

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: Chapter 11
Welded Construction, L.P., *et al.*, Case No. 18-12378 (CSS)
Debtors.¹ (Jointly Administered)

Welded Construction, L.P., Adv. No. 20-50927 (CSS)
Plaintiff,
vs.
Contractor's Rental Corporation dba CRC
Contractors Rental,
Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT**

Contractor's Rental Corporation ("Defendant"), by and through its undersigned counsel, states as follows as its Answer and Affirmative Defenses to Plaintiff Welded Construction, L.P.'s complaint (the "Complaint"):

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 bankruptcy proceedings of Welded Construction, L.P. and its affiliated debtor and debtor in possession (together, the "Debtors")² pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P (5008) and Welded Construction Michigan, LLC (9830).

² The "Debtors" are all entities listed in footnote 1.



“Bankruptcy Code”). Subject to proof, Plaintiff also seeks to avoid and recover from Defendant or any other person or entity for whose benefit transfers were made pursuant to sections 548 and 550 of the Bankruptcy Code any transfers that may have been fraudulent conveyances.

ANSWER: Defendant admits that Plaintiff seeks the relief described in this paragraph, but denies as untrue that any such relief is appropriate in this case.

2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but hereby reserves all of its rights to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

ANSWER: Defendant admits that Plaintiff seeks the relief described in this paragraph, but denies as untrue that any such relief is appropriate in this case.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this adversary proceeding, which arises under the Bankruptcy Code and arises in and relates to cases under the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Delaware (the “Court”), captioned *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (CSS), pursuant to 28 U.S.C. §§ 157 and 1334(b).

ANSWER: Paragraph 3 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 3 of the Complaint.

4. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

ANSWER: Paragraph 4 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 4 of the Complaint..

5. 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.

ANSWER: Paragraph 5 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 5 of the Complaint. Defendant does not 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. § 1409.

ANSWER: Paragraph 6 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 6 of the Complaint.

7. 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.

ANSWER: Paragraph 7 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in paragraph 7 of the Complaint. Defendant does not 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.

PROCEDURAL BACKGROUND

8. On October 22, 2018 (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.

ANSWER: Defendant admits the allegations in this paragraph.

9. On October 23, 2018, this Court entered an order authorizing the joint administration of the chapter 11 cases for procedural purposes pursuant to Bankruptcy Rule 1015(b). [D.I. 33].³

ANSWER: Defendant admits the allegations in this paragraph.

10. On June 25, 2020, this Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* (the “Confirmation Order” and “Plan,” respectively). [D.I. 1505].

³ All docket items referenced are from Case No. 18-12378, under which the Chapter 11 Cases are jointly administered.

ANSWER: Defendant admits the allegations in this paragraph.

11. The effective date of the Plan (the “Effective Date”) occurred on July 31, 2020. [D.I. 1555].

ANSWER: Defendant admits the allegations in this paragraph.

12. On the Effective Date, pursuant to Article V, Section 5.1 of the Plan, the Retained Causes of Action,⁴ including actions arising under chapter 5 of the Bankruptcy Code, were retained by or vested in the Plaintiff. [D.I. 1505-1].

ANSWER: Defendant admits the allegations in this paragraph.

13. Pursuant to Article II, Section 2.3 of the Plan, General Unsecured Claims comprise an impaired class of claims and are not expected to be paid in full.

ANSWER: Defendant admits the allegations in this paragraph.

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan and Confirmation Order.

THE PARTIES

14. Pursuant to the Plan and the Confirmation Order, Plaintiff is authorized and has standing to, among other things, pursue, prosecute, compromise, release, settle, or otherwise dispose of this avoidance action.

ANSWER: Defendant admits the allegations in this paragraph but denies as untrue that Plaintiff has satisfied other prerequisites to the filing of this avoidance action.

15. Upon information and belief, Defendant was, at all relevant times, a vendor or creditor that provided equipment rental services to or for the Debtors. Upon further information and belief, at all relevant times, Defendant's principal place of business is located at 600 44th Street S.W., Grand Rapids, Michigan 49548. Plaintiff is informed and believes and on that basis alleges that Defendant is a corporation residing in and subject to the laws of the State of Michigan.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

FACTUAL BACKGROUND

16. As more fully discussed in the *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions*⁵ and the Disclosure Statement,⁶ as of the Petition Date, the Debtors were a mainline pipeline construction contractor headquartered in Perrysburg, Ohio.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

⁵ D.I. 4.

