

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

In re:

Welded Construction, L.P., *et al.*,

Debtors.

Chapter 11

Case No. 18-12378 (LSS)

(Jointly Administered)

Welded Construction, L.P.,

vs.

Industrial Fabrics, Inc.,

Plaintiff,

Defendant.

Adv. No. 20-50932-LSS

**NO HEARING WILL BE HELD
UNLESS REQUESTED OR
ORDERED BY THE COURT**

Objection deadline:
April 7, 2022 @ 4:00 p.m.

Re: Adv. No. 39

**MEMORANDUM OF LAW IN SUPPORT OF INDUSTRIAL FABRICS, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Filed on: March 24, 2022

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NATURE OF PROCEEDING

On October 20, 2020, the debtor-in-possession Welded Construction, L.P. (the “Plaintiff” or “DIP”) commenced this adversary proceeding against Industrial Fabrics, Inc. (the “Defendant”). In its complaint, the Plaintiff seeks to recover alleged preferential transfers and fraudulent conveyances from the DIP and its affiliated debtor (the “Debtors”) to the Defendant made within ninety (90) days of the Debtors’ bankruptcy petition (the “Preference Period”). Specifically, the Plaintiff seeks to recover three transfers with a total amount of \$280,349.42 (the “Transfers”).

In support of its Motion for Summary Judgment (the “Motion”) and this Memorandum of Law (the “Memorandum”), the Defendant submits the affidavit of James Mitchell (“Mitchell Affi.”), a copy of which is attached as *Appendix A*.

SUMMARY OF ARGUMENTS

The Transfers were made in exchange for the Defendant’s waiver of its inchoate liens against the properties which the Debtors serviced as general contractors. This waiver caused a coincident release of the property owner’s claims against the Debtors, thereby creating new value for the Debtors. This new value was contemporaneously exchanged for the Transfers and cannot be avoided pursuant to 11 U.S.C. § 547(c)(1).

If this Court finds that the Transfers are not protected by 11 U.S.C. § 547(c)(1), the Plaintiff is nevertheless barred from recovering them pursuant to 11 U.S.C. § 547(c)(2), which protects transfers made in the ordinary course of business.

Finally, the Defendant provided reasonably equivalent value to the Debtors in exchange for the Transfers. Hence, the Plaintiff cannot recover the Transfers since it cannot satisfy all the elements of 11 U.S.C. § 548(a)(1)(B).

STATEMENT OF FACTS

The Defendant believes that there is no genuine dispute with respect to the following material facts:

I. PROCEDURAL BACKGROUND

On October 22, 2018 (the “Petition Date”), Welded Construction, L.P., et al. (the “Debtors”) each filed a voluntary petition under Chapter 11 of the Bankruptcy Code. ¶8 of Complaint.

On October 20, 2020, the Plaintiff filed a Complaint with claims for Avoidance of Preferential Transfers under 11 U.S.C. § 547; Avoidance of Fraudulent Conveyances under 11 U.S.C. § 548(a)(1)(B); Recovery of Property under 11 U.S.C. § 550; and Disallowance of Claims under 11 U.S.C. § 502(d) and (j) against the Defendant [D.I. 1]. The Plaintiff seeks to recover three transfers with a total amount of \$280,349.42 (the “Transfers”)

On January 7, 2021, the Defendant filed its Answer. [D.I. 13].

II. FACTUAL BACKGROUND

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. ¶17 of Complaint.

On the other hand, the Defendant is a manufacturer and distributor of geotechnical products, including geotextile fabrics, geogrids, liner material, silt fence, erosion control, pipeline protection and paving products for the construction industry. *See Mitchell Affi.* ¶4.

The parties started doing business around 17 months prior to the Petition Date. *See Mitchell Affi.* ¶5.

In the course of their dealings, the Defendant supplied the Debtors with construction materials for their projects. The goods covered by the invoices paid by the Transfers consist of

RockGuard[®] HD, a mesh rock shield designed to provide long-term protection to pipelines, and RockGuard[®] Tape, a filament tape specially designed to install RockGuard[®] products. These goods were shipped and utilized in pipeline construction projects which the Debtors serviced as general contractors. More particularly:

- a. The first Transfer amounting to \$82,829.42 made on August 13, 2018 represents payment for goods shipped to and utilized in the Mariner East Pipeline Project (the “Mariner Pipeline”) in Pennsylvania owned by Sunoco Pipeline, L.P. (“Sunoco”). *See Appendix C and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*
- b. The second Transfer amounting to \$98,760.00 made on September 10, 2018 represents payment for goods shipped to and utilized in the Mountaineer Xpress Pipeline Project (the “Mountaineer Pipeline” and, collectively with Mariner Pipeline, the “Pipeline Projects”) in West Virginia owned by Columbia Gas Transmission, LLC (“Columbia Gas” and, collectively with Sunoco, the “Project Owners”). *See Appendix D and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*
- c. The third Transfer amounting to \$98,760.00 made on September 24, 2018 also represents payment for goods shipped to and utilized in the Mountaineer Pipeline. *See Appendix E, Mitchell Affi. ¶6, and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*

The Defendant would send invoices to the Debtors for each delivery of goods. Despite the invoices having “Net 30” terms, the Debtors hardly ever paid on time. *See Mitchell Affi. ¶7.*

There was no significant difference in the manner and timing of the payments during the

90-day period prior to the Petition Date (the “Preference Period”) and the 14-month period prior to the start of the Preference Period (the “Historical Period”). *See Mitchell Affi.* ¶8.

During the Historical Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$72,840.54. Transfers during this period ranged from 27 to 71 days after the invoice date, with the average payment being made 51.64 days after the invoice date. *See Appendix F and Mitchell Affi.* ¶9.

Similarly, during the Preference Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$93,449.81. Transfers during this period ranged from 54 to 88 days after the invoice date, with the average payment being made 63 days after the invoice date. *See Appendix G and Mitchell Affi.* ¶10.

The Defendant did not exert any unusual collection pressure on the Debtors during the Preference Period. The Defendant did not, for example, demand shorter payment terms or COD terms; did not threaten to halt the performance of services; did not threaten to sue the Debtors or have its attorneys call the Debtors. *See Mitchell Affi.* ¶11.

In accordance with its standard business practices, the Defendant would have placed liens on the Pipeline Projects and sought payment from the Project Owners had the Debtors failed to pay prior to the deadline to perfect the liens. *See Mitchell Affi.* ¶12.

At the time of each Transfer, the Debtors had outstanding invoices collectible from the Project Owners for good utilized in and services rendered on their respective Pipeline Projects. The total amounts due from these outstanding invoices were equal to or more than the amount of each Transfer. More particularly:

- d. On August 13, 2018, the Debtors had outstanding invoices collectible from Sunoco for good utilized in and services rendered on the Mariner Pipeline. The

total amounts due from these outstanding invoices were equal to or more than \$82,829.42. *See Appendix H and Plaintiff's Response to Interrogatory Nos. 22 and 23.*

- e. On September 10, 2018, the Debtors had outstanding invoices collectible from Columbia Gas for good utilized in and services rendered on the Mountaineer Pipeline. The total amounts due from these outstanding invoices were equal to or more than \$98,760.00. *See Appendix I and Plaintiff's Response to Interrogatory Nos. 22 and 23.*
- f. On September 24, 2018, the Debtors had outstanding invoices collectible from Columbia Gas for good utilized in and services rendered on the Mountaineer Pipeline. The total amounts due from these outstanding invoices were equal to or more than \$98,760.00. *See Appendix I and Plaintiff's Response to Interrogatory Nos. 22 and 23.*

ARGUMENTS

I. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 n. 10 (1986). A party asserting that a fact cannot be—or, alternatively, is—genuinely disputed must be supported either by citing to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for the purposes of the motions only),

admissions, interrogatory answers, or other materials," or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A) & (B). If the moving party has carried its burden, the nonmovant must then "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita*, 415 U.S. at 587 (internal quotation marks omitted). The court will "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

To defeat a motion for summary judgment, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586-87; see also *Podohnik v. U.S. Postal Service*, 409 F.3d 584, 594 (3d Cir. 2005) (stating party opposing summary judgment "must present more than just bare assertions, conclusory allegations or suspicions to show the existence of a genuine issue") (internal quotation marks omitted). Although the "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment," a factual dispute is genuine where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (stating entry of summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial").

II. PAYMENTS MADE IN EXCHANGE FOR WAIVER OF INCHOATE LIENS ARE MADE IN EXCHANGE FOR NEW VALUE AND CANNOT BE AVOIDED PURSUANT TO 11 U.S.C. 547(C)(1)

A. Inchoate Liens are Security Interests

A lienor with a right to perfect an unperfected statutory lien holds an inchoate lien. *In re Vienna Park Properties*, 976 F.2d 106, 112 (2nd Cir. 1992). (“The failure of a secured party to perform enforcement procedures prior to bankruptcy merely renders an interest inchoate, not nullified.”). The holder of an inchoate lien is a secured creditor. *In re SeSide Co.* 152, B.R. 878, 1993 U.S. Dist. LEXIS 4177 (E.D. Pa. 1993) citing *Vienna Park* at 113 (“An agreement that creates an inchoate lien on rents creates a "security interest" under the Bankruptcy Code). A "security interest" is defined in the Bankruptcy Code as simply a "lien created by an agreement." *Id.* § 101(51). "Lien," in turn, is broadly defined as a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(37). This definition includes inchoate liens. See S. Rep. 95-989, reprinted following 11 U.S.C. 101 ("The definition is new and is very broad. . . . It includes inchoate liens.") (emphasis added). See also *Ricotta v. Burns Coal & Building Supply Co.*, 264 F.2d 749 (2d Cir. 1959) (neither the filing nor the enforcement of [a mechanic's] lien would have constituted a preference" and that "had the liens been filed, payment merely discharging them . . . would likewise have been immune from attack.); and *In re Country Squire Assocs. of Carle Place, L.P.*, 1998 Bankr. LEXIS 1909 (Bankr. N.D.N.Y. Sep. 30, 1998) (The Second Circuit has decided that an agreement creating an inchoate lien on rents creates a security interest as defined by Code § 101(51) and qualifies as a security interest under section 552(b)).

**B. The Defendant held an Inchoate
Materialman's Lien under W. Va. Code §
38-2-4**

W. Va. Code § 38-2-4 states that, “Every person, firm or corporation, which shall furnish to any general contractor or to any subcontractor mentioned in sections one and two of this article, any materials, machinery or other equipment or supplies necessary to the completion of any building or other structure mentioned in this article, or improvement appurtenant thereto, for use in the erection, construction, repair or removal thereof, by virtue of a contract between such general contractor or subcontractor and the materialman or furnisher of machinery, or other supplies or equipment necessary to the completion of such general contract, shall have such a lien for his compensation as is mentioned in section one of this article.”

Furthermore, W. Va. Code § 38-2-11 requires the lien holders described in the preceding article to serve a notice of lien to the contractor or subcontractor within 100 days after he or she has ceased to furnish materials in order to perfect and preserve their materialman's lien.

In this case, the Defendant supplied materials and supplies for the construction and improvement of the Debtors' project in West Virginia, and all invoices were paid by the Transfers prior to the lapse of the 100-day period for perfection. Clearly, the Defendant held an inchoate materialman's lien which remained unperfected precisely because of the payment of the Transfers.

**C. The Defendant held an Inchoate
Mechanic's Lien under 49 Pa. Stat. Ann. §
1301**

49 Pa. Stat. Ann. § 1301 states that, “Except as provided under subsection (b), every improvement and the estate or title of the owner in the property shall be subject to a lien, to be perfected as herein provided, for the payment of all debts due by the owner to the contractor or

by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement, provided that the amount of the claim, other than amounts determined by apportionment under section 306(b) of this act, shall exceed five hundred dollars (\$500).”

Furthermore, 49 Pa. Stat. Ann. § 1502 requires the lien holders described in the preceding article to file a claim within six (6) months from the completion of his work.

In this case, the Defendant supplied materials and supplies for the construction and improvement of the Debtors’ project in Pennsylvania, and all invoices were paid by the Transfers prior to the lapse of the 6-month period for perfection. Clearly, the Defendant held an inchoate mechanic’s lien which remained unperfected precisely because of the payment of the Transfers.

D. The Waiver of An Inchoate Lien Constitutes A Contemporaneous Exchange for New Value and Payments Made That Discharge Inchoate Liens Cannot Be Avoided Under the Preference Laws

Circuit courts that have addressed the issue have consistently found that the waiver of the right to perfect an inchoate lien in exchange for the receipt of an otherwise preferential transfer is a transfer of new value under 11 U.S.C. 547(c)(1). *See e.g. R.M. Taylor, Inc. v. H.M White, Inc. (In re RM Taylor, Inc.)*, 257 B.R. 289, 296 (Bankr. W.D. Mo. 2000) (“...the release of a lien, or the waiver of a lien right, is new value”); *In re Egert*, 887 F.2d 955, 959 (9th Cir. 1989) (“...the release of the subcontractors’ rights against the surety, which in turn could have exercised its lien rights, constituted “new value” being given in a substantially contemporaneous exchange.”); *In re Rodman*, 792 F.2d 125 at 127-128 (10th Cir. 1986) (where the Court ruled that waiver of lien against third party owner was a contemporaneous exchange of new value); *In re Robinson Bros. Drilling*, 877 F.2d 32 at 34 (10th Cir. 1989) (affirmed district court ruling that release of inchoate

liens were an exchange for new value to the extent of the value of the liens at the time of the transfers.); *In re Grand Chevrolet*, 25 F.3d 728 at 734 (9th Cir. 1994) (affirmed finding that release of inchoate security interest was transfer of new value and remanded to determine value of security interest.)

The Defendant anticipates that the Plaintiff will argue that the inchoate liens are valueless considering that the Plaintiff did not own the Pipeline Projects, wherein the inchoate liens would have attached. However, there are several cases addressing this issue where courts have found value in the inchoate liens of subcontractors even though the debtor was merely a general contractor and did not own the properties wherein the inchoate liens would have attached.

In *Janas v. Reuter Equip. Co. (In re JWJ Contracting Co.)*, 74 F. App'x 779 (9th Cir. 2003), the debtor was a construction contractor who engaged a surety, which issued payments and performance bonds on its jobs. *Id.* at 780. The defendant in the underlying preference action, Reuter, was a subcontractor to the debtor. *Id.* at 781. Reuter argued that the payment was accepted as a contemporaneous exchange under 547(c)(1). *Id.* It argued that if the debtor had not paid Reuter the surety would have placed an equitable lien on the debtor. *Id.* Reuter argued that its forbearance to proceed against the surety was contemporaneous new value. *Id.* The bankruptcy court disagreed and avoided the transfers, the district court reversed. *Id.* The Court of Appeals for the 9th Circuit affirmed the district court's decision finding that since the debtor's payment to the subcontractors avoided the imposition of an equitable lien by the surety of future payments under the contract, there was no diminution to the estate. *Id.* at 784. Thus, the Court of Appeals found that the payments to Reuter were not avoidable as preferences.

In *Taylor v. White*, 257 B.R. 289 (Bankr. W.D. Mo. 2000), the debtor was a general contractor who hired the defendant as a subcontractor to work on a construction project for a

third party. *Id.* at 291. The debtor paid the defendant's subcontractor during the preference period for work done prior to the preference period. *Id.* The defendant transferred partial lien releases to the debtor simultaneously with receiving payment. *Id.* at 292. The court found that in the event the subcontractor had not been paid by the debtor, the third-party owner would have paid the subcontractor/defendant and liened the debtor. *Id.* at 295. The court also found that the third party had funds sufficient to secure itself fully. *Id.* Thus, the court found, the payment to the subcontractor did not diminish the estate and the trustee did not show that the subcontractor would have received more had the debtor filed a Chapter 7 case without having made the alleged preferential transfers. *Id.* The court also found that the release of the lien by the defendant/subcontractor was new value. *Id.* at 296.

