IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Welded Construction, L.P., *et al.*,[1] Debtors.	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
Welded Construction, L.P., Plaintiff, v. McCutcheon Enterprises, Inc., Defendant.	Adv. No.: 20-50938 (CSS)

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT MCCUTCHEON ENTERPRISES, INC. TO COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547, 548, AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502

AND NOW, comes the Defendant, McCutcheon Enterprises, Inc., ("McCutcheon"), by and through its attorneys, Campbell & Levine, LLC, and sets forth its Answer and Affirmative Defenses to the Complaint To Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547, 548 and 550 and to Disallow Claims Pursuant to 11 U.S.C. § 502 (the "Complaint") filed by Welded Construction, L.P. ("Welded"). In support of its Answer, McCutcheon states the following:

ANSWER

NATURE OF THE CASE

1. McCutcheon answers that this paragraph of the Complaint states, at most, legal conclusions or hypothetical statements of fact to which no response is required. McCutcheon

[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).

further answers that, to the extent that this paragraph of the Complaint purports to reserve the Debtors' rights beyond those rights afforded to it under applicable law, the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, such reservation is improper and McCutcheon denies the same. Finally, to the extent that this paragraph alleges facts, McCutcheon is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies the same.

2. McCutcheon answers that this paragraph of the Complaint states a legal conclusion to which no response is required. McCutcheon further answers that, to the extent that this paragraph of the Complaint purports to reserve the Debtors' rights beyond those rights afforded to it under applicable law, the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, such reservation is improper and McCutcheon denies the same. To the extent a response is deemed to be necessary, the averments contained in this paragraph are denied.

JURISDICTION AND VENUE

3. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

4. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

5. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent that this proceeding is determined to

be non-core, McCutcheon does not consent to the entry of judgment against it by the Bankruptcy Court.

6. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

7. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

PROCEDURAL BACKGROUND

8. The averment contained in this paragraph of the Complaint is admitted.

9. The averment contained in this paragraph of the Complaint is admitted.

10. The averment contained in this paragraph of the Complaint is admitted.

11. The averment contained in this paragraph of the Complaint is admitted.

12. The averments contained in this paragraph rely on the documents referenced therein, those documents speak for themselves. To the extent a further response is deemed to be necessary, the averments are denied.

13. The averments contained in this paragraph rely on the document referenced therein, that document speaks for itself. To the extent a further response is deemed to be necessary, the averments are denied.

THE PARTIES

14. The averments contained in this paragraph rely on the documents referenced therein, those documents speak for themselves. To the extent a further response is deemed to be necessary, the averments are denied.

15. Defendant admits that it provided waste management services to the Debtors. The Defendant also admits that its principal place of business is located at 250 Park Road, Apollo, Pennsylvania 15613. Defendant is incorporated in Pennsylvania. The remaining allegations in this paragraph are denied.

FACTUAL BACKGROUND

16. The averments contained in this paragraph rely on the documents referenced therein, those documents speaks for themselves. To the extent a further response is deemed to be necessary, the averments are denied.

17. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

18. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

19. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

20. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

21. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

22. The averments contained in this paragraph of the Complaint are admitted in part and denied in part. McCutcheon admits that it provided services and goods and issued invoices to the Debtor. McCutcheon is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term "Agreements"; and therefore the averments are denied. To the extent that the averments contained in this paragraph rely on various documents referenced therein, those documents speak for themselves. To the extent a further response is deemed to be necessary, the averments are denied.

23. The averments contained in this paragraph of the Complaint are admitted in part and denied in part. McCutcheon admits that it provided services and goods and issued invoices to the Debtor both prior to the Petition Date and after the Petition Date. McCutcheon is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term "Agreements"; and therefore the averments are denied.

24. The averments contained in this paragraph of the Complaint are admitted in part and denied in part. McCutcheon admits that it provided services and goods and issued invoices to the Debtor both prior to the Petition Date and after the Petition Date. McCutcheon is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term "Agreements"; and therefore the averments are denied.

