

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

In re: WELDED CONSTRUCTION, <i>et al.</i> , Debtors.	Chapter 11 Case No. 18-12378-CSS (Jointly Administered)
Welded Construction, L.P. Plaintiff, vs. Veriforce, LLC, Defendant.	Adv. Proc. No. 20-50955-CSS

**ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR AVOIDANCE OF
PREFERENTIAL TRANSFERS
PURSUANT TO 11 U.S.C. §§ 547 & 550**

Veriforce, LLC (“Defendant”) files the following Answer and Affirmative Defenses to the *Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 & 550 [Adv. Dkt. 1]* (the “Complaint”), of Plaintiff, Welded Construction, L.P. (the “Plaintiff”),¹ in the above-captioned adversary proceeding and avers as follows:

NATURE OF THE CASE

1. Paragraph 1 setting forth the nature of Plaintiff’s case contains no allegations as to Defendant and requires no response from Defendant. To the extent a response is or may be deemed required, Defendant denies that Plaintiff is entitled to recover from the Defendant based on the grounds set forth in Paragraph 1.

¹ The Debtors in these Chapter 11 cases are: Welded Construction, L.P and Welded Construction Michigan, LLC (hereafter sometimes referred to herein as “Debtors”).



2. Paragraph 2 setting forth the nature of Plaintiff's case contains no allegations as to Defendant and requires no response from Defendant. To the extent a response is or may be deemed required, Defendant denies that Plaintiff is entitled to recover from the Defendant based on the grounds set forth in Paragraph 2.

JURISDICTION AND VENUE

3. Subject to the limitations set forth in paragraphs 5 to 7 below in this Answer, Defendant admits that the Bankruptcy Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334.

4. Subject to the limitations set forth in paragraphs 5 to 7 below in this Answer, Defendant admits that this action was commenced pursuant to sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure.

5. With respect to Plaintiff's allegations in paragraph 5 of the Complaint about this matter being core, and the entry of final orders, 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, and Defendant expressly reserves and asserts Defendant's right to a jury trial under the Seventh Amendment of the United States Constitution.

6. Subject to the limitations set forth in paragraphs 5 to 7 in this Answer, Defendant admits that venue is proper in this Court pursuant to 28 U.S.C. § 1409.

7. Pursuant to Local Bankruptcy Rule 7008-1, 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, and the Defendant expressly reserves and asserts the Defendant's right to a jury trial under the Seventh Amendment of the United States Constitution.

PROCEDURAL BACKGROUND

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Paragraph 12 makes no allegations against Defendant and therefore requires no response. To the extent a response is or may be deemed required, the allegations contained in Paragraph 12 are denied as written, except to admit that the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* (the "Plan"), which has been confirmed in these Chapter 11 proceedings, would be the best evidence of its contents, including any causes of actions retained by the Plaintiff.

13. Paragraph 13 makes no allegations against Defendant and therefore requires no response. To the extent a response is or may be deemed required, the allegations contained in Paragraph 13 are denied as written, except to admit that the Plan, which has been confirmed in these Chapter 11 proceedings, would be the best evidence of its contents.

THE PARTIES

14. Paragraph 14 makes no allegations against Defendant and therefore requires no response. To the extent a response is or may be deemed required, the allegations contained in Paragraph 14 are denied as written, except to admit that the Plan, which has been confirmed in these Chapter 11 proceedings, would be the best evidence of its contents, including the rights of the Plaintiff to pursue, prosecute, and/or compromise any reserved claims.

15. Defendant admits its principal place of business is located at 1575 Sawdust Road, Suite 600, The Woodlands, Texas 77380, and that it was formed under the laws of New Mexico. Defendant further admits that it previously provided Operator Qualification (“OQ”) compliance management services to Plaintiff.

16. Paragraph 16 makes no allegations against Defendant and therefore requires no response. To the extent a response is or may be deemed required, the allegations contained in Paragraph 16 are denied for lack of sufficient information to justify a reasonable belief therein.

17. The allegations in Paragraph 17 are denied for lack of sufficient information to justify a reasonable belief therein.

18. The allegations in Paragraph 18 are denied for lack of sufficient information to justify a reasonable belief therein.

19. The allegations in Paragraph 19 are denied for lack of sufficient information to justify a reasonable belief therein.

20. The allegations in Paragraph 20 are denied for lack of sufficient information to justify a reasonable belief therein.

21. The allegations in Paragraph 21 are denied for lack of sufficient information to justify a reasonable belief therein.

