers During Preference Period

Debtor Transferor(s)	Debtor(s) Incurring Antecedent Debt	Check Number	Check Amt	Clear Date	Invoice Number	Invoice Date	Invoice Amt
AFA Foods, Inc.	United Food Group LLC	645364	\$39,435.57	3/29/2012	515483	3/8/2012	\$39,435.57
AFA Foods, Inc.	United Food Group LLC	645164	\$39,762.75	3/27/2012	515164	3/3/2012	\$39,762.75
AFA Foods, Inc.	United Food Group LLC	644976	\$43,184.36	3/27/2012	515020	3/1/2012	\$43,184.36
AFA Foods, Inc.	United Food Group LLC	644697	\$38,300.10	3/20/2012	514672	2/24/2012	\$38,300.10
AFA Foods, Inc.	United Food Group LLC	644670	\$39,690.30	3/20/2012	514713	2/25/2012	\$39,690.30
AFA Foods, Inc.	United Food Group LLC	644586	\$36,524.24	3/19/2012	514596	2/23/2012	\$36,524.24
AFA Foods, Inc.	United Food Group LLC	643633	\$38,576.54	3/5/2012	513694	2/10/2012	\$38,576.54
AFA Foods, Inc.	United Food Group LLC	643238	\$36,181.95	2/28/2012	513271	2/3/2012	\$36,181.95
AFA Foods, Inc.	United Food Group LLC	643237	\$37,814.70	2/28/2012	513251	2/3/2012	\$37,814.70
AFA Foods, Inc.	United Food Group LLC	642822	\$32,132.38	2/21/2012	512783	1/27/2012	\$31,193.38
AFA Foods, Inc.	United Food Group LLC	642822	\$32,132.38	2/21/2012	512782	2/27/2012	\$939.00
AFA Foods, Inc.	United Food Group LLC	642364	\$38,450.15	2/15/2012	512302	1/21/2012	\$36,308.75
AFA Foods, Inc.	United Food Group LLC	642364	\$38,450.15	2/15/2012	512245	1/19/2012	\$2,141.40
AFA Foods, Inc.	United Food Group LLC	639982	\$2,028.60	1/10/2012	508883	12/1/2011	\$2,028.60

**Totals: 12 transfer(s), \$422,081.64**

In re		Chapter 11
AFA Investment Inc., <i>et al.</i> <sup>1</sup> ,	Debtors	Case No. 12-11127 (MFW) (Jointly Administered)
AFA Investment Inc., et al., Debtors in Possession,	Plaintiff,	Adv. No. <b>Refer to Summons</b>
vs.		
AB Foods LLC,	Defendant.	

**NOTICE OF DISPUTE RESOLUTION ALTERNATIVES**

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. The purpose of this Notice is to furnish general information about ADR.

The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the *Neutral*.

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

**Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.**

Dated: March 28, 2014

/s/ David D. Bird  
 Clerk of Court

<sup>1</sup> The Debtors are the following nine entities: AFA Investment Inc.; American Foodservice Corporation; American Fresh Foods, Inc.; American Fresh Foods, L.P.; AFA Foods, Inc.; American Fresh Foods, LLC; Fairbank Reconstruction Corporation; American Foodservice Investment Company, LLC; and United Food Group LLC.