25. The Defendant without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. McCutcheon further answers that, to the extent that this paragraph of the Complaint purports to reserve the Debtors'

rights beyond those rights afforded to it under applicable law, the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, such reservation is improper and McCutcheon denies the same. Finally, to the extent that this paragraph alleges facts, McCutcheon is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies the same.

26. The averments contained in this paragraph of the Complaint are admitted in part and denied in part. McCutcheon admits that it provided services and goods and issued invoices to the Debtor both prior to the Petition Date and after the Petition Date. McCutcheon is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term "Agreements"; and therefore the remaining averments are denied.

27. McCutcheon admits that the Plaintiff, through counsel, sent a demand letter although it was mailed to the wrong state. McCutcheon is without knowledge as to the extent to which the Plaintiff performed its own due diligence evaluation of the reasonably knowable affirmative defenses available to the Defendant as the demand letter did not lay them out. Therefore, the remaining averments are denied.

28. For the reasons stated above, McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

29. McCutcheon answers that to the extent the Plaintiff purports to reserve rights in this paragraph of the Complaint beyond those rights afforded to it under applicable law, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and/or any

scheduling orders entered by the Court in this matter, such reservation is improper and McCutcheon objects to the same. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, therefore, denies the same.

30. Denies, as stated. McCutcheon denies that it has any liability.

CLAIMS FOR RELIEF

COUNT I
(Avoidance of Preference Period Transfters – 11 U.S.C. § 547)

31. McCutcheon incorporates paragraphs 1 through 30 *supra*, as if set forth at length herein.

32. McCutcheon admits only that it received payment within 90 days of the Petition Date. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint, in particular with regards to the defined term "Transfers", and, therefore, denies the same.

33. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint, therefore, denies the same.

34. McCutcheon admits only that it received payment within 90 days of the Petition Date. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint, in particular with regards to the the defined terms "Agreements" and "Transfers", and, therefore, denies the same.

35. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint, in particular with regards to the defined term "Transfers", and, therefore, denies the same.

36. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint, in particular with regards to the defined terms "Agreements" and "Transfers", and, therefore, denies the same.

37. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the factual averment contained in this paragraph of the Complaint. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, all averments are denied.

38. McCutcheon admits only that it received payment within 90 days of the Petition Date. The remaining averments contained in this paragraph are denied.

39. McCutcheon is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph of the Complaint, including with regards to the defined term "Transfers", and, therefore, denies the same.

40. McCutcheon denies the averments contained in this paragraph.

COUNT II
(Recovery of Avoided Transfers – 11 U.S.C. § 548(a)(1)(B))

41. McCutcheon incorporates paragraphs 1 through 40 *supra*, as if set forth at length herein.

42. McCutcheon denies the averments contained in this paragraph.

43. McCutcheon denies the averments contained in this paragraph.

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

44. McCutcheon incorporates paragraphs 1 through 43 *supra*, as if set forth at length herein.

45. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

46. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

47. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

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

48. McCutcheon incorporates paragraphs 1 through 47 *supra*, as if set forth at length herein.

49. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

50. McCutcheon admits only that it has not paid any amounts or turned over property on account of any alleged transfer and denies that it has any obligation to do so. Answering further, McCutcheon denies that it is liable under 11 U.S.C. §550 or otherwise.

51. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

52. The averments contained in this paragraph of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

AFFIRMATIVE DEFENSES

A. The Complaint fails to state a claim for which relief may be granted.

B. The Plaintiff cannot establish all of the elements required to avoid a preferential transfer under 11 U.S.C. § 547(b).

C. Plaintiff cannot establish all the elements required to avoid a fraudulent conveyance under 11 U.S.C. § 548.

D. The Plaintiff cannot establish all of the elements required to recover property allegedly transferred or the value of the alleged transfer under 11 U.S.C. § 550.

