

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

**HEALTH DIAGNOSTIC LABORATORY,
INC., et al.,**

Debtors.⁷

**RICHARD ARROWSMITH AS
LIQUIDATING TRUSTEE OF THE HDL
LIQUIDATING TRUST,**

Plaintiff,

v.

**ADOBE SYSTEMS INCORPORATED
SERVE: KAREN ROBINSON,
REGISTERED AGENT
345 PARK AVENUE, MAILSTOP A16-TAX
SAN JOSE, CALIFORNIA 95110**

Defendant.

Chapter 11

Case No.: 15-32919-KRH

Jointly Administered

Adversary Proceeding No. 16-_____

**COMPLAINT TO (I) AVOID AND RECOVER AVOIDABLE TRANSFERS;
AND (II) COMPEL TURNOVER OF PROPERTY TO THE ESTATE**

⁷ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434).

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*Counsel to Richard Arrowsmith,
Liquidating Trustee of the HDL Liquidating Trust*

Richard Arrowsmith, in his capacity as Liquidating Trustee of the HDL Liquidating Trust (the “**Plaintiff**” or the “**Liquidating Trustee**”), appointed pursuant to the confirmed Modified Second Amended Plan of Liquidation (the “**Plan**”) of Health Diagnostic Laboratory, Inc., et al. (the “**Debtors**”), by and through his undersigned counsel, for his Complaint to (I) Avoid and Recover Avoidable Transfers; and (II) Compel Turnover of Property to the Estate (the “**Complaint**”) against Adobe Systems Incorporated (“**Adobe**” or the “**Defendant**”) respectfully allege as follows:

JURISDICTION AND VENUE

1. On June 7, 2015 (the “**Petition Date**”), each of the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “**Bankruptcy Court**”), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the above-captioned Chapter 11 Cases (the “**Chapter 11 Cases**”). On June 9, 2015, the Bankruptcy Court entered an order authorizing the joint administration of these Chapter 11 Cases [Docket No. 42].

2. The Debtors continue to manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 16, 2015, the United States Trustee for the Eastern District of Virginia (the “**U.S. Trustee**”) appointed the statutory committee of unsecured creditors. No trustee or examiner has been appointed.

4. This Bankruptcy Court has subject matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

5. This Adversary Proceeding constitutes a core proceeding by virtue of 28 U.S.C. § 157(b)(2)(A), (E), and (O).

6. The predicates for the relief requested herein are sections 105(a), 502, 542(b), 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

7. The Liquidating Trustee consents to entry of final orders and judgment by the Bankruptcy Court in this Adversary Proceeding.

8. Venue is proper in this Bankruptcy Court as to the Debtors and the Liquidating Trustee under 28 U.S.C. §§ 1408 and 1409.

9. Venue is proper in this Bankruptcy Court as to Adobe because a substantial part of the events or omissions giving rise to the claims asserted herein against Adobe occurred in this judicial district.

PARTIES

10. Health Diagnostic Laboratory, Inc. (“**HDL**”) is a privately held company and was incorporated in the Commonwealth of Virginia.

11. Upon information and belief, Adobe is a Delaware corporation.

PROCEDURAL AND FACTUAL BACKGROUND

12. During the ninety (90) days before the Petition Date (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, including Adobe (each transfer, and “**Avoidable Transfer**”) and, collectively, the “**Avoidable Transfers**”) as more fully identified on **Exhibit 1** attached hereto.

13. The Liquidating Trustee seeks to avoid all of the transfers of an interest in the Debtors’ property made by the Debtors to Adobe during the Preference Period.

14. The Liquidating Trustee's review of the Debtors' books and records indicates that Adobe is holding an advance payment from the Debtors in the total amount of \$9,188.58, representing check number 94951 dated April 6, 2015 (the "**Advance Payment**"). The Advance Payment represents monies paid by the Debtors in advance for services provided by the Defendant but which services the Debtors ceased using. The Advance Payment has been amortized as appropriate to account for any use of the services provided by the Defendant.

15. Despite demand from the Debtors and the Liquidating Trustee, Adobe has refused to turn over the Advance Payment to the Debtors and/or the Liquidating Trustee.

COUNT I

Avoidance of Preferential Transfers Pursuant to Section 547(b) of the Bankruptcy Code

16. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 15 above as if fully set forth herein.

17. During the Preference Period, the Debtors made transfers to, or for the benefit of, Adobe in the amounts set forth on **Exhibit 1**, which is incorporated by reference herein.

18. During the Preference Period, Defendants were creditors of the Debtors within the meaning of section 547(b)(1) of the Bankruptcy Code at the time of each Avoidable Transfer by virtue of supplying goods and/or services for which the Debtors were obligated to pay.

