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Liquidating Trustee for the Fleetwood Liquidating Trust

11 **UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **RIVERSIDE DIVISION**

14 In re  
15 FLEETWOOD ENTERPRISES INC., et al.,  
16 Debtors.

Case No. 6:09-bk-14254-MJ  
Chapter 11

17 SLTNTRST LLC, the duly appointed  
18 Liquidating Trustee for the FLEETWOOD  
LIQUIDATING TRUST,  
19 Plaintiff,  
20 vs.  
21 Boyd R. Plowman,  
22 Defendant.  
23

Adv No.

**COMPLAINT FOR (1) AVOIDANCE AND  
RECOVERY OF PREFERENTIAL AND  
FRAUDULENT TRANSFERS, (2)  
PRESERVATION OF AVOIDABLE  
TRANSFERS, AND (3) DISALLOWANCE  
OF CLAIMS**

Date:  
Time: [To Be Set By Summons]  
Place:

24 For its Complaint for (1) Avoidance and Recovery of Preferential and Fraudulent  
25 Transfers, (2) Preservation of Avoidable Transfers, and (3) Disallowance of Claims (the  
26 “Complaint”), plaintiff, SltTrst LLC, the duly appointed Liquidating Trustee for the Fleetwood  
27 Liquidating Trust (the “Liquidating Trustee” or “Plaintiff”) established pursuant to the order  
28 confirming the Plan (defined below), hereby alleges and avers as follows:





1 Plans”). The deferred compensation payments under the Benefit Plans were scheduled on the  
2 Debtors’ financial reports.

3           10.       Payments to plan participants under both the Benefit RP and Supplemental  
4 BP were payments of retirement benefits contributed to non-qualified plans. Payments under  
5 those plans were made in accordance with the written election of the plan participant upon  
6 termination of the participant’s employment with the Debtors. Such election was generally made  
7 prior to the inception of the participant’s participation in either plan. The participant could  
8 designate any of the following payment options: (i) a lump sum upon the termination of  
9 employment with the Debtors, or in the first week of January of a designated year following  
10 termination; (ii) consecutive annual installments of not less than \$10,000 each, to commence the  
11 first week of January of a designated year following employment termination; and/or (iii) a lump  
12 sum amount of less than the participant’s entire benefit in accordance with (i), followed by  
13 installment payments on the balance in accordance with (ii). Payments under both the Benefit RP  
14 and Supplemental BP ordinarily commenced upon or after termination.

15           11.       In the alternative, a participant could elect for payments to commence  
16 while still employed on or after the date on which the sum of such employee’s age and total  
17 service with the Debtors equaled 85 (or 70, if a committee, which was comprised of the Chief  
18 Executive Officer, Chief Financial Officer and treasurer or general counsel of the Debtors,  
19 approved payment to an employee who was still employed). An election could be modified at any  
20 time if the employee elected to have the full balance distributed but reduced by 10% (commonly  
21 referred to as a “haircut payment”).

22           12.       Under the Deferred CP, certain management employees were provided an  
23 opportunity to defer receipt of a portion of their compensation to a later date based on an election.  
24 The Deferred CP provided that on or before the last business day of the fiscal quarter preceding  
25 each deferral period, the employee could make an election to (i) defer all or any portion of the  
26 employee’s compensation in excess of the qualifying amount - \$15,000 quarterly salary – in equal  
27 amounts for each of the three months in the deferral period, and/or (ii) defer all or any portion of  
28 the employee’s other compensation which, in the absence of such election, would otherwise be

1 payable for the deferral period. An employee could elect to defer receipt of payment either in one  
2 lump sum in January of a specified future year or in not more than five equal annual cash  
3 installments starting in a specified further year, with each installment paid in January.

4 13. Plaintiff alleges on information and belief that in late 2008 and early 2009,  
5 the Debtors were faced with substantial upcoming obligations on account of the Benefit Plans.

6 **B. Pre-Petition Transfers**

7 14. Plaintiff alleges on information and belief that the Debtors made transfers  
8 of property to Defendant on or within one year prior to the Petition Date (between March 9, 2008  
9 and March 9, 2009), in the form of payments to the Defendant, including, but not limited to, the  
10 specific transfers under the Debtors' applicable Benefit Plans as reflected on **Exhibit "A"** hereto,  
11 which is incorporated herein by this reference (the "Pre-Petition Transfers").