In *Gem Construction v. Guard Masonry*, 262 B.R. 638 (E.D. Va. 2000), the defendant was a subcontractor that was paid during the preference period. *Id.* at 642. Prior to the bankruptcy the defendant/subcontractor had filed liens on the owner's properties, the properties of the entity that had retained the debtor to perform construction work. *Id.* at 643. When the defendant was paid during the preference period it released its liens against the owner. *Id.* The defendant raised the defense of new value. *Id.* at 645. The court found that the time for evaluating the amount of new value was when the transfer or exchange occurred. *Id.* at 648. The court found that the defendant had failed to prove that its mechanics liens had any value on the date of the transfer since the lien was against the owners' property and it was unclear whether the owners would have to satisfy the defendant's liens in total. *Id.* However, the court found that the defendant, by forbearing to place a lien on the surety in exchange for the payments, did contribute new value since the surety would have placed a lien on the monies owed from the owner to the debtor. *Id.* at 652. Thus, payment to the defendant did not diminish the estate and

the transfers were exempt from avoidance.

Particularly instructive is *In re J.A. Jones*, 361 B.R. 94 (Bankr. W.D.N.C. 2007), wherein the debtor served as the general contractor and numerous subcontractors were sued to recover alleged preference transfers. *Id.* at 97. Each defendant possessed inchoate lien rights which it released in exchange for the said transfers. *Id.* at 98. The subcontractors moved for summary judgment on common issues. One of those issues was the “indirect transfer” theory. *Id.*

The court recognized a division in case law on the issue but held that, “[T]he split in the case law on whether [the creditor's] release of inchoate lien rights against [a third party] constitutes ‘new value’ is not as wide as it initially appears. A close reading of the cases reveals that **the primary variant in these cases is whether, at the time of the preference payment, the [third party] still owed sufficient sums to the debtor on the project to permit a setoff If the [third party] still owes the debtor, then its indemnity claim can be setoff and is secured.** In this context, most courts consider the ‘indirect transfer’ to provide new value. If there is no debt to be setoff, however, then the owner's claim for indemnification is simply an unsecured debt and there is no ‘new value.’” *Id.* at 103.

In reaching this conclusion, the *J.A. Jones* court reasoned that, “Section 547 requires [the court] to hypothesize what the subcontractor would have received in bankruptcy had the allegedly preferential payment not been made. We cannot fairly assess how the subcontractor would have fared without projecting how it would have reacted to nonpayment. Since an individual subcontractor's reaction is unknowable, an objective approach should be employed, asking ‘what would a reasonable materialman have done in response to that nonpayment.’ It takes little commercial construction expertise to answer. A reasonable subcontractor would assert his legal rights, lien the project, perfecting those liens and forcing payment through the

owner. We should also assume a reasonable behavior by the project owner. Again, this requires almost no imagination. With liens on this project, the owner would have no reasonable alternative but to pay the subcontractor and then seek indemnification from the general contractor. To make any other assumption would defy reality. It would also penalize the lien creditor for accepting payments. It would also defy commercial reality. A subcontractor would not long remain in business if it made a practice of refusing payments from its general contractor in favor of enforcing lien rights against the underlying project. No one would hire such a subcontractor.” *Id.*

The reasoning in *J.A. Jones* finds some support in this circuit in the case of *Instrumentation & Controls, Inc. v. Ne. Union, Inc. (In re Instrumentation & Controls, Inc.)*, 506 B.R. 677 (Bankr. E.D. Pa. 2014), wherein the court favorably cited *J.A. Jones* and agreed that the defendant therein could raise a defense under § 547(c)(1) based on the indirect transfer theory. *Id.* at 681. However, since the case was still in the pleading stage, the court simply denied the plaintiff’s motion for judgment on the pleadings and allowed the case to proceed to discovery. *Id.*

Every applicable precedent cited above stands for the proposition that the practical commercial reality, the pre-Code law and the legislative history of the statute clearly shows that section 547(c)(1) exempts inchoate liens from the “bite” of the preference laws. If under 547(c)(1) the Court cannot exempt inchoate liens, debtors would be encouraged to simply wait until the preference period to pay mechanics liens and then later avoid them.

In the present case, the Defendant contemporaneously waived its inchoate liens upon receipt of the Transfers. If the Debtors had not made the Transfers, the Defendant would have lienied the Pipeline Projects pursuant to its standard business practices. These liens would have been perfected and the Defendant would have sought payment through the Project Owners. The

Project Owners would have paid the Defendant and sought indemnification from the Debtors, as the general contractors. However, at the time of the Transfers, the Project Owners owed sufficient sums of money to the Debtors to permit a setoff of their indemnification claims. In this context, the Debtors received new value in exchange for the Transfers in the form of the Defendant's waiver of its inchoate liens. Hence, the Transfers may not be avoided by the Plaintiff pursuant to 11 U.S.C. § 547(c)(1).

III. THE TRANSFERS WERE MADE IN THE ORDINARY COURSE OF BUSINESS OR FINANCIAL AFFAIRS OF THE DEBTORS AND THE DEFENDANT. HENCE, THE TRANSFERS ARE EXEMPT FROM AVOIDANCE PURSUANT TO 11 U.S.C. §547(C)(2)

Should this Court find that the Transfers are protected by section 547(c)(1), the Plaintiff is nevertheless barred from recovering them. Section 547(c)(2) of the Bankruptcy Code provides that the Trustee may not avoid a transfer under subsection Section 547(b) to the extent such transfer was:

- (A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
- (B) made according to ordinary business terms.

11 U.S.C. §547(c)(2)

This exception, which is commonly referred to as the ordinary course of business exception, is meant to "induce creditors to continue dealing with a distressed debtor so as to kindle its chances of survival without a costly detour through, or a humbling ending in, the sticky web of bankruptcy." *Forman v. Moran Towing Corp. (In re AES Thames, LLC)*, 547 B.R. 99 at 103 (Bankr. D. Del. 2016). Section 547(c)(2) "is intended to protect recurring, customary credit

transactions that are incurred and paid in the ordinary course of business of the debtor and the Debtors' transferee." *Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy* ¶ 547.04[2], at 547-51 (16th ed. 2010) ("Collier"); accord *Kleven v. Household Bank F.S.B.*, 334 F.3d 638, 642 (7th Cir.), cert. denied, 540 U.S. 1073, 124 S. Ct. 924, 157 L. Ed. 2d 743 (2003); *Waldschmidt v. Ranier (In re Fulghum Constr. Corp.)*, 872 F.2d 739, 743 (6th Cir. 1989); *Official Comm. of Unsecured Creditors of Enron Corp. v. Martin (In re Enron Creditors Recovery Corp.)*, 376 B.R. 442, 459 (Bankr. S.D.N.Y. 2007). "[T]he purpose of [section 547(c) (2)] is to leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the Debtors' slide into bankruptcy." H.R. Rep. No. 95-595, at 373 (1977); S. Rep. No. 95-989, at 88 (1977); accord *Official Comm. of Unsecured Creditors of Cyberrebate.com, Inc. v. Gold Force Int'l, Ltd. (In re Cyberrebate.com, Inc.)*, 296 B.R. 639, 642 (Bankr. E.D.N.Y. 2003), *aff'd*, No. 03 CV 5982 (JG), 2004 U.S. Dist. LEXIS 2089, 2004 WL 287144 (E.D.N.Y. Feb. 10, 2004).

"A payment that is made beyond invoice or contract terms may still be considered in the ordinary course for purposes of subparagraph (B) if late payments were the standard course of dealing between the parties." 5 *Collier* ¶ 504.04[2] [ii], at 547-55; *In re Tolona Pizza Prods. Corp.*, 3 F.3d 1029, 1032 (7th Cir. 1993) ("[A] 'late' payment really isn't late if the parties have established a practice that deviates from the strict terms of their written contract.") "To determine whether a late payment may still be considered ordinary between the parties, a court will normally compare the degree of lateness of each of the alleged preferences with the pattern of payments before the preference period to see if the alleged preferences fall within that pattern." 5 *Collier* ¶ 504.04[2][ii], [*10] at 547-55; see CIS II, 214 B.R. at 120 (comparing the average number of days between the invoice and payment dates during the pre-preference and preference

periods). Although delay in payment is particularly relevant, "late payments can fall within the ordinary course of business exception if the prior course of conduct between the parties demonstrates that those types of payments were ordinarily made late." *In re Grand Chevrolet, Inc.*, 25 F.3d 732.

To make out an ordinary course of business defense under 11 U.S.C.S. § 547(c)(2), a defendant must show that the incurred debts, and the resulting transfers in payment of those debts, were made either in the ordinary course of business or according to ordinary business terms. 11 U.S.C.S. § 547(c)(2). "[T]he cornerstone of this element of a preference defense is that the creditor needs demonstrate some consistency with other business transactions between the debtor and the creditor." *WJM, Inc. v. Mass. Dep't of Pub. Welfare*, 840 F.2d 996, 1011 (1st Cir. 1988) (quoting *In re Magic Circle Energy Corp.*, 64 B.R. 269, 273 (Bankr. W.D. Okla. 1986)); accord *McCord v. Venus Foods, Inc. (In re Lan Yik Foods Corp.)*, 185 B.R. 103, 111 (Bankr. E.D.N.Y. 1995); *Huffman v. N.J. Steel Corp. (In re Valley Steel Corp.)*, 182 B.R. 728, 736 (Bankr. W.D. Va. 1995). The creditor must establish a "baseline of dealings" to enable the court to compare the payment practices during the preference period with the prior course of dealing. *Ellenberg v. Tulip Prod. Polymerics, Inc. (In re T. B. Home Sewing Enters., Inc.)*, 173 B.R. 782, 788 (Bankr. N.D. Ga. 1993). The relevant comparisons relate to the amount of the payments, the timeliness of the payments, the existence of any unusual debt collection practices and the form of, and the circumstances surrounding, the payments. *In re Vogel Van & Storage, Inc.*, 210 B.R. at 35; *Savage & Assocs. v. Mandl (In re Teligent, Inc.)*, 380 B.R. 324, 340 (Bankr. S.D.N.Y. 2008); *Cyberrebate.com, Inc.*, 296 B.R. at 642; *Cassirer v. Herskowitz (In re Schick)*, 234 B.R. 337, 348 (Bankr. S.D.N.Y. 1999); *Hassett v. Goetzmann (In re CIS Corp.)*, 195 B.R. 251, 258 (Bankr. S.D.N.Y. 1996); [*8] see 5 *Collier* ¶ 504.04[2][ii], at 547-55.

To be entitled to the subjective ordinary course defense, the creditor must establish that the debt was typical to those that existed between the parties and that the corresponding payment was typical of their payment history. *Homeplace of America, Inc. v. Salton, Inc. (In re Waccamaw's Homeplace, et al.)*, 325 B.R. 524 (Bankr. D. Del. 2005), citing *Zeta Consumer Prods. Corp. v. Equistar Chem., LP (In re Zeta Consumer Prods. Corp.)*, 291 B.R. 336, 356 (Bankr. D.N.J. 2003).

A. Prior Course of Dealing Between the Parties – Consistency of transactions between the Debtors and Defendant before and during the Preference Period

The circumstances in this case readily show that the Transfers were made according to the parties' ordinary course of business. A look at various factors to determine the consistency of transactions between the Defendant and the Debtors reveal that there was nothing unusual in their transactions during the Preference Period when compared with those transactions during the Historical Period.

Length of time the parties have engaged in the type of dealing at issue

The parties have worked together for about 17 months prior to the Petition Date. The Defendant's supply of goods to the Debtor was within the scope of the Defendant's normal business operations just as the Debtor's acceptance of the goods was in the ordinary course of the Debtor's business operations. Throughout the course of their business dealings, the Defendant supplied the same type of goods to the Debtor.

The payments were tendered in a manner not different from previous payments.

There was nothing unusual in the amounts paid by the Debtor. During the Historical Period, the average dollar amount of each payment was \$72,840.54. On the other hand, during

the Preference Period the average dollar amount of each payment was \$93,449.81. Hence, the average payment amounts of both periods are relatively close.

There was likewise nothing unusual about the manner in which the Debtor paid since, in both periods, the Debtors always paid each invoice with a single check.

The Defendant did not exert unusual collection pressure on the Debtors and did nothing to gain an advantage of the Debtors' deteriorating financial condition.

In the course of its business relationship with the Debtors, up to and during the Preference Period, the Defendant did not do anything to take advantage of the Debtors' deteriorating financial condition. The Defendant did not, for example, demand shorter payment terms or COD terms; did not threaten to halt services; did not threaten to sue the Debtors or have its attorneys call the Debtors.

B. Prior Course of Dealing Between the Parties – “Average Lateness Method”

The Debtors' payment history establishes that the payments of the Defendant's invoices were ordinary. Using the well-recognized Average Lateness Method, one can easily determine that the Debtors' payment practices during the Preference Period are consistent with its practices during the Historical Period.

Using the Average Lateness Method, the Debtors' length of payments is **51.64 days** during the Historical Period and **63 days** during the Preference Period. This translates to a **11.36-day difference** in the averages.

Similarly, the **weighted average** of the Debtors' length of payments is **51.18 days** during the Historical Period and **63.51 days** during the Preference Period. This translates to a mere **12.33-day difference** in the weighted averages.

An approximate **11-day difference in the overall averages and 12-day difference in the weighted averages** of the Historical Period and Preference Period falls well within what a number of courts have found as ordinary and immune from a trustee or debtor-in-possession's avoidance powers:

a. *In re Bank of New England Corp.*, 161 B.R. 557 (Bankr. D. Mass. 1993) - Holding that a difference between 38.4 days pre-preference average number of days to payment, and 54.7 days preference average number of days to payment did not make the payments out of the ordinary course of business. Translating to a 16.3-day or 42.45% difference.

b. *McCord v. Venus Foods (In re Lan Yik Foods Corp.)*, 185 B.R. 103, 112-113 (Bankr. E.D.N.Y. 1995) – Holding that a difference between approximately 89 days pre-preference average days to payment after invoicing, and approximately 110 days preference average days to payment after invoicing did not make the payments out of the ordinary course of business; Although the average payment in the preference period was made later than the average payment during the pre-preference period, a comparison of the pre-preference and preference payments shows that in both periods there were substantial and significant delays in payments.

c. *Huffman v. New Jersey Steel Corp., (In re Valley Steel Corp.)*, 182 B.R. 728 (Bankr. W.D. Va. 1995) - Holding that a difference between approximately 54 days pre-preference average days to payment, and approximately 67 days preference average days to payment did not make the payments out of the ordinary course of business. Translating to a 13-day difference.

Thus, based on previous court decisions, an approximate **11-day (18%) or 12-day (19%)** difference between the averages and weighted averages of the Historical Period and Preference Period does not preclude the successful application of the ordinary course of business defense. Historically, only much larger shifts in the averages would be able to negate the ordinary course of business defense. *See e.g. Davis v. R.A. Brooks Trucking, Co. (In re Quebecor World (USA), Inc.)*, 491 B.R. 379 (Bankr. S.D.N.Y. 2013) (27.5 days increase from 50 days to 77 days or a 55% increase); *Official Plan Comm. v. Expeditors Int'l (in Re Gateway Pac. Corp.)*, 153 F.3d 915

(8th Cir. 1998) (19 days increase from 35 days to 54 days or a 54% increase); *In re CIS Corp.*, 214 B.R. 108 (Bankr. S.D.N.Y. 1997) (29 days increase from 51 days to 80 days or a 57% increase).

Based on the foregoing, the timeliness of payments between the parties during the Historical Period and the Preference Period remained ordinary.

C. Prior Course of Dealing Between the Parties – “Bucketing Method”

“In deciding what payments are ordinary, a court reviews the range of payments centered around the average and also groups the payments in buckets by age.” *Davis v. R.A. Brooks Trucking, Co. (In re Quebecor World (USA), Inc.)*, 491 B.R. 379 (Bankr. S.D.N.Y. 2013) citing *In re Hechinger Inv. Co. of Delaware, Inc.*, 489 F.3d 568, 578 (3d Cir. 2007); *Chapter 11 Estate Liquid. Trust v. Inserts East, Inc. (In re Philadelphia Newspapers, LLC)*, 468 B.R. 712, 2012 WL 983594, *2 (Bankr. E.D. Pa. 2012).

In *In re Quebecor World (USA), Inc.*, 491 B.R. 379, the court grouped payments made during the historical period into so-called “buckets” and compared each bucket to the corresponding buckets and percentages in the preference period. *Id.* at 388. Particularly, the court noted that 88% of the amount paid during the historical period were paid between 11 to 40 days after the receipt of the invoice, while only 22% of the amount paid during the preference period were paid within the same bucket. *Id.*

In the instant case, 94% of payments during the Historical Period were made between 31-90 days, while 100% of payments during the Preference Period were made within the same period.