E. The Plaintiff cannot establish all of the elements required to disallow the Defendant's claim against the Debtors' estates under 11 U.S.C. § 502(d) and/or (j).

F. Any alleged transfer is not avoidable to the extent that they are protected by the earmarking doctrine.

G. Any alleged transfer is not avoidable to the extent that they consisted of funds provided by any party other than the Debtor.

H. Any alleged transfer is not avoidable to the extent that any payment was: (a) intended by the Debtor and McCutcheon to be contemporaneous exchanges for new value given to the Debtor; and (b) were in fact substantially contemporaneous exchanges. 11 U.S.C. §547(c)(1).

I. Any alleged transfer was: (1) in payment of a debt incurred by the Debtor in the ordinary course of business or financial affairs of the Debtor and McCutcheon and made in the

ordinary course of business or financial affairs of the Debtor and McCutcheon; or (b) made according to ordinary business terms. 11 U.S.C. §547(c)(2).

J. Any alleged transfer is not avoidable to the extent that they create a security interest in property acquired by the Debtor to the extent such security interest secures new value that was given at or after the signing of a security agreement that contains a description of such property as collateral, given by or on behalf of the secured party under such agreement, given to enable the Debtor to acquire such property, and in fact used by the Debtor to acquire such property and that is perfected on or before thirty days after the debtor receives possession of such property. 11 U.S.C. § 547(c)(3).

K. Any alleged transfer is not avoidable to the extent that after such payment was made, McCutcheon gave new value to or for the benefit of the Debtor (a) not secured by an otherwise unavoidable security interest; and (b) on account of which new value the Debtor did not make an otherwise unavoidable transfer to or for the benefit of McCutcheon. 11 U.S.C. §547(c)(4).

L. Any alleged transfer is not avoidable to the extent that they created a perfected security interest in inventory or a receivable or the proceeds of either not otherwise excepted within the limitations of 11 U.S.C.§ 547(c)(5).

M. Any alleged transfer is not avoidable to the extent that it was the fixing of a statutory lien that is not avoidable under § 545 of the United States Bankruptcy Code. 11 U.S.C. §547(c)(6).

N. The Complaint is barred in whole or in part pursuant to the doctrine of accord and satisfaction.

O. Recovery under the claims set forth in the Complaint is barred by the statute of limitations, statute of repose and/or 11 U.S.C. § 546(a).

P. The Complaint is barred by the doctrine of equitable estoppel.

Q. Recovery under the claims set forth in the Complaint is barred by the doctrine of judicial estoppel.

R. Recovery under the claims set forth in the Complaint is barred by the doctrines of setoff and recoupment.

S. Any alleged transfer from Debtor to McCutcheon was a transfer of trust funds held by Debtor in trust for McCutcheon and therefore, were not property of the Debtor's estate. McCutcheon gave reasonable equivalent value to the Debtor in exchange for the alleged transfer.

T. McCutcheon took any alleged transfer from the Debtor in good faith and is entitled to retain such transfer to the extent of the value given.

U. Defendant reserves its rights to amend its Answer and add additional defenses that may be ascertained during the course of this litigation. Further, McCutcheon reserves the right to claim setoff rights and assert administrative expense status.

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WHEREFORE, the Defendant respectfully requests that the Court deny the Plaintiff's request for relief under the Complaint, dismiss the Complaint with prejudice and grant such further relief as this Court deems just and proper.

Respectfully submitted,

Dated: December 10, 2020

/s/ Mark T. Hurford

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CERTIFICATE OF SERVICE

I, Mark T. Hurford, of Campbell & Levine, LLC, hereby certify that on this date I caused a copy of the foregoing to be filed with the Clerk of Court and served upon the individuals listed below via the Court's CM/ECF system and via email to the addresses listed below:

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Dated: December 10, 2020

CAMPBELL & LEVINE, LLC

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