⁶ See Amended Disclosure Statement for the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC [D.I. 1344].

17. Prior to the Petition Date, the Debtors, as a mainline pipeline construction contractor, maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

18. As a mainline pipeline construction contractor, the Debtors regularly purchased goods from various entities including vendors, creditors, suppliers and distributors. The Debtors also regularly paid for services used to facilitate their business.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

19. As of the Petition Date, the Debtors issued disbursements to vendors from the Debtors' account ending 0247 at Huntington Bank (the "Disbursement Account").

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

20. The Debtors drew upon the Disbursement Accounts to pay for their operational costs, including payment to their vendors, suppliers, distributors, and other creditors, including Defendant.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

21. During the ninety (90) days before the Petition Date, that is between July 24, 2018 and October 22, 2018 (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 various entities.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

22. Upon information and belief, during the course of their relationship, the Defendant and one or more of the Debtors entered into agreements, which are evidenced by invoices, communications and other documents (collectively, the “Agreements”). The Agreements concerned and related to the goods and/or services provided by Defendant or the debt otherwise incurred by one or more of the Debtors to the Defendant as described in the “Parties” section of this Complaint. The details of each of the transfers under the Agreements made during the Preference Period are set forth on the Statement of Account, which is attached hereto and incorporated by reference as Exhibit A. Such details include “Invoice Number,” “Invoice Date,” and “Invoice Amount.”

ANSWER: Defendant admits the allegations in this paragraph insofar as Defendant provided goods to one or more of the Debtors. Defendant denies as untrue the remaining allegations in this paragraph, specifically that the “details of each of the transfers” are set forth on the Statement of Account.

23. Defendant conducted business with one or more of the Debtors through and including the Petition Date pursuant to the Agreements or otherwise held a debt owed by one or more of the Debtors.

ANSWER: Defendant denies as untrue the allegations contained in this paragraph.

24. As identified in the Agreements identified on Exhibit A, one or more of the Debtors purchased goods and/or services from Defendant.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph, which are therefore denied.

25. 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 applicable Debtor(s) to Defendant within the Preference Period.

ANSWER: Defendant admits the allegations of this paragraph insofar as Plaintiff seeks the relief described therein. Defendant denies as untrue the allegations in this paragraph, insofar as it did not receive the Transfers as alleged. Defendant lacks knowledge or information sufficient to form a belief as to what "information" Plaintiff has analyzed.

26. Plaintiff has determined that one or more of 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 \$312,284.21 (the "Transfer" or "Transfers"). The details of each Transfer are set forth on Exhibit A attached hereto and incorporated by reference. Such details include "Check Number," "Check Amount," "Check Clear Date," and "Debtor Transferor(s)."

ANSWER: Defendant denies as untrue the allegations in this paragraph, insofar as it did not receive the Transfers as alleged.

27. On or about September 11, 2020, Plaintiff, through counsel, sent a demand letter (the “Demand Letter”) to Defendant, seeking a return of the Transfer(s). The Demand Letter indicated the potential statutory defenses available to Defendant pursuant to 11 U.S.C. § 547(c), and requested that if Defendant had evidence to support any affirmative defenses, it provide this evidence so Plaintiff could review the same. Plaintiff also performed its own due diligence evaluation of the reasonably knowable affirmative defenses available to Defendant.

ANSWER: Defendant admits the allegations in this paragraph insofar as Plaintiff sent a demand letter as alleged. By way of further response, Defendant responded to the demand letter and asked that Plaintiff provide Defendant with evidence that Defendant received the alleged transfers. To date, no such evidence has been provided and no meaningful pre-filing discussions ever occurred.

28. Based upon Plaintiff’s review of the information, if any, provided by Defendant prior to filing this Complaint, and after performing its own due diligence evaluation of the reasonably knowable affirmative defenses to avoidance of the Transfer(s), Plaintiff has determined that Plaintiff may avoid some or all of the Transfers, even after taking into account Defendant’s alleged affirmative defenses.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, insofar as Defendant has no idea what “information” Plaintiff reviewed, and therefore denies the allegations in this paragraph.