Hence, the bucketing analysis also reveals a clear consistency between the parties’ payment practices between both the Historical Period and Preference Period.

D. Prior Course of Dealing Between the Parties – “Range Method”

Payments in the preference period made within the range of payments of the pre-preference period are deemed payments in the ordinary course of business. *Brothers Gourmet Coffees v. Armenia Coffee Corporation (In re Brothers Gourmet Coffees, Inc.)*, 271 B.R. 456 (Bankr. D. Del. 2002); *Jensen v. Raymond Building Supply Co. (In re Homes of Port Charlotte)*, 109 B.R. 489 (Bankr. M.D. Fl., 1990) (determining that only those preference payments beyond the pre-preference range of 28-76 days were outside the ordinary course); *Torch Offshore, LLC v. C&D Marine, LLC (In re Torch Offshore, Inc.)*, 2008 Bankr. LEXIS 1898 (Bankr. E.D. La., June 18, 2008) (determining that preference payments to one of two creditors could not be avoided by the trustee because the preference period payment range of 65 to 168 days was similar to 36 and 128 days pre-preference period payment range).

Moreover, preference period payments slightly outside the historical range of payments are still ordinary. The bankruptcy court in *H. L. Hansen Lumber Co. v. G & H Custom Craft, Inc. (In re H.L. Hansen Lumber Co.)*, 270 B.R. 273 (Bankr. C.D. Ill. 2001), citing *In re Tennessee Chemical Co.*, 112 F.3d 234, 237 (6th Cir. 1997), found that transfers within 10% of the outer limit of the historical period range may still be considered as within the ordinary course of business. In that case, the outer limit of the historical period range was 74 days so the court deemed those transfers 81 days of age or less to be within the ordinary course of business (74 days x .10 = 7.4 days; 7.4 days + 74 days = 81.4 days). See also *Torch Offshore, LLC v. C&D Marine, LLC (In re Torch Offshore, Inc.)*, 2008 Bankr. LEXIS 1898 (Bankr. E.D. La., 2008) (determining that preference payments to one of two creditors could not be avoided by the trustee because the preference period payment range of 65 to 168 days was similar to 36 and 128 days pre-preference period payment range).

There is some support for this in Delaware. In *Miller v. Westfield Steel, Inc. (In re Elrod Holdings)*, 426 B.R. 106, 111 (Bankr. D. Del. 2010) the trustee brought an adversary proceeding to avoid certain transfers as preferential. Prior to the preference period, the debtor's payment history was within a range of between thirty-five (35) and seventy-three (73) days after the invoice date. During the preference period, the debtor submitted payments to the defendant between thirty (30) and seventy-four (74) days after invoice. Despite that the payments were made outside the range of payments from the pre-preference period, and that the defendant threatened to withhold future shipments unless the debtor made payments, Judge Gross granted the defendant's motion for summary judgment finding that the ordinary course of business exemption was applicable.

During the Historical Period, the Debtors paid the Defendant's invoices between 27 days up to 71 days of the invoice date. *See Appendices F and G.*

During the Preference Period, the Debtors paid the Defendant's invoices between 54 and 88 days of the invoice date. *See Appendices F and G.*

The first Transfer was made 54 days after the invoice date. Hence, it is clearly within the range of payments established during the Historical Period.

The second Transfer was made 75 days after the invoice date. Hence, it fell slightly outside of the range of payments established during the Historical Period. However, following the cases of *H. L. Hansen Lumber Co. v. G & H Custom Craft, Inc. (In re H.L. Hansen Lumber Co.)*, 270 B.R. 273 (Bankr. C.D. Ill. 2001) and *Miller v. Westfield Steel, Inc. (In re Elrod Holdings)*, 426 B.R. 106, 111 (Bankr. D. Del. 2010), the second Transfer is also protected from recovery.

Hence, two out of three Transfers are protected by the Range Method and cannot be

avoided pursuant to 11 U.S.C. 547(c)(2).

E. Policy Considerations Favor the Defendant

Preference actions serve two purposes. “The more important one is to facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor that received a greater payment than others of his class is required to disgorge so that all may share equally. The other purpose is to discourage creditors from racing to the courthouse to dismember the debtor during his slide into bankruptcy, thereby giving the debtor an opportunity to work his way out of a difficult financial situation through cooperation with all of his creditors.” *Jubber v. SMC Elec. Prods. (In re C.W. Mining Co.)*, 798 F.3d 983, 985 (10th Cir. 2015). See also *In re Finn*, 909 F.2d 903, 906-07 (6th Cir. 1990) (discussing the legislative history of the ordinary course of business defense); *In re Affinity Health Care, Mgmt.*, 499 B.R. 246, 262 (Bankr. D. Conn. 2013) (“The purpose of the ordinary course of business exception is to benefit all creditors by deterring the race to the courthouse and enabling the struggling debtor to continue to operate its business.”); *Clark v. Balcors Real Estate Fin., Inc. (In re Meridith Hoffman Partners)*, 12 F.3d 1549, 1553 (10th Cir. 1993) (The preference section “discourages ‘unusual action’ that may favor certain creditors or hasten bankruptcy by alarming other creditors and motivating them to force the debtor into bankruptcy to avoid being left out.” But even if payments were “not common,” they may be in the ordinary course if “they did not favor certain creditors or encourage a race to dismember the [debtor].”); and *Warsco v. Household Bank F.S.B.*, 272 B.R. 246, 252 (Bankr. N.D. Ind. 2002) (“[P]art of the rationale behind § 547(c)(2) is to encourage creditors to continue to do business with a potential debtor... Indeed, the court can imagine little (short of the certain knowledge that its debt will not be paid) that would discourage a potential creditor from extending credit to a new customer in questionable financial circumstances more than the

knowledge that it would not even be able to raise the ordinary course of business defense, if it is subsequently sued to recover an alleged preference.”)

In this case, the parties’ agreement to purchase and sell construction materials was clearly an arm’s length transaction. The Transfers were not the product of unusual action by either party. Furthermore, the Defendant’s actions helped the Debtors continue their operations, temporarily stave off bankruptcy, and gave them an opportunity to work their way out of their difficult financial situation. The Defendant did not exert any collection pressure on the Debtors and was not favored by the Debtors or treated any differently from other similarly situated creditors.

Hence, grating the Defendant’s ordinary course of business defense would better serve the rationale and purpose behind the exception, which is to encourage creditors to continue distressed debtors, discourage a race to the courthouse, and give struggling debtors a chance to work their way out of their difficult financial situation.

IV. THE DEFENDANT PROVIDED REASONABLY EQUIVALENT VALUE FOR THE ALLEGED FRAUDULENT CONVEYANCES UNDER 11 U.S.C. §548.

Pursuant to 11 U.S.C. §548(a)(1)(B), the trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

- (i) received less than a reasonably equivalent value in exchange for such a transfer or obligation; and
- (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
- (II) was engaged in business or a transaction, or was about to engage

in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the Debtors' ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

In order to satisfy the statutory requirement for "reasonably equivalent value" under §548, a conveyance must satisfy an antecedent debt or constitute a present exchange. *Crumpton v. Stephens (In re Northlake Foods, Inc.)*, 483 B.R. 247, 251 (M.D. Fla. 2012); *Janvey v. Brown*, 2014 U.S. App. LEXIS 17580 (5th Cir. 2014). *Durand v. Ackerman (In re Durand)*, 09-CV-3372, 2010 U.S. Dist. LEXIS 101755 (E.D.N.Y. 2010) citing *Pergament v. Reisner (In re Reisner)*, 357 B.R. 206, 214 (Bankr. E.D.N.Y. 2006) (citing 5 Collier on Bankruptcy, ¶ 548.05[1][b]). While dollar-for-dollar equivalence is not required, the value of the consideration may not be "disproportionately small" as compared to the value of the transferred property." *Id.* citing *Lippe v. Bairnco Corp.*, 249 F. Supp. 2d 357, 377 (S.D.N.Y. 2003).

The Debtor received reasonably equivalent value in exchange for the Transfers

Where a bankruptcy trustee seeks to avoid certain payments made by a bankruptcy debtor as fraudulent under 11 U.S.C.S. § 548(a)(1)(B), the trustee must allege that the debtor had an interest in the property transferred, that the transfer occurred within two years prior to the case filing, that the debtor did not receive reasonably equivalent value in exchange for the transfer, and that the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. *Gordon v. Harrison (In re Alpha Protective Servs.)*, 531 B.R. 889 (Bankr. M.D. Ga. 2015). The party seeking to set aside a transfer alleged to be either actual or constructively

fraudulent pursuant to either 11 U.S.C. §548 bears the burden of proving the elements of the fraud, which it must do by a preponderance of evidence. *Bruno Mach. Corp. v. Troy Die Cutting Co.* (*In re Bruno Mach. Corp.*), 435 B.R. 819, 853-854 (Bankr. N.D.N.Y. 2010); *McFarland v. Wallace* (*In re McFarland*), 2014 U.S. Dist. LEXIS 111198 (S.D. Ga. 2014). It is the creditor's burden to offer evidence addressing the elements of fraudulent transfer as to each transfer. *Tow v. Pajoo* (*In re CRCGP LLC*), 2008 Bankr. LEXIS 4236 (Bankr. S.D. Tex. 2008).

In this case, the alleged Transfers were all **made in consideration of the goods supplied by the Defendant** pursuant to its contracts of sale.

A litany of cases holds that the terms of a contract evidence the value of goods or services provided to a debtor. *See, e.g., Webster v. Harris Corp.* (*In re Nettel Corp.*), 319 B.R. 290, 295 (Bankr. D.D.C. 2004) (holding that the value of services provided would be measured by the contract price); *Jones Truck Lines, Inc. v. Central States, Southeast and Southwest Areas Pension Fund* (*In re Jones Truck Lines, Inc.*), 130 F.3d 323, 328 (8th Cir. 1997) ("[a]bsent contrary evidence, the value of employee services is presumed to equal the wages and benefit the employer contracted to pay."); *Osborne v. Loftus Group, LLC* (*In re Nomus-North Carolina, Inc.*), 2004 WL 574510, No. 01-50373 at *4 (Bankr. M.D.N.C. 2004) (when considering wages, new value of wages presumed to equal contract rate); *In re Pulaski Highway Express, Inc.*, 57 B.R. 502, 510 (Bankr. M.D. Tenn. 1986) (same); *Bethlehem Steel Corp. v. BP Energy Co.* (*In re Bethlehem Steel Corp.*), 291 B.R. 260 (Bankr. S.D.N.Y. 2003) (discussion in context of an administrative claim, the Court stated that "There is an initial assumption that, where a contract exists, the contractual rate is the reasonable value of the goods or services provided to the estate. The presumption is viable unless the debtor introduces convincing evidence to the contrary."); and *In re Globe Metallurgical, Inc.*, 312 B.R. 34 (Bankr. S.D.N.Y. 2004) (following *In re*

Bethlehem Steel and holding that the claimant had not offered sufficient evidence to overcome the presumption that the value of the services sought by the administrative claim should be fixed in the amount called for by the parties' contract). Payments of compensation for services are presumed to be for fair consideration, and in order for a trustee to avoid them he must establish that the salary payments were in bad faith or the payments were excessive in light of the defendants' employment responsibilities. *Anderson v. Patel (In re Diplomat Constr., Inc.)*, 2013 Bankr. LEXIS 4297 (Bankr. N.D. Ga. 2013).

Premises considered, the Transfers cannot be avoided pursuant to 11 U.S.C. 548(a)(1)(B).

CONCLUSION

It is clear from the foregoing discussion that the Plaintiff cannot recover the Transfers to the Defendant because the Transfers are protected from avoidance by § 547(c)(1) since the Defendant waived its right to enforce an inchoate lien upon its receipt of the Transfers and the Debtors received value as a consequence of the Defendant's waiver. Moreover, even if this Court finds § 547(c)(1) inapplicable, the Transfers are nevertheless protected from avoidance because of the ordinary course of business defense under § 547(c)(2).

Finally, fraudulent conveyances transfer claim must fail because the Defendant provided reasonably equivalent value in exchange for the Transfers.

Dated: March 24, 2022

Respectfully submitted,

THE LAW OFFICE OF JAMES TOBIA, LLC

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Admitted pro hac vice

Counsel for the Defendant

APPENDIX A

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

In re:		Chapter 11
Welded Construction, L.P., <i>et al.</i> ,		Case No. 18-12378 (CSS)
Debtors.		(Jointly Administered)
<hr/>		Adv. No. 20-50932
Welded Construction, L.P.,	Plaintiff,	
vs.		
Industrial Fabrics, Inc.,	Defendant.	
<hr/>		

**AFFIDAVIT OF JAMES MITCHELL IN SUPPORT OF
INDUSTRIAL FABRIC INC.'S MOTION FOR SUMMARY JUDGMENT**

James Mitchell, being duly sworn, deposes and states as follows:

1. I am the Chief Financial Officer (“CFO”) of Industrial Fabrics, Inc. (the “Defendant”) with office address located at 510 Oneal Lane Ext., Baton Rouge, LA 70819.
2. I am an individual over the age of eighteen, and if called as a witness, I could and would testify to the facts set forth below. The following facts are within my personal information and knowledge and are based upon my review of the documents regarding these matters and pleadings in this action.
3. The exhibits referred to in this affidavit are true and correct copies of the original documents that I have in my possession and/or are based on the Defendant’s records as kept in the regular course of business.
4. The Defendant is a manufacturer and distributor of geotechnical products, including geotextile fabrics, geogrids, liner material, silt fence, erosion control, pipeline protection and paving products for the construction industry.

5. The Defendant started doing business with Welded Construction, L.P., et al. (the “Debtors”) around 17 months prior to October 22, 2018 (the “Petition Date”).

6. In the course of their dealings, the Defendant supplied the Debtors with construction materials for their projects. The goods covered by the invoices paid by the transfers sought to be avoided by Welded Construction, L.P. (the “Plaintiff”) in the above-referenced case (the “Transfers”) consist of RockGuard®HD, a mesh rock shield designed to provide long-term protection to pipelines, and RockGuard® Tape, a filament tape specially designed to install RockGuard® products. These goods were shipped to certain pipeline construction projects, namely:

- a. The first Transfer amounting to \$82,829.42 made on August 13, 2018 represents payment for goods shipped to and utilized in the Mariner East Pipeline Project (the “Mariner Pipeline”) in Pennsylvania owned by Sunoco Pipeline, L.P. (“Sunoco”). The invoice paid by this Transfer is attached to the Defendant’s Memorandum of Law in Support of its Motion for Summary Judgment (the “Memorandum”) as *Appendix C*.
- b. The second Transfer amounting to \$98,760.00 made on September 10, 2018 represents payment for goods shipped to and utilized in the Mountaineer Xpress Pipeline Project (the “Mountaineer Pipeline” and, collectively with Mariner Pipeline, the “Pipeline Projects”) in West Virginia owned by Columbia Gas Transmission, LLC (“Columbia Gas” and, collectively with Sunoco, the “Project Owners”). The invoice paid by this Transfer is attached to the Memorandum as *Appendix D*.

- c. The third Transfer amounting to \$98,760.00 made on September 24, 2018 also represents payment for goods shipped to and utilized in the Mountaineer Pipeline.

The invoice paid by this Transfer is attached to the Memorandum as *Appendix E*.

7. The Defendant would send invoices to the Debtors for each delivery of goods. Despite the invoices having “Net 30” terms, the Debtors hardly ever paid on time.

8. There was no significant difference in the manner and timing of the payments during the 90-day period prior to the Petition Date (the “Preference Period”) and the 14-month period prior to the start of the Preference Period (the “Historical Period”).

9. During the Historical Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$72,840.54, and the average payment being made 51.64 days after the invoice date. The payment history of the Debtors for the Historical Period is attached to the Memorandum as *Appendix F*.

10. Similarly, during the Preference Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$93,449.81, and the average payment being made 63 days after the invoice date. The payment history of the Debtors for the Preference Period is attached to the Memorandum as *Appendix G*.

11. The Defendant did not exert any unusual collection pressure on the Debtors during the Preference Period. The Defendant did not, for example, demand shorter payment terms or COD terms; did not threaten to halt the performance of services; did not threaten to sue the Debtors or have its attorneys call the Debtors.

12. In accordance with its standard business practices, the Defendant would have placed liens on the Pipeline Projects and sought payment from the Project Owners had the Debtors failed to pay prior to the deadline to perfect the liens.