22. Defendant admits that it had a longstanding commercial relationship with Plaintiff. Defendant charged semi-annual fees for the services it provided to Plaintiff, and in the ordinary course of business, Defendant would issue bi-annual invoices to Plaintiff to cover the services. Plaintiff, in turn, generally paid these invoices within the invoice’s payment terms of Net 30 days. Answering further, Defendant submits that the details of the payment received from Plaintiff

during the Preference Period, including the invoice number, date, and amount, are detailed in the Exhibit A to Plaintiff's Complaint.

23. Denied as stated.

24. Admitted.

25. Paragraph 25 makes no allegations against Defendant and therefore requires no response. To the extent a response is or may be deemed required, Defendant specifically denies that the Plaintiff is entitled to recover the payment made to Defendant during the Preference Period because the payment was made in the ordinary course of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice. Upon information and belief, Defendant denies that Plaintiff completed an *appropriate* analysis of Defendant's reasonably knowable affirmative defenses in conformance with its due diligence obligations, as required by the 2019 amendment to 11 USC 547(b).

26. Defendant admits that it received a payment in the amount of \$251,255.00 from the Plaintiff during the Preference Period. Answering further, Defendant specifically denies the Plaintiff is entitled to recover this payment because the payment was made in the ordinary course of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice.

27. Defendant denies the allegations in Paragraph 27, except to state that the September 11, 2020 Demand Letter is the best evidence of its contents. As set forth above, Defendant denies that Plaintiff performed an appropriate due diligence evaluation of Defendant's reasonably knowable affirmative defenses.

28. Defendant denies the allegations in paragraph 28 to the extent Plaintiff claims it is entitled to avoid the payment at issue herein, because the payment was made in the ordinary course

of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice.

29. Paragraph 29 makes no allegations against Defendant and therefore requires no response. To the extent a response is a more be deemed required, the allegations in Paragraph 29 are denied for lack of information sufficient to justify a reasonable belief therein.

30. Paragraph 30 makes no allegations against Defendant and therefore requires no response. Answering further, Defendant submits that the payment that is the subject of the Plaintiff's Complaint is entitled to ordinary course protection pursuant to 11 U.S.C. § 547(c) because it was made in the ordinary course of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice.

CLAIMS FOR RELIEF

COUNT I

(Recovery of Preferential Transfers -- 11 U.S.C. § 547)

31. Paragraph 31 of the Complaint merely incorporates by reference its preceding paragraphs. Thus, Defendant incorporates by reference its responses to all preceding paragraphs.

32. Defendant admits that Defendant received a payment in the amount of \$251,255.00 from the Plaintiff during the ninety days prior to the Petition Date. Defendant denies the balance of allegations set forth in paragraph 32 of the Complaint and submits that the underlying documents used by Plaintiff to create Exhibit "A" to the Complaint are the best evidence of their contents, and thus, generally and specifically denies any and all allegations related thereto.

33. Defendant lacks sufficient knowledge as to the truth of the matters set forth in paragraph 33 of the Complaint, and thus, generally and specifically denies the allegations therein.

34. Defendant admits that it was a creditor of the Plaintiff at the time the Transfer was made. Defendant denies the balance of allegations set forth in paragraph 34 of the Complaint and

submits that the underlying documents used by Plaintiff to create Exhibit “A” to the Complaint are the best evidence of their contents, and thus, generally and specifically denies any and all allegations related thereto.

35. The allegations of paragraph 35 of the Complaint state legal conclusions that require no response from the Defendant. Further answering, Defendant reiterates that the payment that is the subject of the Plaintiff’s Complaint is entitled to ordinary course protection pursuant to 11 U.S.C. § 547(c) because it was made in the ordinary course of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice.

36. The allegations of paragraph 36 of the Complaint state legal conclusions that require no response from the Defendant. Further answering, Defendant reiterates that the payment that is the subject of the Plaintiff’s Complaint is entitled to ordinary course protection pursuant to 11 U.S.C. § 547(c) because it was made in the ordinary course of business or financial affairs of the parties, and the payment was also fully consistent with the terms of the applicable invoice

37. Paragraph 37 sets forth legal conclusions which require no response from Defendant. To the extent a response is deemed required, Defendant lacks sufficient knowledge as to the truth of the matters set forth in the first sentence of paragraph 37 of the Complaint, and thus, generally and specifically denies the allegations therein.

38. Defendant admits that the Transfer was made during the Preference Period, but submits that defenses in 11 U.S.C. § 547(c), or defenses under other relevant law, are applicable and serve to preclude Plaintiff from recovering the Transfer referenced herein.