12 15. Plaintiff alleges on information and belief that at all relevant times to this  
13 Complaint, Defendant was an insider of the Debtors.

14 16. On or about September 6, 2008, Defendant retired from employment with  
15 the Debtors. Prior to his retirement, Defendant was the Debtors' chief financial officer.

16 17. Plaintiff alleges on information and belief that Defendant used or benefited  
17 from his senior position with the Debtors to cause or to influence the Debtors to use corporate  
18 assets to make Benefit Plan payments to himself and other insiders at a time when the Debtors  
19 were insolvent.

20 **FIRST CLAIM FOR RELIEF**

21 **(Avoidance of Preferential Transfers Pursuant to 11 U.S.C. § 547(b))**

22 18. Plaintiff realleges and incorporates herein by reference each and every  
23 allegation contained in paragraphs 1 through 17 as though set forth in full.

24 19. The Debtors transferred the Pre-Petition Transfers to Defendant within one  
25 year before the Petition Date.

26 20. The Pre-Petition Transfers were made to Defendant for the benefit of  
27 Defendant, who was a creditor of the Debtors at the time of the respective transfers as the term  
28 "creditor" is defined by section 101(10) of the Bankruptcy Code.



1 incurred such obligation to or for the benefit of an insider, under an employment contract and not  
2 in the ordinary course of business.

3 31. Plaintiff is entitled to avoid the Pre-Petition Transfers pursuant to section  
4 548(a)(1)(B) of the Bankruptcy Code.

5 **THIRD CLAIM FOR RELIEF**

6 **(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and California Civil**  
7 **Code § 3439.05)**

8 32. Plaintiff realleges and incorporates herein by reference each and every  
9 allegation contained in paragraphs 1 through 17 as though set forth in full.

10 33. The Debtors transferred to Defendant the Pre-Petition Transfers within  
11 four years before the Petition Date.

12 34. The Pre-Petition Transfers constituted transfers of interest of the Debtors  
13 in property.

14 35. The Pre-Petition Transfers constitute fraudulent transfers that should be  
15 avoided under section 544(b) of the Bankruptcy Code and California Civil Code § 3439.05.

16 36. The Pre-Petition Transfers or obligations thereunder incurred by the  
17 Debtors are fraudulent because the Debtors made the Pre-Petition Transfers or incurred the  
18 obligations thereunder without receiving a reasonably equivalent value in exchange for such  
19 transfers or obligations and the Debtors were insolvent at that time or became insolvent as a result  
20 of the transfers or obligations.

21 37. Plaintiff is entitled to avoid the Pre-Petition Transfers pursuant to section  
22 544(b) of the Bankruptcy Code and California Civil Code § 3439.05.

23 **FOURTH CLAIM FOR RELIEF**

24 **(For Recovery of Property Pursuant to 11 U.S.C. § 550)**

25 38. Plaintiff realleges and incorporates herein by reference each and every  
26 allegation contained in paragraphs 1 through 37 as though set forth in full.

27 39. Plaintiff is entitled to avoid the Pre-Petition Transfers under sections  
28 544(b), 547(b) and 548(a)(1) of the Bankruptcy Code. As Defendant is the initial transferee of the

1 Pre-Petition Transfers, or the individual or entity for whose benefit the Pre-Petition Transfers were  
2 made, or is the immediate or mediate transferee of the initial transferee receiving such Pre-Petition  
3 Transfers, or any of them, Plaintiff is entitled to recover for the estates the proceeds or value of the  
4 Pre-Petition Transfers under section 550 of the Bankruptcy Code.

5 **FIFTH CLAIM FOR RELIEF**

6 **(For Preservation of Avoided Transfer Pursuant to 11 U.S.C. § 551)**

7 40. Plaintiff realleges and incorporates herein by reference each and every  
8 allegation contained in paragraphs 1 through 39 as though set forth in full.

9 41. Pursuant to section 551 of the Bankruptcy Code, Plaintiff is entitled to  
10 preserve any transfer avoided under sections 544(b), 547(b), and 548(a)(1) of the Bankruptcy  
11 Code, including the Pre-Petition Transfers, for the benefit of the estates.

12 **SIXTH CLAIM FOR RELIEF**

13 **(For Disallowance of Claim Pursuant to 11 U.S.C. § 502(d) and (j))**

14 42. Plaintiff realleges and incorporates herein by reference each and every  
15 allegation contained in paragraphs 1 through 41 as though set forth in full.