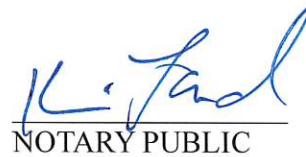
13. I declare to the best of my knowledge that the foregoing statements are true and correct.

Dated: March 17, 2022



James Mitchell

SUBSCRIBED AND SWORN to me this 17th day of March 2022.



NOTARY PUBLIC

Kevin P. Landreneau, Notary Public
10357 Old Hammond Highway
Baton Rouge, LA 70816
La. Bar #22103/Notary #50770
My commission expires at death

APPENDIX B

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (CSS)
Debtors. ¹	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	
Industrial Fabrics, Inc.,	Adv. No. 20-50932
Defendant.	

**PLAINTIFF’S OBJECTIONS AND RESPONSES TO FIRST SET
OF INTERROGATORIES PROPOUNDED BY DEFENDANT**

Pursuant to Federal Rule of Civil Procedure 33, as made applicable herein by Federal Rule of Bankruptcy Procedure 7033, plaintiff, Welded Construction, L.P., (the “Plaintiff”), hereby submits its objections and responses to defendant, Industrial Fabrics, Inc. (the “Defendant”), First Set of Interrogatories (the “Interrogatories”) as follows:

PRELIMINARY STATEMENT

These responses are based on information presently available to Plaintiff and his attorneys. Plaintiff has not completed formal discovery, investigation of the facts, analysis of the facts, documents in Plaintiff’s possession or available to Plaintiff nor trial preparation. Thus, Plaintiff’s responses are made subject to and without waiver of or prejudice to Plaintiff’s right to later produce, including at trial, any testimonial, documentary, or other type of evidence subsequently discovered or revealed to be relevant by further analysis. Additionally, Plaintiff reserves the right to modify or supplement these responses if it later appears that Plaintiff has inadvertently made an error(s).

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).

The following responses are based upon the documents presently in the possession of or readily available to Plaintiff and are made without prejudice to the rights of Plaintiff to introduce and/or rely upon subsequently discovered documents in this action. Plaintiff anticipates that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to known facts, and will establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the following responses.

DEFINITIONS

Attorney-Client Protected Matters. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “attorney-client protected matters,” “attorney work product” or the equivalent, such response shall mean that Plaintiff objects on the ground that the request seeks to obtain information that is within the scope of the attorney-client privilege and/or attorney-client work product doctrine. *See* Fed. R. Evid. 501; Fed. R. Civ. P. 26(b) as made applicable herein by Fed. R. Bankr. P. 7026.

Information Equally Available. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “information equally available,” such response shall mean that Plaintiff objects on the ground that the request seeks information obtainable from other sources that are more convenient, less burdensome or less expensive than production by Plaintiff. Fed. R. Civ. P. 26(b) as made applicable herein by Fed. R. Bankr. P. 7026. By way of example only and not limitation, many interrogatories seek information available from public records or other sources equally accessible to Plaintiff and Defendant. All such information will not be provided herein.

Overly Broad, Unduly Burdensome And/Or Oppressive. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “overly broad” and/or “unduly

burdensome and oppressive,” such response shall mean that Plaintiff objects on the ground that, taking into consideration the nature of the information sought, the lack of actual need for the discovery, the expense and burden of locating and producing such information, and the scope and nature of the litigation, the burden of providing the information sought outweighs any remote claim that might otherwise exist to obtain it.

Information Not Relevant. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “information not relevant,” or the equivalent, such response shall mean Plaintiff objects on the ground that it seeks information not relevant to this litigation and not likely to lead to the discovery of admissible evidence.

Stored Records. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “Stored Records,” such response shall mean that the business records requested, if still available, are in storage in a warehouse facility and not readily accessible to Plaintiff. Business records in storage may contain the information requested in such request. Plaintiff relies on Fed. R. Civ. P. 33(d), as incorporated by Fed. Bankr. R. 7033, the option to produce business records, and will afford reasonable opportunity to examine stored records and make copies therefrom.

Computer Records. To the extent that any of the Discovery Requests seek electronic documents Plaintiff objects on the basis that such Requests are unduly burdensome. To the extent the documents being requested are still available and stored on computer, Plaintiff relies on Fed. R. Civ. P. 33(b)(E) and will supply Defendant with copies of said electronic records in a reasonably usable form or forms, and need not produce the same electronically stored information in more than one form.

GENERAL OBJECTIONS

1. Plaintiff responds to each and every request subject to its objections set forth herein. These objections form a part of the response to each and every request and are set forth here to

avoid duplication by restating them for each request. These general objections may be specifically referred to in response to a certain request for the purpose of clarity. However, the failure specifically to refer to a general objection is not and shall not be construed to be a waiver of any general objection even if other general objections are specifically stated in response to a request.

2. Plaintiff objects to these Interrogatories on the basis that they contain compound queries containing multiple sub parts, which are properly considered separate interrogatories. The totality of interrogatories and sub parts in Defendant's requests are far in excess of the numeric limit on interrogatories imposed by the Federal Rules of Civil Procedure and the local rules of this Court. Accordingly, these requests are unduly burdensome and oppressive in total. Thus, Plaintiff asserts it is under no duty to respond to these egregious requests. However, Plaintiff is providing limited responses in the interest of fairness.

3. Plaintiff objects to each of the requests to the extent they seek information and documents that are subject to the attorney-client privilege, joint or common defense privilege, attorney-work product doctrine, or any other applicable privileges. Plaintiff objects to each of the requests to the extent they seek information or materials prepared in anticipation of or for litigation or which reflect confidential, commercial or business information, including reserve and reinsurance information, or information subject to other applicable privileges. In responding to each request, Plaintiff will not provide privileged information.

4. Plaintiff objects to each of the requests to the extent it seeks to impose upon Plaintiff any obligation beyond those required by the Bankruptcy Code and Rules and/or Federal Rules of Civil Procedure as applicable therein.

5. Plaintiff objects to each of the requests to the extent it seeks confidential and/or proprietary information or documents, or information and documents protected from disclosure by law, court order or agreement respecting confidentiality or non-disclosure.

6. Plaintiff objects to each of the requests to the extent it seeks information and documents not relevant to the time period alleged in the complaint and/or not relevant to any affirmative defense(s) that may have been raised by Defendant in its answer to the complaint on the grounds that such requests are overly broad, unduly burdensome, not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiff objects to each of the requests as overly broad and unduly burdensome to the extent it fails to specify a relevant time period. Unless otherwise specified, Plaintiff will only respond to requests with respect to the time period alleged in the complaint.

8. Plaintiff objects to each of the requests to the extent it seeks disclosure of information relating to contracts or agreements between the Debtors and parties other than Defendant on the grounds that such requests are overly broad, unduly burdensome, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and exceed the scope of the Bankruptcy Code and Rules and/or the Federal Rules of Civil Procedure made applicable herein.

9. Plaintiff objects to each of the requests to the extent that the information sought by said request may be more readily available from a more convenient, less burdensome and/or less expensive source than having Plaintiff produce the same.

10. Plaintiff objects to each of the requests to the extent that such seeks information and/or documents prepared, generated or received in anticipation or furtherance of litigation.

11. Plaintiff objects to each request to the extent it uses terms Plaintiff cannot interpret or understand as used by Defendant. Where possible, Plaintiff has made reasonable assumptions as to the intended meanings of terms and responded accordingly, while preserving its objections as to the vagueness, ambiguity and uncertainty of the request.

12. Plaintiff reserves its right to challenge the competency, relevance, materiality and admissibility of any and all information and/or documents provided herein.

Plaintiff identifies as the basis of responding to Defendant's Interrogatory Requests, pursuant to Fed. R. Civ. P. 33(d), the following Exhibits:

1. Spreadsheet entitled "Checks That Cleared Within Preference Period" annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "A."
2. Spreadsheet entitled "Vendor Historical Paid Invoice Report 'Baseline'" annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "B."
3. Spreadsheet entitled "New Value Analysis" annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "C."
4. Spreadsheet entitled "Vendor Paid Invoice Report [All Paid Invoices in Pref Period]" annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "D."
5. Copies of checks that cleared within the Preference Period annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "E."
6. Email correspondence annexed to Plaintiff's Objections and Responses to Defendant's Requests for Production as Exhibit "F."

The information contained in the Debtors' electronic database was used, referred to and was the basis of Exhibits "A" through "D" annexed hereto.

These answers and objections are based upon information now known. Plaintiff has not yet completed discovery or preparation for trial in this action, and therefore reserves his rights to amend, modify or supplement objections and answers as set forth herein.

PLAINTIFF'S RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each and every person that has knowledge of any facts relevant to this litigation, *including, but not limited to:* (a) the Debtor's accountants within two (2) years of the Filing Date; (b) the Debtors' directors, officers or employees who were in charge of the Debtors' regulatory filings within two (2) years prior to the Filing Date.

RESPONSE TO INTERROGATORY NO. 1: Plaintiff objects to this Interrogatory on the basis that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad due to the fact the term “each and every person” requires Plaintiff to identify persons that may be unknown to Plaintiff and “any facts relevant to this litigation” is ambiguous. Subject to and without waiving said objections, Plaintiff responds as follows: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors’ business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. However, Ms. Speckhart has no first-hand or personal knowledge relevant to the Pre-Petition Date allegations made in Plaintiff’s complaint, the transfers at issue in this adversary proceeding and the transactions relating thereto. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor’s business records and may have knowledge responsive to this Interrogatory based upon her review of the same and her past experience as employee of the Debtors. The accountants and bookkeepers who maintained the Debtor’s books and records at various times during the two-year period preceding the Petition Date, with last known business address and title, are identified in Attachment 26a to the Debtors’ Statements of Financial Affairs. Plaintiff further refers to the persons appearing on email correspondence being produced contemporaneously herewith. Persons with knowledge responsive to this Interrogatory request may include those individuals identified by Defendant in its initial disclosures. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 2: With respect to each person identified in Interrogatory #1, summarize the substance of the knowledge of each person named, and describe the relationship of each person named to any party to this litigation.

RESPONSE TO INTERROGATORY NO. 2: Plaintiff objects to this Interrogatory on the basis that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad due to the fact the term “summarize the substance of the knowledge of each person named” requires a response far beyond the realm of relevant information. Subject to and without waiving the foregoing objections, Plaintiff states the following: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors’ business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. However, Ms. Speckhart has no first-hand or personal knowledge relevant to the pre-Petition Date allegations made in Plaintiff’s complaint, the transfers at issue in this adversary proceeding and the transactions relating thereto. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor’s business records and may have knowledge responsive to this Interrogatory based upon her review of the same and her past experience as employee of the Debtors. The officers and employees identified in Attachment 26a to the Debtors’ Statements of Financial Affairs maintained the books and records for the Debtors at various times during the two-year period prior to the Petition Date. Plaintiff further refers to the persons appearing on email correspondence being produced contemporaneously herewith. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 3: Identify all persons or entities who have possession, custody or control of Documents relevant to this adversary proceeding, and identify the Documents over which such persons or entities have possession, custody or control; including the Debtor's accountants two (2) years prior to the Filing Date and up to the Filing Date.

RESPONSE TO INTERROGATORY NO. 3: Plaintiff objects to this Interrogatory on the basis that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad due to the fact the term "all persons or entities" requires Plaintiff to identify persons and/or entities that may be unknown to Plaintiff. Subject to and without waiving said objections, Plaintiff responds as follows: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors' business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor's business records and may have knowledge responsive to this Interrogatory based upon her review of the same and her past experience as employee of the Debtors. The officers and employees identified in Attachment 26a to the Debtors' Statements of Financial Affairs maintained the books and records for the Debtors at various times during the two-year period prior to the Petition Date. Plaintiff further refers to the persons appearing on email correspondence being produced contemporaneously herewith. Persons with knowledge responsive to this Interrogatory request may include those individuals identified by Defendant in its initial disclosures. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 4: Identify each expert witness the Plaintiff expects to call at trial in this litigation, describe his qualifications as an expert witness pursuant to Rule 702 of the Federal Rules of Evidence, and state the substance of his testimony.

RESPONSE TO INTERROGATORY NO. 4: Plaintiff objects to this Interrogatory as premature. Subject to and without waiving said objection, Plaintiff makes the following response: At this time, Plaintiff has not retained or specifically employed an expert witness in anticipation of this litigation or preparation for trial. Plaintiff reserves the right to amend its response should Defendant identify any expert witness. Plaintiff responds further that pursuant to 11 U.S.C § 547(g), Defendant bears the burden of proof for affirmative defenses under 11 U.S.C. § 547(c); pursuant to Federal Rule of Civil Procedure 26(a)(2)(D)(ii), Plaintiff reserves the right to introduce rebuttal evidence on the same subject matter identified by Defendant under Rule 26(a)(2)(B) or (C) within 30 days of said production, in the event that Defendant produces the same. Plaintiff will disclose its expert witness(es) and disclose its expert(s)' report(s) that will be used at trial of this matter at the time set forth in the Scheduling Order issued by the Court consistent with Rule 26(b)(4)(A) of the Federal Rules of Civil Procedure. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its Response if and when new information relevant to this Interrogatory becomes available.

INTERROGATORY NO. 5: Identify all fact witnesses that Plaintiff expects to call at trial in this litigation and set forth a detailed summary of each such fact witness's testimony.

RESPONSE TO INTERROGATORY NO. 5: Plaintiff objects to this Interrogatory on the basis that it is premature. Plaintiff will comply with all applicable rules of civil procedure and bankruptcy procedure and will designate witnesses at the appropriate time as provided in those rules and the Scheduling Order governing this matter. Without waiving the foregoing objection, Plaintiff makes the following response: Cullen D. Speckhart, Post-Effective Date sole officer for Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN

55121, telephone (651) 406-9665, may be called as a fact witness at any hearing or trial in this adversary proceeding. Ms. Speckhart is the custodian of certain of the Debtors' business records and will testify regarding the Debtors' business records based upon her review of the same. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor's business records and may have knowledge responsive to this Interrogatory based upon her review of the same and her past experience as employee of the Debtors, and may testify in this capacity. Plaintiff may also call those fact witnesses identified by Defendant in its initial disclosures and responses to Plaintiff's discovery requests. Any additional witnesses will be designated at the time set forth in the Scheduling Order issued by the Court consistent with the Federal Rules of Civil Procedure. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its Response if and when new information relevant to this Interrogatory becomes available.

INTERROGATORY NO. 6: Identify all directors, officers, employees, and agents of the Debtors who had Communications or dealings with the Defendant within two (2) years prior to the Filing Date and up to the Filing Date.

RESPONSE TO INTERROGATORY NO. 6: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad due to the fact "all directors, officers, employees, and agents" requires Plaintiff to identify persons that may be unknown to Plaintiff. Subject to and without waiving said objection, Plaintiff responds as follows: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors' business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. However, Ms. Speckhart has no first-hand or personal

knowledge relevant to the allegations made in Plaintiff's complaint, the transfers at issue in this adversary proceeding and the transactions relating thereto. Plaintiff further refers to the employees named in email correspondence being produced contemporaneously herewith as persons who may potentially have had dealings with Defendant. Persons with knowledge responsive to this Interrogatory request may include those individuals identified by Defendant in its initial disclosures, responses to Plaintiff's discovery requests, and/or in the documents produced by Defendant in response to Plaintiff's document requests. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 7: With respect to each person identified in Interrogatory #6, describe the capacity in which such person communicated or dealt with the Defendant and the substance of their Communications or dealings.

RESPONSE TO INTERROGATORY NO. Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Subject to and without waiving said objection, Plaintiff states that discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information and/or documents become known to Plaintiff. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 8: Identify each person participating in the preparation of the answers to these interrogatories, and describe the relationship of each such person to any party to this litigation.

RESPONSE TO INTERROGATORY NO. 8: Plaintiff's attorneys Joseph L. Steinfeld, Jr. and Nicholas C. Brown of ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, (651) 406-9665 and Josef Mintz of Blank Rome, counsel to the Debtors; as to Plaintiff's answers

to all Interrogatories, Cullen D. Speckhart, Post-Effective Date sole officer for Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors. Plaintiff responds further that documents were also provided by Defendant that are referenced in Plaintiff's interrogatory responses.

INTERROGATORY NO. 9: Identify each Document that Plaintiff referred to or relied upon in responding to any of these interrogatories, and annex a copy of each such Document to Plaintiff's responses.

