

1 RON BENDER (SBN 143364)  
2 IRV M. GROSS (SBN 53659)  
3 JULIET Y. OH (SBN 211414)  
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
5 10250 Constellation Boulevard, Suite 1700  
6 Los Angeles, CA 90067  
7 Telephone: (310) 229-1234  
8 Facsimile: (310) 229-1244  
9 E-Mail: rb@lnbrb.com; img@lnbyb.com; jyo@lnbyb.com

10 Attorneys for Plaintiff

11 **UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **SAN FERNANDO VALLEY DIVISION**

14 **In re** ) **CASE NO. 1:09-bk-13964-GM**  
15 )  
16 **FATBURGER RESTAURANTS OF** ) **CHAPTER 11**  
17 **CALIFORNIA, INC.,** )  
18 **Debtor.** ) **(Jointly Administered with Case No. 1:09-**  
19 **bk-13965-GM)**  
20 **FATBURGER RESTAURANTS OF** ) **Adv. No. \_\_\_\_\_**  
21 **CALIFORNIA, INC.,** )  
22 **Plaintiff,** ) **COMPLAINT FOR:**  
23 **v.** )  
24 **[Defendant],** ) **(1) AVOIDANCE AND RECOVERY**  
25 **Defendant.** ) **OF PREFERENTIAL TRANSFERS [11**  
 ) **U.S.C. §§ 547(b), 550(a), AND 551]; AND**  
 ) **(2) DISALLOWANCE OF ANY**  
 ) **CLAIMS HELD BY DEFENDANT**  
 ) **[11 U.S.C. § 502(d)]**  
 )  
 )  
 )  
 )  
 )

1 Fatburger Restaurants of California, Inc. (Debtor)<sup>1</sup> for its complaint against Defendant  
2 [Defendant] (“Defendant”) to avoid and recover preferential transfer and disallow  
3 claims (the “Complaint”), alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§  
6 151, 157, and 1334.

7 2. This adversary proceeding is commenced pursuant to Rule 7001, et seq. of the Federal  
8 Rules of Bankruptcy Procedure and Sections 502, 547, 550 and 551 of 11 U.S.C. § 101 et seq. (the  
9 “Bankruptcy Code”).

10 3. Venue in this Court is proper pursuant to 28 U.S.C. § 1409 as this adversary  
11 proceeding arises under and in connection with a case under Title 11 which is pending in this  
12 District.

13 4. This adversary proceeding is a core proceeding as defined by 28 U.S.C. § 157(b) (2)  
14 (A), (B), (F), and (O).

15 **PARTIES**

16 5. On April 7, 2009 (the “Petition Date”), Debtor commenced its bankruptcy case by  
17 filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

18 6. Defendant was, at all times material hereto, a creditor of the Debtor during the period  
19 commencing ninety (90) days prior to the Petition Date and concluding on the Petition Date (the  
20 “Preference Period”).

21 ///

22 **STATEMENT OF FACTS**

23 7. As set forth in **Exhibit “A”**, which is attached hereto and specifically incorporated  
24 herein by reference, the Debtor made transfers totaling not less than \$37,439.73, to or for the benefit

25 \_\_\_\_\_  
<sup>1</sup> On April 15, 2009, the Court entered an order for joint administration of this case and Fatburger Restaurants of Nevada, Inc., Bk. Case No. 09-13965-GM.

1 of the Defendant within the ninety (90) days prior to the Petition Date, together with any other  
2 transfers that may subsequently be identified (the “Transfers”).

3 8. Prior to receiving the Transfers, (i) Defendant provided goods and/or services to the  
4 Debtor or (ii) the Debtor was otherwise indebted to the Defendant. After such debts were created,  
5 the Debtor made the Transfers on account of those obligations. As such, the Transfers were  
6 payments on account of antecedent debts owed by the Debtor to the Defendant.