29. 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 authorized by the Plan, if applicable (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.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about what Plaintiff "may" learn in the future. Defendant will oppose any request to amend pleadings based on Plaintiff's failure to conduct a reasonable investigation of the facts of this case prior to filing. Defendant denies as untrue that any such amendments would relate back to the filing of the Complaint.

30. 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 Bankruptcy Code section 547(g).

ANSWER: Paragraph 30 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant admits it has a complete defense to the allegations contained in the Complaint insofar as it did not receive the Transfers as alleged.

CLAIMS FOR RELIEF
COUNT I

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

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

ANSWER: Defendant repeats its answers to the preceding allegations as if fully set forth herein.

32. As more particularly described on Exhibit A attached hereto and incorporated herein, during the Preference Period, the Debtor(s) identified on Exhibit A made Transfers to or for the benefit of Defendant in an aggregate amount not less than \$312,284.21.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

33. Each Transfer was made from the Disbursement Account described *supra*, and constituted transfers of an interest in property of the transferring Debtor(s) as identified on Exhibit A.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, which are therefore denied.

34. Defendant was a creditor at the time of each Transfer by virtue of supplying the Debtor(s) identified on Exhibit A goods and/or services identified in this Complaint and in the Agreements, as more fully set forth on Exhibit A hereto, for which the Debtor(s) identified on Exhibit A were obligated to pay following delivery in accordance with the Agreements, or by virtue of otherwise holding a debt owed by one or more of the Debtors.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

35. 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 to Defendant.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

36. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtor(s) identified on Exhibit A 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 transferring Debtor(s) as set forth on Exhibit A hereto.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

37. 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).

ANSWER: Paragraph 37 of the Complaint contains statements and conclusions of law to which no response is required. To the extent that a response is required, Defendant denies that Plaintiff is entitled to the relief requested.

38. Each Transfer was made during the Preference Period, as set forth on Exhibit A.

ANSWER: Defendant denies as untrue the allegations in this paragraph, insofar as it did not receive the Transfers as alleged.

39. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors’ cases were 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 Debtors’ schedules filed in the applicable underlying bankruptcy case as well as the proofs of claim that have been received to date, the Debtors’ liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors’ bankruptcy estates.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

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

ANSWER: Defendant repeats its answers to the preceding allegations as if fully set forth herein.

42. To the extent one or more of the Transfers identified on Exhibit A was not made on account of an antecedent debt, or was a prepayment for goods and/or services subsequently received, or was a transfer made by one Debtor without a corresponding transfer into the payment account by the Debtor incurring the debt, Plaintiff pleads in the alternative that the Debtor(s) making such transfer(s) did not receive reasonably equivalent value in exchange for such transfer(s) (the “Potentially Fraudulent Transfers”); and

A. The Debtors were insolvent as of the date of the Transfer(s), or became insolvent as a result of the Transfer(s); or

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

B. The Debtors were engaged, or about to engage, in business or a transaction for which any property remaining with the Debtors or for whose benefit the Transfer(s) was made was an unreasonably small capital; or

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

- C. The Debtors intended to incur, or believed they would incur, debts beyond their ability to pay upon maturity.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, which are therefore denied.

43. Based upon the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

ANSWER: Defendant denies as untrue the allegations in this paragraph.

COUNT III
(Recovery of Avoided Transfers – 11 U.S.C. § 550)

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

ANSWER: Defendant repeats its answers to the preceding allegations as if fully set forth herein.

45. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b) and any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548 (collectively, the “Avoidable Transfers”).

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

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

ANSWER: Defendant incorporates herein by reference the answers to the allegations contained above.

49. Defendant is a transferee of transfers avoidable under sections 547 and/or 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

50. Defendant has not paid the amount of the Avoidable Transfer(s), or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

51. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee, against the Debtors' chapter 11 estates or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s), plus interest thereon and costs.

ANSWER: Defendant denies as untrue the allegations in this paragraph.

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

ANSWER: Defendant denies as untrue the allegations in this paragraph.

GENERAL DENIAL

Defendant denies each and every allegation contained in the Complaint that is not hereinabove expressly admitted and Defendant further denies that Plaintiff is entitled to any relief whatsoever in this action.