RESPONSE TO INTERROGATORY NO. 9: All documents responsive to this Interrogatory that are in Plaintiff's possession, custody and control, have been produced to Defendant concurrently herewith in response to Plaintiff's Responses and Objections to Defendant's Requests for Production including Exhibits "A" through "F." In addition, Plaintiff referred to the Debtor's Bankruptcy Schedules and Statement of Financial Affairs and the First Day Declaration of Frank Pometti, copies of which are publicly available on the Debtors' bankruptcy case docket. Plaintiff reserves the right to amend and/or revise the conclusions set forth in Exhibits "A" through "D" based upon further analysis and/or the availability of additional data. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Request for Production become available.

INTERROGATORY NO. 10: Identify the person or entity who had control over the Debtors' assets and the extent of that person or entity's control over the Debtors' assets.

RESPONSE TO INTERROGATORY NO. 10: Plaintiff objects to this Interrogatory because the Interrogatory is vague and overly broad as it contains no time reference and the use and meaning of the term "control" is ambiguous. Subject to and without waiving said objection, Plaintiff refers to Debtors' bankruptcy schedules for an identity of assets, and statement of

financial affairs for ownership and officers of the Debtors. Welded Construction, L.P. had two general partners (Ohio Welded Company LLC and McCaig Welded GP, LLC. Welded Construction, L.P. had two limited partners: Bechtel Oil, Gas and Chemicals, Inc. and McCaig US Holdings, Inc. The entity is overseen by a five-member board of managers. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 11: Identify each and every person that has knowledge of any facts relevant to the allegation in Plaintiff's Complaint that the Transfers are avoidable under 11 U.S.C. §548 as alleged fraudulent transfers.

RESPONSE TO INTERROGATORY NO. 11: Plaintiff objects to this Interrogatory to the extent that it requires Plaintiff to make a legal conclusion. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad because "each and every person that has knowledge of any facts" would require Plaintiff to identify persons that it may not be aware. Moreover, Plaintiff objects to the Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Subject to and without waiving said objections, Plaintiff makes the following response: Plaintiff's assessment of fraudulent conveyances under 11 U.S.C. § 548, and the information and/or documents upon which the same is based, has been or will be provided in analyses and correspondence to defense counsel, and/or is contained in documents that will be provided to Defendant in response to its document requests, including Exhibits "A" through "E" thereto. Plaintiff reserves the right to amend and/or revise the conclusions set forth in Exhibits "A" through "D" based upon further analysis and/or the availability of additional data. The claim for fraudulent transfers is pled in the alternative to claims under 547. In the event Defendant produces evidence that the Transfers were not made for or on account of antecedent debt by the debtor, the Transfers would be subject to avoidance as constructively fraudulent transfers made for less than reasonably equivalent

value, i.e., not in satisfaction of an antecedent debt. Additional documents responsive to this Interrogatory may include those documents produced and/or offered to be produced by Defendant in response to Plaintiff's document requests. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 12: With respect to each person identified in Interrogatory #11, summarize the substance of the knowledge of each person named, and describe the relationship of each person named to any party to this litigation.

RESPONSE TO INTERROGATORY NO. 12: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors' business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. However, Ms. Speckhart has no first-hand or personal knowledge relevant to the allegations made in Plaintiff's complaint, the transfers at issue in this adversary proceeding and the transactions relating thereto. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor's business records and may have knowledge responsive to this Interrogatory based upon her review of the same. The claim for fraudulent transfers is pled in the alternative to claims under 547. In the event Defendant produces evidence that the Transfers were not made for or on account of antecedent debt by the debtor, the Transfers would be subject to avoidance as constructively fraudulent transfers made for less than reasonably equivalent value, i.e., not in satisfaction of an antecedent debt. Persons with knowledge responsive to this Interrogatory request may include those individuals identified by Defendant in its initial disclosures, responses to Plaintiff's discovery requests, and/or in the documents produced by Defendant in response to Plaintiff's document requests. Discovery is ongoing and

Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information becomes known by Plaintiff. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 13: Identify all Documents pertaining to the allegations contained in paragraphs 42 and 43 of the Plaintiff's Complaint.

RESPONSE TO INTERROGATORY NO. 13: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the extent it seeks information subject to the attorney-client privilege and work product doctrine. Subject to and without waiving said objection, Plaintiff refers to Exhibits "A" through "E". The claim for fraudulent transfers is pled in the alternative to claims under 547. In the event Defendant produces evidence that the Transfers were not made for or on account of antecedent debt by the debtor, the Transfers would be subject to avoidance as constructively fraudulent transfers made for less than reasonably equivalent value, i.e., not in satisfaction of an antecedent debt. Discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information and/or documents become known to Plaintiff. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 14: With respect to the transfers alleged in Plaintiff's Complaint, does Plaintiff contend that any such transfer was not in payment of a debt incurred by Debtors in the ordinary course of business or financial affairs of Debtors and the transferee? If so, (a) State and describe in detail each fact upon which such contention is based with references to documents evidencing, referring or relating to such contention.

RESPONSE TO INTERROGATORY NO. 14: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory to the extent it requires Plaintiff make a legal conclusion. Subject to and without waiving said objections, Plaintiff's assessment of Defendant's purported ordinary course of business defense, and the information and/or documents upon which the same is based, will be provided in analyses and correspondence to defense counsel, and/or is contained in documents that will be provided to Defendant in response to its document requests, and/or is contained in documents produced and/or offered by Defendant in response to Plaintiff's admission and/or document requests. In particular, see Exhibits "A," "B," "D" and "E" to Plaintiff's Objections and Responses to Defendant's Requests for Production. Plaintiff reserves the right to amend and/or revise the conclusions set forth in Exhibits "A," "B" and "D" to Plaintiff's Objections and Responses to Defendant's Requests for Production based upon further analysis and/or the availability of additional data. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 15: Does Plaintiff contend that any of the transfers referred to in his Complaint were not made in the ordinary course of business or financial affairs of Debtors and the transferee? If so,

(a) State and describe in detail each fact upon which such contention is based with references to documents evidencing, referring or relating to such contention.

RESPONSE TO INTERROGATORY NO. 15: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory to the extent it requires Plaintiff make a legal conclusion. Subject to and without waiving said objections, Plaintiff's assessment of Defendant's purported ordinary course of business defense, and the information and/or documents upon

which the same is based, will be provided in analyses and correspondence to defense counsel, and/or is contained in documents that will be provided to Defendant in response to its document requests, and/or is contained in documents produced and/or offered by Defendant in response to Plaintiff's admission and/or document requests. In particular, see Exhibits "A," "B," "D" and "F" to Plaintiff's Objections and Responses to Defendant's Requests for Production. Plaintiff reserves the right to amend and/or revise the conclusions set forth in Exhibits "A," "B" and "D" to Plaintiff's Objections and Responses to Defendant's Requests for Production based upon further analysis and/or the availability of additional data. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 16: Does Plaintiff contend that any of the transfers referred to in Plaintiff's Complaint were not made according to ordinary business terms? If so,

(a) State and describe in detail each fact upon which such contention is based with references to documents evidencing, referring or relating to such contention.

RESPONSE TO INTERROGATORY NO. 16: Plaintiff objects to this Interrogatory on the basis that it seeks information and/or documents as available to Defendant as to Plaintiff. In addition, Plaintiff objects to this Interrogatory because it requires Plaintiff to make a legal conclusion. Plaintiff also objects to the Interrogatory on the basis that Plaintiff is currently not in a position to speculate as to what constitutes the ordinary business terms in the Debtor's and/or Defendant's "industry." Further, the Debtor's operations spanned various SIC codes and the Plaintiff has not been able to yet determine which aspect of its business dealt with the Defendant and therefore cannot provide the relevant industry or SIC Code. Such information is better addressed in an expert report. Plaintiff has not retained an expert witness in this case. Subject to and without waiving said objections, Plaintiff makes the following response: Plaintiff is currently unaware of the relevant SIC Code that the Court should use in determining whether the Transfers

were “made according to ordinary business terms” under 11 U.S.C. 547(c)(2)(C). Therefore, Plaintiff is currently unable to identify the person associated with the Debtor who had the most complete knowledge of those “ordinary business terms” responsive to this Interrogatory. Plaintiff further refers to Exhibits A-D being produced contemporaneously herewith. Discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information becomes known by Plaintiff. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available or if Defendant identifies an expert witness.

INTERROGATORY NO. 17: Identify the percentage of its claim which Defendant would receive if:

- (a) this case were a case under Chapter 7 of the Bankruptcy Code;
- (b) the transfer or transfers had not been made;
- (c) and the Defendant received payments of its debts under the provisions of the Bankruptcy Code

RESPONSE TO INTERROGATORY NO. 17: Plaintiff objects to this Interrogatory to the extent that it requires Plaintiff to make a legal conclusion and speculate. The Interrogatory is unduly burdensome. Subject to and without waiving said objections, Plaintiff makes the following response: As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtor’s case was under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payment of its debts under the provision of the Bankruptcy Code, because, as the Debtor was insolvent throughout the 90-day period before the petition date, there cannot be a 100% payout to unsecured creditors. The Debtor was insolvent throughout the 90-day period before the petition date because the sum of its debts was greater than the fair value of its assets. Plaintiff relies on the presumption of

insolvency established under 11 U.S.C. § 547(f) of the Bankruptcy Code, *In re Brothers Gourmet Coffees, Inc.*, 271 B.R. 456 (Bankr. D. Del. 2002), and schedules filed by the Debtor. Plaintiff is currently not aware of the exact percentage breakdown below 100% Defendant would receive on its unsecured claims because the claims process has not concluded and Plaintiff is not aware of the amount of Defendant's unsecured claim(s), however, it is anticipated that general unsecured creditors will receive a small fraction (less than 10%) of the amount of their respective claims. Further, to the extent the requested information is evidenced in documents, they are attached to Plaintiff's Objections and Responses to Defendant's Requests for Production served concurrently herewith, including Exhibits "A" and "E" thereto. Plaintiff reserves the right to amend and/or revise the conclusions set forth in Exhibits "A" and "D" based upon further analysis and/or the availability of additional data. Additional information and/or documents responsive to this Interrogatory include those documents produced and/or offered to be produced by Defendant in response to Plaintiff's document requests. Discovery is ongoing. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 18: Identify the projects where the goods or materials related to the Invoices were installed, applied, or otherwise used, and state the location of each project identified.

RESPONSE TO INTERROGATORY NO. 18: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Subject to and without waiving said objection, Plaintiff states on information and belief that at least some of the goods or materials provided by Defendant were supplied to the Mountaineer Xpress Pipeline Project in Glen Dale, West Virginia and Mariner East Pipeline Project in Morgantown, Pennsylvania. However, discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said

information and/or documents become known to Plaintiff. Additional information and/or documents responsive to this Interrogatory include those documents produced and/or offered to be produced by Defendant in response to Plaintiff's document requests. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 19: Identify all liens or other encumbrances related to the projects and/or locations identified in your response to Interrogatory No. 18. Please identify such liens and encumbrances by stating: (a) the Uniform Commercial Code ("UCC") Financing Statement related to the lien or encumbrance and the UCC Registry where the UCC Financing Statement can be obtained; or, if a UCC Financing Statement was not used, then identify the relevant lien notice or claim and county where the lien notice or claim was recorded.

RESPONSE TO INTERROGATORY NO. 19: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff; specifically, any such liens are recorded and a matter of public record. Plaintiff further refers to adversary proceedings pending in the Debtors' cases, including but not limited to 19-50274-CSS, 19-50275-CSS, 20-50445-CSS, 20-50446-CSS, 20-50447-CSS, 20-50448-CSS, 20-50812-CSS, and the claims register. Plaintiff further objects because this Interrogatory is not likely to lead to the discovery of admissible or otherwise relevant evidence. The Interrogatory is vague, overly broad and unduly burdensome. Plaintiff further objects to the extent the Interrogatory requires Plaintiff to make a legal conclusion. Subject to and without waiving said objection, discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information and/or documents become known to Plaintiff. Additional information and/or documents responsive to this Interrogatory include those documents produced and/or offered to be produced by Defendant in response to Plaintiff's

document requests. Plaintiff reserves the right to amend and/or supplement this Response if and when new information and/or documents relevant to the Interrogatory become available.

INTERROGATORY NO. 20: Identify each and every person that has knowledge of how the goods or materials related to the Invoices were utilized by the Debtors, including, but not limited to: (a) foremen; (b) supervisors; (c) managers; (d) employees; and (e) officers who were in charge of the Debtors' operations at the place of use.

RESPONSE TO INTERROGATORY NO. 20: Plaintiff objects to this Interrogatory to the extent that it seeks information and/or documents as available to Defendant as to Plaintiff. Plaintiff further objects to the Interrogatory on the basis that it is vague and overly broad due to the fact the "each and every person" requires Plaintiff to identify persons that may be unknown to Plaintiff. Plaintiff objects because the Interrogatory is not reasonably calculated to lead to the discovery of admissible or otherwise relevant evidence. Subject to and without waiving said objection, Plaintiff responds as follows: Cullen D. Speckhart, Post-Effective Date sole officer for the Welded Construction, L.P., c/o ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, telephone (651) 406-9665 is the custodian of certain of the Debtors' business records via access through one or more consultants or retained professionals, and may have knowledge responsive to this Interrogatory based upon her review of the same. However, Ms. Speckhart has no first-hand or personal knowledge relevant to the allegations made in Plaintiff's complaint, the transfers at issue in this adversary proceeding and the transactions relating thereto. Jackie Krzysztofik, consultant to Ms. Speckhart and former employee of Debtors, maintains certain of the Debtor's business records and may have knowledge responsive to this Interrogatory based upon her review of the same and may have some limited knowledge based on her experience as employee of the Debtors. Persons with knowledge responsive to this Interrogatory request may include those individuals identified by Defendant in its initial disclosures, responses to Plaintiff's discovery requests, and/or in the documents produced by Defendant in response to Plaintiff's

document requests. Discovery is ongoing and Plaintiff will promptly provide any and all information and/or documents responsive to this Interrogatory if and when said information becomes known by Plaintiff. Plaintiff reserves the right to amend and/or supplement its answer if and when new information and/or documents relevant to the Interrogatory become available.

Dated: May 10, 2021

ASK LLP

/s/ Nicholas C. Brown, Esq.

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Counsel for Welded Construction, L.P.

DECLARATION

I, Jacklyn Krzysztofik, former Human Resources Manager for Welded Construction, L.P., have read the foregoing **Plaintiff's Objections and Responses to Defendant, Industrial Fabrics Inc.'s First Set of Request for Interrogatories** and verify under penalty of perjury that, to the best of my knowledge, the Responses set forth therein are true and accurate, except as to those matters alleged on information and belief, which are believed to be true and accurate.

Executed on this 3rd day of May, 2021



Jacklyn Krzysztofik

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

In re:		Chapter 11
Welded Construction, L.P., <i>et al.</i> ,		Case No. 18-12378 (CSS)
	Debtors. ²	(Jointly Administered)
Welded Construction, L.P.,	Plaintiff,	
vs.		
Industrial Fabrics, Inc.,	Defendant.	Adv. No. 20-50932

NOTICE OF SERVICE

Please take notice that on May 10, 2021, a copy of **Plaintiff's Objections and Responses to Industrial Fabrics, Inc.'s, First Set of Interrogatories and Request for Production of Documents**, were caused to be served on the following via Electronic Mail:

Attorneys for Defendant

James Tobia, Esq.
The Law Office of James Tobia, LLC
1716 Wawaset Street
Wilmington, DE 19806
jtobia@tobialaw.com

-and-

Roland Gary Jones, Esq.
Jones & Associates
1325 Avenue of the Americas
28th Floor
New York, NY 10019
rgj@rolandjones.com

² 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).

Dated: May 10, 2021

ASK LLP

/s/ Nicholas C. Brown, Esq.

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Counsel for Welded Construction, L.P.

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (CSS)
Debtors. ¹	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	
Industrial Fabrics, Inc.,	Adv. No. 20-50932
Defendant.	