16 43. Defendant has asserted claims against the Debtors' estates.

17 44. Section 502(d) of the Bankruptcy Code provides that the claim of any  
18 transferee receiving a transfer that is avoidable under sections 544, 547, and/or 548 of the  
19 Bankruptcy Code shall be disallowed unless the transferee turns over the property or the value  
20 thereof to the estates.

21 45. Defendant has not paid or surrendered the Pre-Petition Transfers or the  
22 value thereof to the Trustee.

23 46. Any claims filed by Defendant against the Debtors must be disallowed  
24 pursuant to section 502(d) of the Bankruptcy Code.

25 47. Pursuant to section 502(j) of the Bankruptcy Code, any and all previously  
26 allowed claims of Defendant against the Debtors, including any and all claims assigned by  
27 Defendant, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff the  
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1 amount equal to the aggregate amount of all of the Pre-Petition Transfers, plus interest thereon and  
2 costs.

3 **RESERVATION OF RIGHTS**

4 48. Plaintiff was appointed after the filing of the Bankruptcy Cases. As a  
5 result, Plaintiff does not have personal knowledge of the facts alleged in this Complaint that  
6 occurred prior to its appointment and, therefore, alleges all those facts on information and belief.  
7 Plaintiff reserves its right to amend this Complaint to allege additional claims against Defendant  
8 and to challenge and recover transfers made to or for the benefit of Defendant in addition to those  
9 transfers alleged in this Complaint.

10 **WHEREFORE**, Plaintiff prays for an order and judgment against Defendant as  
11 follows:

12 **ON THE FIRST CLAIM FOR RELIEF**

13 1. For an order and judgment that the Pre-Petition Transfers are avoidable as  
14 preferential transfers under section 547(b) of the Bankruptcy Code.

15 **ON THE SECOND CLAIM FOR RELIEF**

16 2. For an order and judgment that the Pre-Petition Transfers are avoidable as  
17 fraudulent transfers under section 548(a)(1)(B) of the Bankruptcy Code.

18 **ON THE THIRD CLAIM FOR RELIEF**

19 3. For an order and judgment that the Pre-Petition Transfers are avoidable as  
20 fraudulent transfers under section 544(b) of the Bankruptcy Code and California Civil Code  
21 § 3439.05.

22 **ON THE FOURTH CLAIM FOR RELIEF**

23 4. For an order and judgment entitling Plaintiff to recover for the estates the  
24 proceeds or value of the Pre-Petition Transfers under section 550 of the Bankruptcy Code.

25 **ON THE FIFTH CLAIM FOR RELIEF**

26 5. For an order and judgment preserving any Pre-Petition Transfers avoided  
27 from Defendant for the benefit of the estates under section 551 of the Bankruptcy Code.

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**ON THE SIXTH CLAIM FOR RELIEF**

6. For an order and judgment disallowing any claims of the Defendant against the Debtors' estates pursuant to section 502(d) and (j).

**ON ALL CLAIMS FOR RELIEF**

1. For interest as permitted by law from the date of the Pre-Petition Transfers;
2. For costs of suit incurred herein, including, without limitation, attorneys' fees; and
3. For such other and further relief as the Court deems just and proper.

DATED: March 9, 2011

Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

By: /s/ Susan K. Seflin

Susan Seflin (CA Bar No. 213865)  
Local Counsel for SltnTrst, LLC, the Duly  
Appointed Liquidating Trustee for the Fleetwood  
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**EXHIBIT A**

**Avoidable Pre-Petition Transfers the Debtors Made to Defendant**

<b>Transferee</b>	<b>Transfer Number</b>	<b>Transfer Date</b>	<b>Transfer Clear Date</b>	<b>Transfer Amount</b>	<b>Basis for Transfer</b>
Boyd R. Plowman	00380136	9/19/2008	9/19/2008	\$225,063.00	Benefit RP
Boyd R. Plowman	00390348	9/26/2008	9/26/2008	\$515,136.00	Supplemental BP
<b>Total</b>				<b>\$740,199.00</b>	

B104 (FORM 104) (08/07)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b>		<b>DEFENDANTS</b>
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.)		<b>ATTORNEYS</b> (If Known)
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)		<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR	BANKRUPTCY CASE NO.	
DISTRICT IN WHICH CASE IS PENDING	DIVISION OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