19. The Avoidable Transfers were transfers of an interest in the Debtors' property.

20. According to the Debtors' books and records, the Avoidable Transfers were made to, or for the benefit of, Adobe because each Avoidable Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to Adobe.

21. The Avoidable Transfers were made for or on account of antecedent debts owed by the Debtors.

22. The Avoidable Transfers were made while the Debtors were insolvent. The Debtors are entitled to the presumption of insolvency for each Avoidable Transfer made during the Preference Period pursuant to section 547(f) of the Bankruptcy Code. Further, as evidenced by, among other things: (i) the Debtors' bankruptcy petitions (publicly filed with the Bankruptcy Court); (ii) the proofs of claim that have been filed against the Debtors' estates; and (iii) the Debtors' publicly-filed schedules, the Debtors' liabilities exceeded the value of the Debtors' assets during the Preference Period.

23. The Liquidating Trustee estimates that general unsecured creditors will receive less than full value on account of their allowed claims against the Debtors' estates.

24. The Avoidable Transfers were made on or within ninety (90) days prior to the Petition Date.

25. The Avoidable Transfers enabled Adobe to receive more than it would receive if (a) the Debtors' cases were under Chapter 7 of the Bankruptcy Code, (b) the Avoidable Transfers had not been made, and (c) Adobe received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

26. Adobe was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or were the immediate or mediate transferees of the initial transferee receiving the Avoidable Transfers.

27. By reason of the foregoing, each Avoidable Transfer should be avoided and set aside as a preferential transfer pursuant to Section 547(b) of the Bankruptcy Code.

COUNT II

Avoidance of Fraudulent Transfers Pursuant to Section 548 of the Bankruptcy Code

28. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 27 above as if fully set forth herein.

29. The Avoidable Transfers were made within two (2) years prior to the Petition Date.

30. The Avoidable Transfers were made to, or for the benefit of, Adobe.

31. Subject to proof, the Liquidating Trustee pleads, in the alternative, that to the extent that Adobe demonstrate that one or more of the Avoidable Transfers were not on account of an antecedent debt or were prepayments for goods and/or services, the Debtors did not receive reasonably equivalent value in exchange for the Avoidable Transfers, either (a) because the value of the services and/or goods received was in fact less than the Avoidable Transfers or (b) because the Debtors that made the Avoidable Transfers were not the Debtors that received such goods and/or services and such Debtors were: (i) insolvent on the dates of the Avoidable Transfers or became insolvent as a result of the Avoidable Transfers; and/or (ii) engaged in business or a transaction for which any property remaining with such Debtors was unreasonably small capital at the time of, or as a result of, the Avoidable Transfers; and/or (iii) intended to incur, or believed that it would incur, debts that would be beyond their ability to pay as such debts matured (the “**Potentially Fraudulent Transfers**”).

32. By reason of the foregoing, the Avoidable Transfers should be avoided and set aside as fraudulent transfers.

COUNT III

Recovery of Avoidable Transfers Pursuant to Section 550 of the Bankruptcy Code

33. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 32 above as if fully set forth herein.

34. The Liquidating Trustee is entitled to avoid the Avoidable Transfers pursuant to section 547(b) of the Bankruptcy Code, or, alternatively, the Potentially Fraudulent Transfers (together, the “**Transfers**”) pursuant to section 548 of the Bankruptcy Code.

35. Adobe was the initial transferee of each of the Transfers, the immediate or mediate transferee of such initial transferee, or the person for whose benefit the Transfers were made.

36. Pursuant to section 550(a) of the Bankruptcy Code, the Liquidating Trustee is entitled to recover from Adobe an amount to be determined at trial that is not less than the total amount of the Transfers made to Adobe, plus interest thereon to the date of payment and the costs of this action.

COUNT IV

Disallowance of Claims Pursuant to Section 502(d) of the Bankruptcy Code

37. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 36 above as if fully set forth herein.

38. Adobe is an entity from which property is recoverable under section 550 of the Bankruptcy Code.

39. Adobe was the initial transferee of each of the Transfers, the immediate or mediate transferee of such initial transferee, or the person for whose benefit the Transfers were made.

40. Adobe has not paid to the Liquidating Trustee the amount of the Transfers, or turned over such property to the Liquidating Trustee, for which Adobe is liable under section 550 of the Bankruptcy Code.

41. Pursuant to section 502(d) of the Bankruptcy Code, any and all Claims of Adobe and/or their assignee, against the Debtors' estates, or the Debtors, must be disallowed until such time as Adobe pay to the Liquidating Trustee all amounts sought herein.

COUNT V

Turnover of Property of the Estate Pursuant to Section 542(a) of the Bankruptcy Code

42. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 41 above as if fully set forth herein.