**PLAINTIFF’S OBJECTIONS AND RESPONSES TO THIRD SET
OF INTERROGATORIES PROPOUNDED BY DEFENDANT**

Pursuant to Federal Rule of Civil Procedure 33, as made applicable herein by Federal Rule of Bankruptcy Procedure 7033, plaintiff, Welded Construction, L.P., (the “Plaintiff”), hereby submits its objections and responses to defendant, Industrial Fabrics, Inc. (the “Defendant”), First Set of Interrogatories (the “Interrogatories”) as follows:

PRELIMINARY STATEMENT

These responses are based on information presently available to Plaintiff and his attorneys. Plaintiff has not completed formal discovery, investigation of the facts, analysis of the facts, documents in Plaintiff’s possession or available to Plaintiff nor trial preparation. Thus, Plaintiff’s responses are made subject to and without waiver of or prejudice to Plaintiff’s right to later produce, including at trial, any testimonial, documentary, or other type of evidence subsequently discovered or revealed to be relevant by further analysis. Additionally, Plaintiff reserves the right to modify or supplement these responses if it later appears that Plaintiff has inadvertently made an error(s).

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).

The following responses are based upon the documents presently in the possession of or readily available to Plaintiff and are made without prejudice to the rights of Plaintiff to introduce and/or rely upon subsequently discovered documents in this action. Plaintiff anticipates that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to known facts, and will establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the following responses.

DEFINITIONS

Attorney-Client Protected Matters. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “attorney-client protected matters,” “attorney work product” or the equivalent, such response shall mean that Plaintiff objects on the ground that the request seeks to obtain information that is within the scope of the attorney-client privilege and/or attorney-client work product doctrine. *See* Fed. R. Evid. 501; Fed. R. Civ. P. 26(b) as made applicable herein by Fed. R. Bankr. P. 7026.

Information Equally Available. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “information equally available,” such response shall mean that Plaintiff objects on the ground that the request seeks information obtainable from other sources that are more convenient, less burdensome or less expensive than production by Plaintiff. Fed. R. Civ. P. 26(b) as made applicable herein by Fed. R. Bankr. P. 7026. By way of example only and not limitation, many interrogatories seek information available from public records or other sources equally accessible to Plaintiff and Defendant. All such information will not be provided herein.

Overly Broad, Unduly Burdensome And/Or Oppressive. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “overly broad” and/or “unduly

burdensome and oppressive,” such response shall mean that Plaintiff objects on the ground that, taking into consideration the nature of the information sought, the lack of actual need for the discovery, the expense and burden of locating and producing such information, and the scope and nature of the litigation, the burden of providing the information sought outweighs any remote claim that might otherwise exist to obtain it.

Information Not Relevant. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “information not relevant,” or the equivalent, such response shall mean Plaintiff objects on the ground that it seeks information not relevant to this litigation and not likely to lead to the discovery of admissible evidence.

Stored Records. Whenever a Response to an Interrogatory and/or Request for Production contains the phrase “Stored Records,” such response shall mean that the business records requested, if still available, are in storage in a warehouse facility and not readily accessible to Plaintiff. Business records in storage may contain the information requested in such request. Plaintiff relies on Fed. R. Civ. P. 33(d), as incorporated by Fed. Bankr. R. 7033, the option to produce business records, and will afford reasonable opportunity to examine stored records and make copies therefrom.

Computer Records. To the extent that any of the Discovery Requests seek electronic documents Plaintiff objects on the basis that such Requests are unduly burdensome. To the extent the documents being requested are still available and stored on computer, Plaintiff relies on Fed. R. Civ. P. 33(b)(E) and will supply Defendant with copies of said electronic records in a reasonably usable form or forms, and need not produce the same electronically stored information in more than one form.

GENERAL OBJECTIONS

1. Plaintiff responds to each and every request subject to its objections set forth herein. These objections form a part of the response to each and every request and are set forth here to

avoid duplication by restating them for each request. These general objections may be specifically referred to in response to a certain request for the purpose of clarity. However, the failure specifically to refer to a general objection is not and shall not be construed to be a waiver of any general objection even if other general objections are specifically stated in response to a request.

2. Plaintiff objects to these Interrogatories on the basis that they contain compound queries containing multiple sub parts, which are properly considered separate interrogatories. The totality of interrogatories and sub parts in Defendant's requests are far in excess of the numeric limit on interrogatories imposed by the Federal Rules of Civil Procedure and the local rules of this Court. Accordingly, these requests are unduly burdensome and oppressive in total. Thus, Plaintiff asserts it is under no duty to respond to these egregious requests. However, Plaintiff is providing limited responses in the interest of fairness.

3. Plaintiff objects to each of the requests to the extent they seek information and documents that are subject to the attorney-client privilege, joint or common defense privilege, attorney-work product doctrine, or any other applicable privileges. Plaintiff objects to each of the requests to the extent they seek information or materials prepared in anticipation of or for litigation or which reflect confidential, commercial or business information, including reserve and reinsurance information, or information subject to other applicable privileges. In responding to each request, Plaintiff will not provide privileged information.

4. Plaintiff objects to each of the requests to the extent it seeks to impose upon Plaintiff any obligation beyond those required by the Bankruptcy Code and Rules and/or Federal Rules of Civil Procedure as applicable therein.

5. Plaintiff objects to each of the requests to the extent it seeks confidential and/or proprietary information or documents, or information and documents protected from disclosure by law, court order or agreement respecting confidentiality or non-disclosure.

6. Plaintiff objects to each of the requests to the extent it seeks information and documents not relevant to the time period alleged in the complaint and/or not relevant to any affirmative defense(s) that may have been raised by Defendant in its answer to the complaint on the grounds that such requests are overly broad, unduly burdensome, not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiff objects to each of the requests as overly broad and unduly burdensome to the extent it fails to specify a relevant time period. Unless otherwise specified, Plaintiff will only respond to requests with respect to the time period alleged in the complaint.

8. Plaintiff objects to each of the requests to the extent it seeks disclosure of information relating to contracts or agreements between the Debtors and parties other than Defendant on the grounds that such requests are overly broad, unduly burdensome, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and exceed the scope of the Bankruptcy Code and Rules and/or the Federal Rules of Civil Procedure made applicable herein.

9. Plaintiff objects to each of the requests to the extent that the information sought by said request may be more readily available from a more convenient, less burdensome and/or less expensive source than having Plaintiff produce the same.

10. Plaintiff objects to each of the requests to the extent that such seeks information and/or documents prepared, generated or received in anticipation or furtherance of litigation.

11. Plaintiff objects to each request to the extent it uses terms Plaintiff cannot interpret or understand as used by Defendant. Where possible, Plaintiff has made reasonable assumptions as to the intended meanings of terms and responded accordingly, while preserving its objections as to the vagueness, ambiguity and uncertainty of the request.

12. Plaintiff reserves its right to challenge the competency, relevance, materiality and admissibility of any and all information and/or documents provided herein.

These answers and objections are based upon information now known. Plaintiff has not yet completed discovery or preparation for trial in this action, and therefore reserves his rights to amend, modify or supplement objections and answers as set forth herein.

PLAINTIFF'S RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 21: With respect to the projects identified in the Plaintiff's Response to Interrogatory No. 18, state the name of the owner(s) of each project (the "Owners").

RESPONSE TO INTERROGATORY NO. 21:

On information and belief, the owner(s) of the Mountaineer Express Pipeline Project in West Virginia was Columbia Gas Transmission, LLC.

On information and belief, the owner(s) of the Mariner East Pipeline Project in Pennsylvania was Sunoco Partners Marketing & Terminals, L.P. and Sunoco Pipeline, L.P. Sunoco subsequently merged into Energy Transfer Partners.

INTERROGATORY NO. 22: Identify the receivables due and owing to the Debtors from the Owners during the Preference Period in relation to the projects identified in the Plaintiff's Response to Interrogatory No. 18.

RESPONSE TO INTERROGATORY NO. 22: Plaintiff objects to this Interrogatory on the basis that it is irrelevant. Plaintiff further objects that it is vague and overly broad. Subject to and without waiving the foregoing objections, Plaintiff refers to the spreadsheet log identifying receivables information on the Mariner East and Mountaineer Xpress projects, which document is titled "PPP5_MXP Invoice Log", which was provided by email on September 27, 2021.

INTERROGATORY NO. 23: Identify any payments received by the Debtors from the Owners during the Preference Period in relation to the projects identified in the Plaintiffs Response to Interrogatory No. 18.

RESPONSE TO INTERROGATORY NO. 23: Plaintiff objects to this Interrogatory on the

basis that it is irrelevant. Plaintiff further objects that it is vague and overly broad. Subject to and without waiving the foregoing objections, Plaintiff refers to the spreadsheet log identifying receivables information on the Mariner East and Mountaineer Xpress projects, which document is titled “PPP5_MXP Invoice Log”, which was provided by email on September 27, 2021.

INTERROGATORY NO. 24: If the Plaintiffs Response to Request for Admission No. 30 was anything but an unequivocal admission, please set forth each and every fact, witness, and or document which supports Plaintiff's response.

RESPONSE TO INTERROGATORY NO. 24: Objection, the Interrogatory is overly broad, vague, and unduly burdensome because it would require Plaintiff to list “each and every fact, witness, and or document”. In addition to being burdensome, Plaintiff cannot possibly compile every fact, witness or document related to Request for Admission No. 30. Subject to and without waiving the foregoing, Plaintiff is not aware of any claims of lien filed by Defendant. Plaintiff further states that Defendant has not provided any documentation showing that it filed a claim of lien in response to Plaintiff's discovery requests.

Dated: November 2, 2021

ASK LLP

/s/ Nicholas C. Brown, Esq.

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mintz@blankrome.com

Counsel for Welded Construction, L.P.

DECLARATION

I, Jacklyn Krzysztofik, former Human Resources Manager for Welded Construction, L.P., have read the foregoing **Plaintiff's Objections and Responses to Defendant, Industrial Fabrics Inc.'s *Third Set of Request for Interrogatories and Second Set of Request for Production*** and verify under penalty of perjury that, to the best of my knowledge, the Responses set forth therein are true and accurate, except as to those matters alleged on information and belief, which are believed to be true and accurate.

Executed on this 30 day of October, 2021



Jacklyn Krzysztofik

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

In re:		Chapter 11
Welded Construction, L.P., <i>et al.</i> ,		Case No. 18-12378 (CSS)
	Debtors. ²	(Jointly Administered)
Welded Construction, L.P.,	Plaintiff,	
vs.		
Industrial Fabrics, Inc.,	Defendant.	Adv. No. 20-50932

NOTICE OF SERVICE

Please take notice that on November 2, 2021, a copy of **Plaintiff's Objections and Responses to Industrial Fabrics, Inc.'s, *Third Set of Interrogatories and Second Set of Request for Production of Documents***, were caused to be served on the following via Electronic Mail:

Attorneys for Defendant

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-and-

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28th Floor
New York, NY 10019
rgj@rolandjones.com

² 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).

Dated: November 2, 2021

ASK LLP

/s/ Nicholas C. Brown, Esq.

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Counsel for Welded Construction, L.P.

APPENDIX C

**Invoice 101623****Customer WEL002**

INDUSTRIAL FABRICS, INC.
510 O'NEAL LANE EXTENSION
BATON ROUGE, LA 70819

INDUSTRIAL FABRICS INC
since 1981

Telephone: 225/273-9600

Bill To:

WELDED CONSTRUCTION, L.P.
Ap@welded.com
PERRYSBURG, OH 43552

Ship To:

WELDED CONSTRUCTION, L.P.
6021 Morgantown Rd
Brett Bushman 360-812-1711
Morgantown, PA 19543
PENNSYLVANIA EXEMPT

Date		Ship Via		F.O.B.		Terms		Whse	
06/20/18		TQL		Jobsite		Net 30 Days		HOU	
Purchase Order Number		Order Date	Salesperson	Cust Slspr	Project	Tax ID		Our Order Number	
86737		06/19/18	P2	HS		PA000-00		87897	
Quantity			Item Number	Description	Tax	Unit Price	Amount		
Req.	Ship	B.O.							
134.00	134.00	0.00	RG237	ROCKGUARD 11mm HD 4.75' X 50' STANDARD ROLL	N	273.1300	36599.42		
134	134	0	RG206	ROCKGUARD 11mm HD 6' X 50' STANDARD ROLL	N	345.0000	46230.00		
							NonTaxable Subtotal	82829.42	
							Taxable Subtotal	0.00	
							Tax	0.00	
							Total Invoice	82829.42	
Net due on 07/20/18									

Customer Original (Reprinted)

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APPENDIX D

**Invoice 101762****Customer WEL002**

INDUSTRIAL FABRICS, INC.
 510 O'NEAL LANE EXTENSION
 BATON ROUGE, LA 70819

INDUSTRIAL FABRICS INC
since 1981

Telephone: 225/273-9600

Bill To:

WELDED CONSTRUCTION, L.P.
 Ap@welded.com
 PERRYSBURG, OH 43552

Ship To:

WELDED CONSTRUCTION
 STEVE ZWIEZEN 630-803-6121
 1591 WHEELING AVE
 GLEN DALE, WV 26038
 WEST VIRGINIA TAX EXEMPT

Date		Ship Via			F.O.B.		Terms		Whse	
06/27/18					JOBSITE		Net 30 Days		HOU	
Purchase Order Number		Order Date	Salesperson	Cust Slspr	Project		Tax ID		Our Order Number	
87659		06/27/18	P2	HS			WV000-00		88021	
Quantity			Item Number	Description	Tax	Unit Price	Amount			
Req.	Ship	B.O.								
1200	1200	0	RG2F8120	ROCKGUARD HD 84" X 120" PADS	N	80.5000	96600.00			
864	864	0	RG901	ROCKGUARD TAPE RG400 3/4 X 60	N	2.5000	2160.00			
							NonTaxable Subtotal		98760.00	
							Taxable Subtotal		0.00	
							Tax		0.00	
							Total Invoice		98760.00	
Net due on 07/27/18										

APPENDIX E

Invoice 101763**Customer WEL002****INDUSTRIAL FABRICS INC***since 1981*

INDUSTRIAL FABRICS, INC.
 510 O'NEAL LANE EXTENSION
 BATON ROUGE, LA 70819

Telephone: 225/273-9600

Bill To:

WELDED CONSTRUCTION, L.P.
 Ap@welded.com
 PERRYSBURG, OH 43552

Ship To:

WELDED CONSTRUCTION
 STEVE ZWIEZEN 630-803-6121
 1591 WHEELING AVE
 GLEN DALE, WV 26038
 WEST VIRGINIA TAX EXEMPT

Date		Ship Via			F.O.B.		Terms		Whse	
06/28/18					JOBSITE		Net 30 Days		HOU	
Purchase Order Number		Order Date	Salesperson	Cust Slspr	Project		Tax ID		Our Order Number	
87659		06/28/18	P2	HS			WV000-00		88045	
Quantity			Item Number	Description	Tax	Unit Price	Amount			
Req.	Ship	B.O.								
1200	1200	0	RG2F8120	ROCKGUARD HD 84" X 120" PADS	N	80.5000	96600.00			
864	864	0	RG901	ROCKGUARD TAPE RG400 3/4 X 60	N	2.5000	2160.00			

APPENDIX F

Historical Period Transfers

Invoice Date	Invoice No.	Invoice Amt	Payment Date	Deposit No.	Payment Amt	Days to Pay
5/13/2017	96737	\$ 87,825.00	6/15/2017	061517-EF	\$ 87,825.00	33
5/19/2017	96736	\$ 86,675.00	6/15/2017	061517-EF	\$ 86,675.00	27
7/1/2017	97226	\$ 67,800.00	8/3/2017	080317-EF	\$ 67,800.00	33
7/3/2017	97230	\$ 63,660.00	8/17/2017	081717-EF	\$ 63,660.00	45
7/7/2017	97316	\$ 87,825.00	8/17/2017	081717-EF	\$ 87,825.00	41
7/11/2017	97395	\$ 63,660.00	8/25/2017	082517-EF	\$ 63,660.00	45
8/4/2017	97750	\$ 38,250.00	9/28/2017	092817-EF	\$ 38,250.00	55
9/6/2017	98115	\$ 74,370.00	10/24/2017	102417-EF	\$ 74,370.00	48
9/10/2017	98167	\$ 74,370.00	11/7/2017	110717-EF	\$ 74,370.00	58
9/13/2017	98233	\$ 74,370.00	11/14/2017	111417-EF	\$ 74,370.00	62
9/14/2017	98232	\$ 74,370.00	11/21/2017	112117-EF	\$ 74,370.00	68
9/14/2017	98480	\$ 87,825.00	11/21/2017	112117-EF	\$ 87,825.00	68
10/11/2017	98586	\$ 90,182.50	12/21/2017	122117-EF	\$ 90,182.50	71
10/31/2017	98877	\$ 48,585.00	1/8/2018	010818-EF	\$ 48,585.00	69
		\$ 1,019,767.50			\$ 1,019,767.50	