39. Defendant denies the allegations contained in paragraph 39 of the Complaint except to admit that the underlying bankruptcy record and filings therein speak for themselves and are the best evidence of their contents. Defendant further submits that it is shielded from preference

liability under 11 U.S.C. § 547(c), or other applicable law, and therefore does not have to return the Transfer to the Plaintiff

40. Defendant denies the allegations contained in paragraph 40 of the Complaint.

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

41. Paragraph 41 of the Complaint merely incorporates by reference its preceding paragraphs. Thus, Defendant incorporates by reference its responses to all preceding paragraphs.

42. Paragraph 42 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 42 (as well as subparagraphs A through C) of the Complaint.

43. Paragraph 43 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 43 of the Complaint.

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

44. Paragraph 44 of the Complaint merely incorporates by reference its preceding paragraphs. Thus, Defendant incorporates by reference its responses to all preceding paragraphs.

45. Paragraph 45 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 45 of the Complaint.

46. Paragraph 46 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 47 of the Complaint.

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

48. Paragraph 48 of the Complaint merely incorporates by reference its preceding paragraphs. Thus, Defendant incorporates by reference its responses to all preceding paragraphs.

49. Paragraph 49 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint asserts a conclusion of law to which no factual response is due. Nonetheless, Defendant generally and specifically denies the allegations contained in paragraph 52 of the Complaint.

DEMAND FOR JURY TRIAL

53. Defendant hereby demands a trial by jury as to all issues so triable.

As to the unnumbered Paragraph beginning “**WHEREFORE**, Plaintiff prays for judgment as follows,” and as to its subparagraphs lettered (A) through (C), Defendant denies that Plaintiff is

entitled to the relief sought and denies any and all liability under any cause of action asserted by Plaintiff in the Complaint.

GENERAL DENIAL

54. Defendant denies any allegations asserted in the Complaint that are not expressly admitted herein.

AFFIRMATIVE DEFENSES

55. Reserving its right to assert additional defenses as its investigation and discovery progress in this matter and without assuming the burden of proof or any other burden if such burden is otherwise on the Plaintiff, Defendant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

56. The Complaint fails to state a claim against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

57. Plaintiff cannot meet all elements of a *prima facie* case under 11 U.S.C. §§ 547 and 550.

THIRD AFFIRMATIVE DEFENSE

58. Plaintiff has failed to undertake the required analysis of Defendant's reasonably knowable affirmative defenses in conformance with its due diligence obligations, as set forth in 11 USC 547(b).

FOURTH AFFIRMATIVE DEFENSE

59. Assuming, without conceding, that all of the elements of a *prima facie* case under 11 U.S.C. § 547(b) can be met, any and all transfers that Defendant received are immune from avoidance by virtue of the ordinary course of business defense pursuant to 11 U.S.C. § 547(c)(2).

FIFTH AFFIRMATIVE DEFENSE

60. Assuming, without conceding, that all of the elements of a *prima facie* case under 11 U.S.C. § 547(b) can be met, Defendant asserts that such alleged avoidable transfers are entitled to be offset pursuant to 11 U.S.C. § 553, and applicable state laws, and/or pursuant to the doctrine of defensive recoupment under applicable Federal and state law.

SIXTH AFFIRMATIVE DEFENSE

61. Plaintiff is precluded from any recovery under the Complaint by virtue of the doctrines of waiver, estoppel, and unclean hands, *in pari delicto*.

RESERVATION OF RIGHTS

62. In addition to the foregoing Affirmative Defenses, Defendant alleges all legal and equitable defenses which may hereafter be discovered as allowed or outlined by Bankruptcy Rule 7008 and/or Rule 8(c) of the Federal Rules of Civil Procedure, and reserves all rights to amend Defendant's Answer to include any affirmative defenses and/or counterclaims as may be discovered.

WHEREFORE, Defendant prays for judgment as follows:

- (1) That Plaintiff takes nothing by way of its Complaint;
- (2) That the Complaint be dismissed with prejudice in its entirety;
- (3) For costs of suit and attorney's fees incurred herein, to the extent permitted by law; and
- (4) For such other and further relief as the Court may deem just and proper.

/s/ James G. McMillan, III

James G. McMillan, III (DE Bar No. 3979)

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CERTIFICATE OF SERVICE

I, James G. McMillan, III, of Halloran Farkas + Kittila LLP, certify that on this date I caused a copy of the foregoing Answer and Affirmative Defenses to be filed with the Clerk of Court and served upon the individual listed below through the Court's CM/ECF system and by email to the address listed:

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