43. Section 542(a) of the Bankruptcy Code provides in pertinent part “an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under 363 of this title, or that the debtor may exempt under 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property” 11 U.S.C. § 542(a).

44. The Advance Payment is property of the Debtors’ bankruptcy estate(s) pursuant to section 541 of the Bankruptcy Code.

45. Accordingly, pursuant to section 542 of the Bankruptcy Code, the Defendant must turn over to the Liquidating Trustee and/or the Debtors’ bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT IV
Breach of Contract

46. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 45 above as if fully set forth herein.

47. Upon information and belief, to the extent HDL has a contractual right to the return of the Advance Payment, the Defendant has breached the applicable contract(s) by failing to return the Advance Payment, thereby damaging the Debtors and/or the Debtors’ bankruptcy estate(s).

48. Accordingly, the Defendant must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT VII
Conversion

49. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 48 above as if fully set forth herein.

50. The Advance Payment is property of the Debtors' bankruptcy estate(s) pursuant to section 541 of the Bankruptcy Code.

51. Upon information and belief, the Defendant has exercised dominion and control over the Advance Payment due to the Defendant's failure to turn over to the Debtors and/or the Debtors' bankruptcy estate(s) the Advance Payment.

52. Upon information and belief, the Defendant's exercise of dominion and control over the Advance Payment has deprived the Debtors and/or the Debtors' bankruptcy estate(s) of the Advance Payment.

53. Such interference has caused damage to the Debtors and/or the Debtors' bankruptcy estate(s).

54. Accordingly, the Defendant must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

55. The Liquidating Trustee hereby reserves his right to supplement and/or amend this Complaint to include additional facts, theories, and/or transfers as such may be discovered during the course of this Adversary Proceeding and preserve all other claims and defenses relating to Adobe.

WHEREFORE, the Liquidating Trustee respectfully requests that the Bankruptcy Court enter an Order and Judgment:

- (a) avoiding all Avoidable Transfers pursuant to section 547(b) of the Bankruptcy Code, or, in the alternative, pursuant to section 548 of the Bankruptcy Code;
- (b) pursuant to section 550(a) of the Bankruptcy Code, directing Adobe to pay to the Liquidating Trustee an amount to be determined at trial that is not less than the full amount of the Transfers;
- (c) disallowing any Claim of Adobe pursuant to section 502(d) of the Bankruptcy Code;
- (d) awarding pre-judgment interest at the maximum legal rate running from the date of the Debtors' and/or the Liquidating Trustee's first demand to return all Avoidable Transfers to the date of judgment with respect to this Complaint herein;
- (e) finding Adobe to be in possession, custody, or control of an advance payment from the Debtors in the total amount of \$9,188.58, representing check number 94951 dated April 6, 2015;
- (f) finding such advance payment from the Debtors in the amount of \$9,188.58 to be property of the Debtors and/or property of the Debtors' bankruptcy estate(s);
- (g) finding Adobe to be in breach of any applicable contract(s);
- (h) finding Adobe to have converted such advance payment;
- (i) awarding the Liquidating Trustee his costs and expenses incurred in connection with this Adversary Proceeding, including reasonable attorneys' fees; and
- (j) entering judgment in favor of the Liquidating Trustee and against Adobe in an amount not less than \$9,188.58, with interest accruing from the date of this Complaint at the judgment rate of interest (together with the monetary award provided in subparagraphs (b), (d), and (i), the "**Judgment**");
- (k) awarding post-judgment interest at the maximum legal rate running from the date of the Judgment until the date the Judgment is paid in full, plus costs;
- (l) requiring Adobe to pay forthwith the amount of the Judgment; and
- (m) granting the Liquidating Trustee such other and further relief as the Bankruptcy Court deems just and proper.

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Dated: June 22, 2016

Respectfully submitted,

/s/ Robert S. Westermann

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*Counsel for Richard Arrowsmith, Liquidating
Trustee of the HDL Liquidating Trust*

EXHIBIT 1

Health Diagnostic Laboratory, Inc.
Payment Listing for Adobe Systems Inc

<u>Payment Number</u>	<u>Payment Date</u>	<u>Clear Date</u>	<u>Payment Amount</u>
94951	4/6/2015	4/15/2015	\$21,906.56
			<u>\$21,906.56</u>

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS		DEFENDANTS
ATTORNEYS (Firm Name, Address, and Telephone No.)		ATTORNEYS (If Known)
PARTY (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		PARTY (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
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (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.)		
FRBP 7001(1) – Recovery of Money/Property <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 FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <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)		FRBP 7001(6) – Dischargeability (continued) <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 FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <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 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.

*Per LBR 7003-1, in the EDVA, a properly completed Adversary Proceeding Cover Sheet is required.