APPENDIX G

Preference Period Transfers

Invoice Date	Invoice No	Invoice Amt	Payment Date	Deposit No	Payment Amt	Days to Pay
6/20/2018	101623	\$ 82,829.42	8/13/2018	081318-EF	\$ 82,829.42	54
6/27/2018	101762	\$ 98,760.00	9/10/2018	091018-EF	\$ 98,760.00	75
6/28/2018	101763	\$ 98,760.00	9/24/2018	092418-EF	\$ 98,760.00	88

APPENDIX H

Welded Construction, LP
Sunoco Pipeline - PPP-5 Invoice Listing

Prepaid Discount \$ 6,131,276.00

Invoice Number	Invoice Date	Weekending Date	Date Approved	Date Paid	Days Out	Invoice Amount	Retention	Discount	Net Invoice	PO Number	Discount %	Discount\$
2016-03-001A	2/18/2016		2/18/2016			\$ 474,624.48	\$ -	\$ -	\$ 474,624.48	4800017173	0.00%	\$ 6,131,276.00
2016-03-002A	7/5/2016		7/5/2016			\$ 75,000.00	\$ -	\$ -	\$ 75,000.00	4800017173	0.00%	\$ 6,131,276.00
2016-03-005	4/28/2017	4/30/2017	4/28/2017	5/12/2017		\$ 7,544,810.00	\$ -	\$ 175,978.50	\$ 7,368,831.50	4800016481	2.39%	\$ 5,955,297.50
2016-03-004 REV 1	4/28/2017	4/30/2017	4/28/2017	5/12/2017		\$ 5,343,844.00	\$ -	\$ 267,650.80	\$ 5,076,193.20	4800016481	5.27%	\$ 5,687,646.70
30077-001	5/26/2017	5/21/2017		6/9/2017		\$ 15,126,516.57	\$ 529,428.08	\$ 345,261.69	\$ 14,251,826.80	4800030077	2.42%	\$ 5,342,385.01
30082-001	5/26/2017	5/21/2017		6/9/2017		\$ 3,932,744.68	\$ 137,646.06	\$ 87,439.07	\$ 3,707,659.55	4800030082	2.36%	\$ 5,254,945.94
30077-002	5/31/2017	5/28/2017		6/30/2017		\$ 4,012,604.69	\$ 140,441.16	\$ 83,987.23	\$ 3,788,176.30	4800030077	2.22%	\$ 5,170,958.71
30082-002	5/31/2017	5/28/2017		6/30/2017		\$ 855,392.89	\$ 29,938.75	\$ 17,904.10	\$ 807,550.04	4800030082	2.22%	\$ 5,153,054.61
30077-003	6/7/2017	6/4/2017	6/9/2017	7/7/2017		\$ 3,784,162.13	\$ 132,445.68	\$ 79,450.19	\$ 3,572,266.26	4800030077	2.22%	\$ 5,073,604.42
30082-003	6/7/2017	6/4/2017	6/9/2017	7/7/2017		\$ 460,641.63	\$ 16,122.46	\$ 9,671.38	\$ 434,847.79	4800030082	2.22%	\$ 5,063,933.04
30077-004	6/14/2017	6/11/2017	6/16/2017	7/19/2017		\$ 7,051,858.44	\$ 246,815.05	\$ 144,539.10	\$ 6,660,504.29	4800030077	2.17%	\$ 4,919,393.94
30082-004	6/14/2017	6/11/2017	6/16/2017	7/19/2017		\$ 1,015,516.77	\$ 35,543.09	\$ 20,814.64	\$ 959,159.04	4800030082	2.17%	\$ 4,898,579.30
30077-005	6/21/2017	6/18/2017	6/22/2017	7/21/2017		\$ 10,543,410.88	\$ 369,019.38	\$ 220,682.56	\$ 9,953,708.94	4800030077	2.22%	\$ 4,677,896.74
30082-005	6/21/2017	6/18/2017	6/22/2017	7/21/2017		\$ 2,097,653.99	\$ 73,417.89	\$ 43,905.68	\$ 1,980,330.42	4800030082	2.22%	\$ 4,633,991.06
30077-006	6/29/2017	6/25/2017	6/28/2017	7/28/2017		\$ 3,517,390.10	\$ 123,108.65	\$ 73,849.19	\$ 3,320,432.26	4800030077	2.22%	\$ 4,560,141.87
30082-006	6/29/2017	6/25/2017	6/28/2017	7/28/2017		\$ 759,308.91	\$ 26,575.81	\$ 15,942.03	\$ 716,791.07	4800030082	2.22%	\$ 4,544,199.84
30077-007	7/7/2017	7/2/2017	7/14/2017	8/4/2017		\$ 7,425,668.68	\$ 259,898.41	\$ 156,070.47	\$ 7,009,699.35	4800030077	2.23%	\$ 4,388,129.37
30082-007	7/7/2017	7/2/2017	7/14/2017	8/4/2017		\$ 636,161.24	\$ 22,265.64	\$ 13,370.65	\$ 600,524.95	4800030082	2.23%	\$ 4,374,758.72
30077-008	7/29/2017	7/9/2017	7/31/2017	8/11/2017		\$ 2,719,592.72	\$ 95,185.75	\$ 56,942.72	\$ 2,567,464.25	4800030077	2.22%	\$ 4,317,816.00
30082-008	7/29/2017	7/9/2017	7/31/2017	8/11/2017		\$ 3,791.32	\$ 132.70	\$ 79.38	\$ 3,579.24	4800030082	2.22%	\$ 4,317,736.62
30077-009	7/29/2017	7/16/2017	7/31/2017	8/14/2017		\$ 6,628,672.16	\$ 232,003.53	\$ 141,380.88	\$ 6,255,287.75	4800030077	2.26%	\$ 4,176,355.74
30082-009	7/29/2017	7/16/2017	7/31/2017	8/18/2017		\$ 527,743.04	\$ 18,471.01	\$ 11,080.21	\$ 498,191.82	4800030082	2.22%	\$ 4,165,275.53
30077-010	8/1/2017	7/23/2017	8/1/2017	8/28/2017		\$ 4,136,354.85	\$ 144,772.42	\$ 88,286.82	\$ 3,903,295.61	4800030077	2.26%	\$ 4,076,988.71
30082-010	8/1/2017	7/23/2017	8/1/2017	8/28/2017		\$ 1,483,907.11	\$ 51,936.75	\$ 31,672.39	\$ 1,400,297.97	4800030082	2.26%	\$ 4,045,316.32
30077-011	8/3/2017	7/30/2017	8/3/2017	9/1/2017		\$ 2,107,239.60	\$ 73,753.38	\$ 44,106.32	\$ 1,989,379.90	4800030077	2.22%	\$ 4,001,210.00
30082-011	8/3/2017	7/30/2017	8/3/2017	9/1/2017		\$ 1,752,869.25	\$ 61,350.42	\$ 36,689.04	\$ 1,654,829.79	4800030082	2.22%	\$ 3,964,520.96
30077-012	8/11/2017	8/6/2017	8/11/2017	9/8/2017		\$ 2,053,249.80	\$ 71,863.74	\$ 43,154.59	\$ 1,938,231.81	4800030077	2.23%	\$ 3,921,366.37
30082-012 REV 1	8/11/2017	8/6/2017	8/11/2017	9/8/2017		\$ 1,868,051.40	\$ 65,381.80	\$ 39,262.15	\$ 1,763,407.45	4800030082	2.23%	\$ 3,882,104.22
30077-015	8/19/2017	8/13/2017		9/1/2017		\$ 4,700,524.92	\$ 164,518.37	\$ 105,565.47	\$ 4,430,441.08	4800030077	2.38%	\$ 3,776,538.75
30082-013	8/19/2017	8/13/2017		9/1/2017		\$ 1,890,070.75	\$ 66,152.48	\$ 42,447.65	\$ 1,781,470.62	4800030082	2.38%	\$ 3,734,091.10
30077-017	8/25/2017	8/20/2017		9/25/2017		\$ 1,381,157.56	\$ 48,340.51	\$ 29,297.54	\$ 1,303,519.51	4800030077	2.25%	\$ 3,704,793.56
30082-014	8/25/2017	8/20/2017		9/25/2017		\$ 2,168,778.97	\$ 75,907.26	\$ 46,004.81	\$ 2,046,866.90	4800030082	2.25%	\$ 3,658,788.75
30077-018	8/30/2017	8/27/2017		9/29/2017		\$ 3,526,376.40	\$ 123,423.17	\$ 75,488.80	\$ 3,327,464.43	4800030077	2.27%	\$ 3,583,299.95
30082-015	8/30/2017	8/27/2017		9/29/2017		\$ 3,255,171.73	\$ 113,931.01	\$ 69,683.19	\$ 3,071,557.53	4800030082	2.27%	\$ 3,513,616.76
30077-021	9/7/2017	9/3/2017	9/8/2017	10/5/2017		\$ 2,037,130.54	\$ 71,299.56	\$ 43,560.08	\$ 1,922,270.90	4800030077	2.27%	\$ 3,470,056.68
30082-016	9/7/2017	9/3/2017	9/8/2017	10/5/2017		\$ 2,584,163.10	\$ 90,445.71	\$ 55,257.64	\$ 2,438,459.75	4800030082	2.27%	\$ 3,414,799.04
30077-022	9/13/2017	9/10/2017	9/14/2017	10/13/2017		\$ 777,719.98	\$ 27,220.19	\$ 16,680.27	\$ 733,819.52	4800030077	2.27%	\$ 3,398,118.77
30082-017	9/13/2017	9/10/2017	9/14/2017	10/13/2017		\$ 2,196,878.59	\$ 76,890.75	\$ 47,117.91	\$ 2,072,869.93	4800030082	2.27%	\$ 3,351,000.86
30077-025	9/20/2017	9/17/2017	9/23/2017	10/20/2017		\$ 1,236,974.67	\$ 43,294.11	\$ 26,690.04	\$ 1,166,990.52	4800030077	2.29%	\$ 3,324,310.82
30082-018	9/20/2017	9/17/2017	9/23/2017	10/20/2017		\$ 2,536,979.37	\$ 88,794.28	\$ 54,740.06	\$ 2,393,445.34	4800030082	2.29%	\$ 3,269,570.76
30077-026	9/20/2017		9/23/2017	10/3/2017		\$ 7,351,950.00	\$ 257,318.25	\$ 168,804.94	\$ 6,925,826.81	4800030077	2.44%	\$ 3,100,765.82
30077-027	9/27/2017	9/24/2017	9/27/2017	10/27/2017		\$ 526,610.26	\$ 18,431.35	\$ 11,396.62	\$ 496,782.29	4800030077	2.29%	\$ 3,089,369.20
30082-019	9/27/2017	9/24/2017	9/27/2017	10/27/2017		\$ 2,656,431.64	\$ 92,975.11	\$ 57,489.08	\$ 2,505,967.45	4800030082	2.29%	\$ 3,031,880.12
30077-028	10/5/2017	10/1/2017		11/5/2017		\$ 1,310,040.68	\$ 45,851.42	\$ 28,520.46	\$ 1,235,668.80	4800030077	2.31%	\$ 3,003,359.66
30082-020	10/5/2017	10/1/2017		11/5/2017		\$ 3,084,243.90	\$ 107,948.54	\$ 67,146.55	\$ 2,909,148.81	4800030082	2.31%	\$ 2,936,213.11
30077-029	10/12/2017	10/8/2017		11/10/2017		\$ 547,843.34	\$ 19,174.51	\$ 11,997.70	\$ 516,671.13	4800030077	2.32%	\$ 2,924,215.41
30082-021	10/12/2017	10/8/2017		11/10/2017		\$ 2,443,667.41	\$ 85,528.36	\$ 53,516.03	\$ 2,304,623.02	4800030082	2.32%	\$ 2,870,699.38
30077-030	10/19/2017	10/15/2017		11/17/2017		\$ 256,593.53	\$ 8,980.77	\$ 5,635.94	\$ 241,976.82	4800030077	2.33%	\$ 2,865,063.44
30082-022	10/19/2017	10/15/2017		11/17/2017		\$ 2,170,685.23	\$ 75,973.98	\$ 47,678.11	\$ 2,047,033.14	4800030082	2.33%	\$ 2,817,385.33