AFFIRMATIVE DEFENSES

1. Some or all of the claims asserted in the Complaint fail to state claims upon which relief may be granted.

2. Some or all of the claims asserted in the Complaint may be barred by 11 U.S.C. § 547(c)(1), which prevents Plaintiff from avoiding any transfer to Defendant that was intended by the transferor and Defendant to be a contemporaneous exchange for new value and such transfers were in fact a substantially contemporaneous exchange.

3. Some or all of the claims asserted in the Complaint may be barred by 11 U.S.C. § 547(c)(2), which prevents Plaintiff from avoiding any transfers to Defendant that were in payment of debts incurred in the ordinary course of business of the Debtors and Defendant and were: a) made in the ordinary course of such business; or b) made according to ordinary business terms.

4. Some or all of the claims asserted in the Complaint may be barred by 11 U.S.C. § 547(c)(4), which prevents Plaintiff from avoiding any transfer to Defendant where Defendant gave new value to or for the benefit of the Debtors.

5. Some or all of the claims asserted in the Complaint may be barred because the Debtors were not insolvent within the meaning of 11 U.S.C. §§ 547 at the time of the transfers alleged in the Complaint.

6. Some or all of the claims asserted in the Complaint may be barred by the applicable statutes of limitations or repose.

7. Some or all of the claims asserted in the Complaint may be barred by 11 U.S.C. § 550(b), if Defendant, as an alleged transferee or subsequent transferee, took the transfer for value, in good faith and without knowledge of the alleged voidability of the transfers.

8. Some or all of the claims asserted in the Complaint may be barred or limited pursuant to 11 U.S.C. § 548(c) as a result of value provided in good faith by Defendant.

9. Some or all of the claims asserted in the Complaint may be barred as the result of the conduct, acts, and/or omissions of the Debtors.

10. Defendant reserves all rights of setoff and recoupment against any credits that may be found owing to the Debtors.

11. Some or all of the claims asserted in the Complaint may be barred because of lack or failure of service of process.

12. Some or all of the claims asserted in the Complaint may be barred because Plaintiff lacks standing.

13. Some or all of the claims asserted in the Complaint may be barred or limited by the doctrine of laches.

14. Some or all of the claims asserted in the Complaint may be barred or limited by the equitable doctrine of unclean hands, waiver, estoppel or other equitable doctrine.

15. Some or all of the claims asserted in the Complaint may be barred by res judicata.

16. During the Preference Period, as defined in the Complaint, Defendant had the right to file and/or assert a statutory or similar type lien, affording Defendant a secured and/or priority claim such that Defendant would have received more than it allegedly would have received to the

extent the transfers were received if these cases were administered under chapter 7 of the Bankruptcy Code.

17. Defendant reserves the right to supplement and amend its affirmative defenses.

RESERVATION OF RIGHTS

The foregoing affirmative defenses are raised by Defendants without waiver of any other defenses that may be available or determined after discovery is undertaken. Defendants give notice that they intend to rely upon any defenses available, and reserve the right to assert any other additional defenses that may become available or apparent at any time during the pendency of this proceeding. Defendants further do not consent to the issuance by the Bankruptcy Court of findings of fact, conclusions of law, or final orders or judgments.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, Defendant respectfully requests the entry of an Order (a) dismissing the Complaint with prejudice; (b) granting Defendant its costs incurred in defending this action, including attorney fees; and (c) granting such other and further relief as this Court deems just and proper.

Respectfully Submitted,

THE ROSNER LAW GROUP LLC

Date: December 10, 2020
Wilmington, Delaware

By: /s/ Jason A. Gibson
Scott James Leonhardt (DE 4885)
Jason A. Gibson (DE 6091)
824 N. Market Street, Suite 810
Wilmington, Delaware 19801
Telephone: 302-777-1111
Email: leonhardt@teamrosner.com
gibson@teamrosner.com

and

WARNER NORCROSS + JUDD LLP
By: Jonathan E. Lauderbach
715 East Main Street, Suite 110
Midland, Michigan 48640
Telephone 989-698-3700
Email: jlauderbach@wnj.com

Attorneys for Defendant