7 **FIRST CLAIM FOR RELIEF**

8 [FOR AVOIDANCE OF PREFERENTIAL TRANSFERSS - 11 U.S.C. § 547]

9 9. Debtor re-alleges and incorporates by this reference each and every allegation set  
10 forth in paragraphs 1 through 13, inclusive, as though fully set forth herein.

11 10. The Transfers were of property interests of Debtor.

12 11. The Transfers were made to or for the benefit of Defendant at a time in which  
13 Defendant were a creditor of the Debtor.

14 12. The Transfers were for or on account of antecedent debts owed by Debtor before such  
15 Transfers were made.

16 13. The Transfers were made while Debtor was insolvent.

17 14. The Transfers enabled Defendant to receive more than Defendant would otherwise  
18 receive if (a) Debtor’s bankruptcy case was a case under chapter 7 of the Bankruptcy Code; (b) the  
19 Transfers had not been made; and (c) Defendant received payment of such debt to the extent  
20 provided by the provisions of the Bankruptcy Code.

21 15. The Transfers may be avoided pursuant to 11 U.S.C. § 547(b).

22 16. The Debtor is entitled to an order and judgment under 11 U.S.C. § 547 that the  
23 Transfers are avoided.

24 **SECOND CLAIM FOR RELIEF**

25 [FOR RECOVERY OF PROPERTY - 11 U.S.C. § 550]

17. Debtor re-alleges and incorporates by this reference each and every allegation set  
forth in paragraphs 1 through 21, inclusive, as though fully set forth herein.

1 18. Debtor is informed and believes and, based upon such information and belief, alleges  
2 that Defendant is the initial transferee of the Transfers, or the entity for whose benefit the Transfers  
3 were made, or is the immediate or mediate transferee of the initial transferee receiving such  
4 Transfers.

5 19. Pursuant to 11 U.S.C. § 550(a), Debtor is entitled to recover the Transfers, together  
6 with interest thereon, as set forth above.

7 **THIRD CLAIM FOR RELIEF**

8 [FOR DISALLOWANCE OF CLAIM – 11 U.S.C. § 502(d)]

9 20. Debtor re-alleges and incorporates by this reference each and every allegation set  
10 forth in paragraphs 1 through 24, inclusive, as though fully set forth herein.

11 21. Defendant is an entity from which property is recoverable under 11 U.S.C. §§ 542,  
12 543, 550 or 553, or Defendant received an avoidable transfer under 11 U.S.C. §§ 522(f), 522(h),  
13 544, 545, 547, 548, 549, or 724(a).

14 22. Defendant has not paid the amount, or turned over any such property for which  
15 Defendant is liable under 11 U.S.C. §§ 522(i), 542, 543, 550, or 553 of the Bankruptcy Code.

16 23. Pursuant to 11 U.S.C. § 502(d), Defendant's claims, to the extent that Defendant  
17 asserts a claim or claims, should be disallowed.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Debtor prays for a judgment on this Complaint, as it may be amended from  
20 time to time, as follows:

- 21 1. For avoidance of the Transfers;
- 22 2. For recovery from Defendant by Debtor of the amount of the Transfers;
- 23 3. For disallowance of any claims asserted by, or scheduled for, Defendant;
- 24 4. For recovery of interest, costs, and attorneys' fees and expenses, to the extent  
25 recoverable under applicable law and the evidence submitted to the Bankruptcy Court; and

1           5.       For such other and further relief as the Court deems just and proper.

2  
3 Dated: April 1, 2011

LEVENE, NEALE, BENDER,  
YOO & BRILL L.L.P.

4 By: /s/ Irv M. Gross

5 IRV M. GROSS  
6 Attorneys for Plaintiff and Debtor,  
7 Fatburger Restaurants of California, Inc.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# **Exhibit “A”**

**Fatburger Restaurants of California, Inc.**  
**90-Day Preference Period Payments**

Vendor / Transfer to	Date	Amount
	<b>\$ TOTAL:</b>	