Invoice Number	Invoice Date	Weekending Date	Date Approved	Date Paid	Days Out	Invoice Amount	Retention	Discount	Net Invoice	PO Number	Discount %	Discount\$
30077-031	10/27/2017	10/22/2017		11/24/2017		\$ 917,429.33	\$ 32,110.02	\$ 20,472.52	\$ 864,846.79	4800030077	2.37%	\$ 2,796,912.81
30082-023	10/27/2017	10/22/2017		11/24/2017		\$ 2,527,052.83	\$ 88,446.85	\$ 56,391.40	\$ 2,382,214.58	4800030082	2.37%	\$ 2,740,521.41
30077-032	11/2/2017	10/29/2017		12/1/2017		\$ 325,516.07	\$ 11,393.06	\$ 7,254.94	\$ 306,868.07	4800030077	2.36%	\$ 2,733,266.47
30082-024	11/2/2017	10/29/2017		12/1/2017		\$ 1,455,769.41	\$ 50,951.93	\$ 32,445.90	\$ 1,372,371.58	4800030082	2.36%	\$ 2,700,820.57
30077-033	11/10/2017	11/5/2017	11/10/2017	12/8/2017		\$ 182,404.59	\$ 6,384.16	\$ 4,153.23	\$ 171,867.20	4800030077	2.42%	\$ 2,696,667.34
30082-025	11/10/2017	11/5/2017	11/10/2017	12/8/2017		\$ 1,772,794.69	\$ 62,047.81	\$ 40,364.96	\$ 1,670,381.92	4800030082	2.42%	\$ 2,656,302.38
30077-034	12/5/2017	11/12/2017	12/13/2017	1/5/2018		\$ 324,624.12	\$ 11,361.84	\$ 7,644.12	\$ 305,618.16	4800030077	2.50%	\$ 2,648,658.26
30082-026	12/5/2017	11/12/2017	12/13/2017	1/5/2018		\$ 1,046,992.75	\$ 36,644.75	\$ 24,654.13	\$ 985,693.87	4800030082	2.50%	\$ 2,624,004.13
30077-035	11/15/2017	10/23/2017	11/28/2017	12/22/2017		\$ 5,293,913.57	\$ -	\$ 122,844.84	\$ 5,171,068.73	4800030077	2.38%	\$ 2,501,159.29
30077-036	12/5/2017	11/19/2017	12/13/2017	1/5/2018		\$ 86,529.30	\$ 3,028.53	\$ 2,037.56	\$ 81,463.21	4800030077	2.50%	\$ 2,499,121.73
30082-027	12/5/2017	11/19/2017	12/13/2017	1/5/2018		\$ 420,128.37	\$ 14,704.49	\$ 9,893.02	\$ 395,530.86	4800030082	2.50%	\$ 2,489,228.71
30077-037	12/12/2017	10/8/2017	12/13/2017	1/12/2018		\$ 2,011,944.31	\$ -	\$ 49,296.50	\$ 1,962,647.81	4800030077	2.51%	\$ 2,439,932.21
30077-038	12/13/2017	11/26/2017			1545	\$ (217,346.60)	\$ (7,607.13)	\$ -		4800030077		\$ 2,439,932.21
30082-028	12/12/2017	11/26/2017			1546	\$ (28,904.20)	\$ (1,011.65)	\$ -		4800030082		\$ 2,439,932.21
30077-039	12/13/2017	12/3/2017		1/12/2018		\$ 318,624.49	\$ 11,151.86	\$ 7,533.59	\$ 299,939.04	4800030077	2.51%	\$ 2,432,398.62
30082-029	12/13/2017	12/3/2017		1/12/2018		\$ 1,722,003.35	\$ 60,270.12	\$ 40,715.23	\$ 1,621,018.00	4800030082	2.51%	\$ 2,391,683.39
30077-040	12/13/2017	12/10/2017		1/12/2018		\$ 88,264.57	\$ 3,089.26	\$ 2,086.94	\$ 83,088.37	4800030077	2.51%	\$ 2,389,596.45
30082-030	12/13/2017	12/10/2017		1/12/2018		\$ 849,042.44	\$ 29,716.49	\$ 20,074.85	\$ 799,251.10	4800030082	2.51%	\$ 2,369,521.60
30077-041	12/21/2017	12/17/2017		1/25/2018		\$ 70,164.00	\$ 2,455.74	\$ 1,599.98	\$ 66,108.28	4800030077	2.42%	\$ 2,367,921.62
30082-031	12/21/2017	12/17/2017		1/25/2018		\$ 162,267.56	\$ 5,679.36	\$ 3,700.27	\$ 152,887.93	4800030082	2.42%	\$ 2,364,221.35
30077-042	1/6/2018	12/31/2017		3/5/2018		\$ 218,410.44	\$ 7,644.37	\$ -	\$ 210,766.07	4800030077	0.00%	\$ 2,364,221.35
30082-032	1/6/2018	12/31/2017		3/5/2018		\$ 224,489.78	\$ 7,857.14	\$ -	\$ 216,632.64	4800030082	0.00%	\$ 2,364,221.35
30077-043 Rev1	2/23/2018			3/27/2018		\$ 4,840,350.00	\$ -	\$ -	\$ 4,840,350.00	4800034244	0.00%	\$ 2,364,221.35
30077-044	4/13/2018	4/8/2018		05/15/218		\$ 208,982.81	\$ 7,314.40	\$ -	\$ 201,668.41	4800034244	0.00%	\$ 2,364,221.35
30077-045	4/21/2018	4/15/2018	5/3/2018	5/22/2018		\$ 125,467.35	\$ 4,391.36	\$ -	\$ 121,075.99	4800034244	0.00%	\$ 2,364,221.35
30077-046	4/21/2018	4/22/2018	5/3/2018	6/5/2018		\$ 288,372.36	\$ 10,093.03	\$ -	\$ 278,279.32	4800034244	0.00%	\$ 2,364,221.35
30077-047	5/8/2018	4/29/2018		6/8/2018		\$ 167,968.11	\$ 5,878.88	\$ -	\$ 162,089.23	4800034244	0.00%	\$ 2,364,221.35
30077-048	5/17/2018	5/6/2018		6/19/2018		\$ 614,839.22	\$ 21,519.37	\$ -	\$ 593,319.85	4800034244	0.00%	\$ 2,364,221.35
30077-049	5/22/2018	5/13/2018		6/22/2018		\$ 91,671.62	\$ 3,208.51	\$ -	\$ 88,463.11	4800034244	0.00%	\$ 2,364,221.35
30082-033	5/22/2018	5/13/2018		6/22/2018		\$ 180,058.74	\$ 6,302.06	\$ -	\$ 173,756.68	4800034242	0.00%	\$ 2,364,221.35
30077-050	5/29/2018	5/20/2018		7/2/2018		\$ 122,249.56	\$ 4,278.73	\$ -	\$ 117,970.83	4800034244	0.00%	\$ 2,364,221.35
30077-051	6/6/2018	5/27/2018		7/9/2018		\$ 2,030,543.97	\$ 71,069.04	\$ -	\$ 1,959,474.93	4800034244	0.00%	\$ 2,364,221.35
30082-034	6/6/2018	5/27/2018		7/9/2018		\$ 62,539.95	\$ 2,188.90	\$ -	\$ 60,351.05	4800034242	0.00%	\$ 2,364,221.35
30077-052	6/8/2018	6/3/2018		7/9/2018		\$ 538,029.03	\$ 18,831.02	\$ -	\$ 519,198.01	4800034244	0.00%	\$ 2,364,221.35
30082-035	6/8/2018	6/3/2018		7/9/2018		\$ 124,852.28	\$ 4,369.83	\$ -	\$ 120,482.45	4800034242	0.00%	\$ 2,364,221.35
30077-053	6/8/2018			7/21/2018		\$ 7,500,000.00	\$ 262,500.00	\$ -	\$ 7,237,500.00	4800034244	0.00%	\$ 2,364,221.35
30082-036	6/8/2018			7/21/2018		\$ 7,500,000.00	\$ 262,500.00	\$ -	\$ 7,237,500.00	4800034242	0.00%	\$ 2,364,221.35
30077-054	6/18/2018	6/10/2018		7/19/2018		\$ 474,206.29	\$ 16,597.22	\$ -	\$ 457,609.07	4800034244	0.00%	\$ 2,364,221.35
30082-037	6/18/2018	6/10/2018		7/19/2018		\$ 194,522.26	\$ 6,808.28	\$ -	\$ 187,713.98	4800034242	0.00%	\$ 2,364,221.35
30077-055	6/25/2018	6/17/2018		7/26/2018		\$ 903,287.88	\$ 31,615.08	\$ -	\$ 871,672.80	4800034244	0.00%	\$ 2,364,221.35
30082-038	6/25/2018	6/17/2018		7/26/2018		\$ 66,887.64	\$ 2,341.07	\$ -	\$ 64,546.57	4800034242	0.00%	\$ 2,364,221.35
30077-056	6/25/2018			7/16/2018		\$ 3,000,000.00	\$ 105,000.00	\$ -	\$ 2,895,000.00	4800034244	0.00%	\$ 2,364,221.35
30082-039	6/25/2018			7/16/2018		\$ 1,250,000.00	\$ 43,750.00	\$ -	\$ 1,206,250.00	4800034242	0.00%	\$ 2,364,221.35
30077-057	6/29/2018	6/24/2018		8/2/2018		\$ 386,936.97	\$ 13,542.79	\$ -	\$ 373,394.18	4800034244	0.00%	\$ 2,364,221.35
30082-040	6/29/2018	6/24/2018		8/2/2018		\$ 256,695.25	\$ 8,984.33	\$ -	\$ 247,710.92	4800034242	0.00%	\$ 2,364,221.35
30077-058	7/11/2018	7/1/2018		8/13/2018		\$ 679,571.32	\$ 23,785.00	\$ -	\$ 655,786.32	4800034244	0.00%	\$ 2,364,221.35
30082-041	7/11/2018	7/1/2018		8/13/2018		\$ 357,779.58	\$ 12,522.29	\$ -	\$ 345,257.29	4800034242	0.00%	\$ 2,364,221.35
30077-059	7/14/2018	7/8/2018		8/14/2018		\$ 209,012.90	\$ 7,315.45	\$ -	\$ 201,697.45	4800034244	0.00%	\$ 2,364,221.35
30082-042	7/14/2018	7/8/2018		8/14/2018		\$ 157,672.57	\$ 5,518.54	\$ -	\$ 152,154.03	4800034242	0.00%	\$ 2,364,221.35
30077-060	7/16/2018	7/31/2018		7/24/2018		\$ 3,000,000.00	\$ 105,000.00	\$ -	\$ 2,895,000.00	4800034244	0.00%	\$ 2,364,221.35
30082-043	7/16/2018	7/31/2018		7/24/2018		\$ 1,250,000.00	\$ 43,750.00	\$ -	\$ 1,206,250.00	4800034242	0.00%	\$ 2,364,221.35
30077-061	7/19/2018	7/15/2018		8/21/2018		\$ 251,472.06	\$ 8,801.52	\$ -	\$ 242,670.54	4800034244	0.00%	\$ 2,364,221.35

Invoice Number	Invoice Date	Weekending Date	Date Approved	Date Paid	Days Out	Invoice Amount	Retention	Discount	Net Invoice	PO Number	Discount %	Discount\$
30082-044	7/19/2018	7/15/2018		8/21/2018		\$ 157,111.55	\$ 5,498.90	\$ -	\$ 151,612.65	4800034242	0.00%	\$ 2,364,221.35
30077-062	7/20/2018	7/31/2018		8/9/2018		\$ 7,500,000.00	\$ 262,500.00	\$ -	\$ 7,237,500.00	4800034244	0.00%	\$ 2,364,221.35
30082-045	7/20/2018	7/31/2018		8/9/2018		\$ 7,500,000.00	\$ 262,500.00	\$ -	\$ 7,237,500.00	4800034242	0.00%	\$ 2,364,221.35
30077-063	7/20/2018	7/22/2018		8/30/2018		\$ 252,144.28	\$ 8,825.05	\$ -	\$ 243,319.23	4800034244	0.00%	\$ 2,364,221.35
30082-046	7/20/2018	7/22/2018		8/21/2018		\$ 125,189.51	\$ 4,381.63	\$ -	\$ 120,807.88	4800034242	0.00%	\$ 2,364,221.35
30077-064	8/2/2018	7/29/2018		9/4/2018		\$ 410,228.89	\$ 14,358.01	\$ -	\$ 395,870.88	4800034244	0.00%	\$ 2,364,221.35
30082-047	8/2/2018	7/29/2018		9/4/2018		\$ 226,766.75	\$ 7,936.84	\$ -	\$ 218,829.91	4800034242	0.00%	\$ 2,364,221.35
30077-065	8/15/2018	8/5/2018		9/17/2018		\$ 470,900.96	\$ 16,481.53	\$ -	\$ 454,419.43	4800034244	0.00%	\$ 2,364,221.35
30082-048	8/15/2018	8/5/2018		9/17/2018		\$ 166,383.00	\$ 5,823.41	\$ -	\$ 160,559.59	4800034242	0.00%	\$ 2,364,221.35
30077-066	8/17/2018	8/12/2018		9/4/2018		\$ 738,939.83	\$ 25,862.89	\$ -	\$ 713,076.94	4800034244	0.00%	\$ 2,364,221.35
30082-049	8/15/2018	8/12/2018		9/5/2018		\$ 133,566.26	\$ 4,674.82	\$ -	\$ 128,891.44	4800034242	0.00%	\$ 2,364,221.35
30077-067	8/15/2018	8/30/2018		9/5/2018		\$ 3,000,000.00	\$ 105,000.00	\$ -	\$ 2,895,000.00	4800034244	0.00%	\$ 2,364,221.35
30082-050	8/15/2018	8/30/2018		9/4/2018		\$ 1,250,000.00	\$ 43,750.00	\$ -	\$ 1,206,250.00	4800034242	0.00%	\$ 2,364,221.35
30077-068 REV1	8/20/2018	6/30/2018		9/5/2018		\$ 5,146,250.00	\$ 180,118.75	\$ -	\$ 4,966,131.25	4800034244	0.00%	\$ 2,364,221.35
30077-069	8/20/2018	8/19/2018		9/20/2018		\$ 474,388.65	\$ 16,603.60	\$ -	\$ 457,785.05	4800034244	0.00%	\$ 2,364,221.35
30082-051	8/15/2018	8/19/2018		9/17/2018		\$ 61,536.63	\$ 2,153.78	\$ -	\$ 59,382.85	4800034242	0.00%	\$ 2,364,221.35
30077-070	9/5/2018	8/26/2018		10/9/2018		\$ 178,903.48	\$ 6,261.62	\$ -	\$ 172,641.86	4800034244	0.00%	\$ 2,364,221.35
30077-071	9/7/2018	9/2/2018		10/12/2018		\$ 372,763.04	\$ 13,046.71	\$ -	\$ 359,716.33	4800034244	0.00%	\$ 2,364,221.35
30082-052	9/7/2018	9/2/2018		10/17/2018		\$ 172,235.67	\$ 6,028.25	\$ -	\$ 166,207.42	4800034242	0.00%	\$ 2,364,221.35
30077-072	9/13/2018	9/30/2018		9/27/2018		\$ 3,000,000.00	\$ 105,000.00	\$ -	\$ 2,895,000.00	4800034244	0.00%	\$ 2,364,221.35
30082-053	9/13/2018	9/30/2018		9/27/2018		\$ 1,250,000.00	\$ 43,750.00	\$ -	\$ 1,206,250.00	4800034242	0.00%	\$ 2,364,221.35
30077-073	9/19/2018	9/9/2018		10/22/2018		\$ 384,594.43	\$ 13,460.81	\$ -	\$ 371,133.62	4800034244	0.00%	\$ 2,364,221.35
30082-054	9/19/2018	9/9/2018		10/22/2018		\$ 147,487.25	\$ 5,162.05	\$ -	\$ 142,325.20	4800034242	0.00%	\$ 2,364,221.35
30077-074	10/5/2018	9/16/2018			1249	\$ 385,282.98	\$ 13,484.90	\$ -	\$ 371,798.08	4800034244	0.00%	\$ 2,364,221.35
30077-075	10/11/2018	9/23/2018			1243	\$ 74,142.71	\$ 2,594.99	\$ -	\$ 71,547.72	4800034244	0.00%	\$ 2,364,221.35
30077-072	10/13/2018	10/31/2018			1241	\$ 3,000,000.00	\$ 105,000.00	\$ -	\$ 2,895,000.00	4800034244	0.00%	\$ 2,364,221.35
30082-053	10/13/2018	10/31/2018			1241	\$ 1,250,000.00	\$ 43,750.00	\$ -	\$ 1,206,250.00	4800034242	0.00%	\$ 2,364,221.35
30077-76	10/18/2018	10/7/2018			1236	\$ 952,358.65	\$ 33,332.55	\$ -	\$ 919,026.10	4800034244	0.00%	\$ 2,364,221.35
TOTAL						\$ 241,966,033.31	\$ 7,573,354.09	\$ 3,767,054.65	\$ 230,863,256.78			

APPENDIX I

Welded Construction, L.P.
Invoice Log

WELDED INVOICE NO.	DATE ISSUED OR PERIOD END	NET AMOUNT SUBMITTED	RETAINAGE AMOUNT	GROSS AMOUNT SUBMITTED	PAID	Unpaid	OUTSTANDING
201801-MXP-001 RevA	01/25/18	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
201801-MXP-001 RevB	01/25/18	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
201801-MXP-002	03/25/18	\$ 2,513,335.86	\$ 279,259.54	\$ 2,792,595.40	\$ 2,513,335.86	\$ 279,259.54	\$ -
201801-MXP-003	04/25/18	\$ 3,333,862.49	\$ 370,429.17	\$ 3,704,291.66	\$ 3,333,862.49	\$ 370,429.17	\$ -
201801-MXP-004	05/25/18	\$ 8,747,419.19	\$ 971,935.47	\$ 9,719,354.66	\$ 8,747,419.19	\$ 971,935.47	\$ -
201801-MXP-005*	06/08/18	\$ 6,973,542.61	\$ 367,028.56	\$ 7,340,571.17	\$ 6,973,542.61	\$ 367,028.56	\$ -
201801-MXP-006	06/22/18	\$ 7,972,645.85	\$ 419,612.94	\$ 8,392,258.79	\$ 7,972,645.85	\$ 419,612.94	\$ (0.00)
201801-MXP-007	07/06/18	\$ 11,116,467.01	\$ 585,077.21	\$ 11,701,544.22	\$ 11,116,467.01	\$ 585,077.21	\$ (0.00)
201801-MXP-008	07/20/18	\$ 18,007,051.77	\$ 947,739.57	\$ 18,954,791.34	\$ 18,007,051.77	\$ 947,739.57	\$ -
201801-MXP-009	08/03/18	\$ 9,824,016.81	\$ 517,053.52	\$ 10,341,070.33	\$ 9,824,016.81	\$ 517,053.52	\$ (0.00)
201801-MXP-010	08/17/18	\$ 11,061,035.87	\$ 582,159.78	\$ 11,643,195.65	\$ 11,061,035.87	\$ 582,159.78	\$ -
201801-MXP-011	08/31/18	\$ 15,236,051.11	\$ 801,897.43	\$ 16,037,948.54	\$ 15,236,051.11	\$ 801,897.43	\$ -
201801-MXP-012	09/14/18	\$ 7,755,982.40	\$ 408,209.60	\$ 8,164,192.00	\$ 7,755,982.40	\$ 408,209.60	\$ -
201801-MXP-013	09/28/18	\$ 7,155,681.46	\$ 376,614.81	\$ 7,532,296.27	\$ 7,155,681.46	\$ 376,614.81	\$ -
201801-MXP-014	10/12/18	\$ 7,395,179.33	\$ 389,219.96	\$ 7,784,399.29	\$ -	\$ 7,784,399.29	\$ -
	TOTAL AMOUNT SUBMITTED :	\$ 117,092,271.76	\$ 7,016,237.56	\$ 124,108,509.32	\$ 109,697,092.43	\$ 14,411,416.89	\$ (0.00)