IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Welded Construction, L.P. *et al.*, Debtors.[1]	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
Welded Construction, L.P., Plaintiff, v. MAXX HDD, LLC Defendant.	Adv. Pro. No. 20-50937 (CSS)

ANSWER AND AFFIRMATIVE DEFENSES OF MAXX HDD, LCC PLAINTIFF'S 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

MAXX HDD, LLC (the "Defendant"), by and through its undersigned counsel, answers the Complaint (the "Complaint") filed by Welded Construction, L.P. (the "Plaintiff") in the above-referenced adversary proceeding (the "Adversary Proceeding") as follows:

NATURE OF THE ACTION

1. The statements within paragraph 1 of the Complaint are based upon a written document (the Complaint) that speaks for itself and, therefore, it appears no response is required. To the extent a response is required, Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and, on that basis, denies each and every allegation contained therein.

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

2. The statements within paragraph 2 of the Complaint are based upon a written document (the Complaint) that speaks for itself and, therefore, it appears no response is required. To the extent a response is required, Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and, on that basis, denies each and every allegation contained therein.

JURISDICTION AND VENUE

3. The allegations in paragraph 3 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and, on that basis, denies each and every allegation contained therein.

4. The allegations in paragraph 4 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and, on that basis, denies each and every allegation contained therein.

5. The allegations in paragraph 5 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant admits that this adversary proceeding is a "core" proceeding. Pursuant to Local Bankruptcy Rule 7012-1, Defendant states that it does not consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. The statements in paragraph 6 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant admits that venue is proper in the District of Delaware.

7. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint and, on that basis, denies each and every allegation contained therein. Pursuant to Local Bankruptcy Rule 7012-1, Defendant states that it does not consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

8. The Defendant admits the allegations set forth in paragraph 8 of the Complaint.

9. The Defendant admits the allegations set forth in paragraph 9 of the Complaint.

10. The Defendant admits the allegations set forth in paragraph 10 of the Complaint.

11. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and, on that basis, denies each and every allegation contained therein.

12. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and, on that basis, denies each and every allegation contained therein.

13. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and, on that basis, denies each and every allegation contained therein.

THE PARTIES

14. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and, on that basis, denies each and every allegation contained therein.

15. It is denied that Defendant's principal place of business is the address set forth in paragraph 15 of the Complaint. The correct address is 7410 Continental Parkway, Amarillo, TX 79119. It is admitted that Defendant is a limited liability company residing in and subject to the laws of the State of Texas. By way of further answer, Defendant provided boring and horizontal directional drill services to Welded.

FACTUAL BACKGROUND

16. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and, on that basis, denies each and every allegation contained therein.

17. With regard to paragraph 17 of the Complaint, the Defendant admits that prior to the Petition Date the Debtors maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services. The Defendant is without information or knowledge sufficient to form a belief as to the trust of the remaining allegations in paragraph 17 of the Complaint, and on that basis, denies the remaining allegations contained therein.

18. With regard to paragraph 18 of the Complaint, the Defendant admits that the Debtors regularly purchased goods from various business entities including vendors, creditors, suppliers and distributors, and that the Debtors regularly paid for services used to facilitate their business.

19. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and, on that basis, denies each and every allegation contained therein.

20. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and, on that basis, denies each and every allegation contained therein.

21. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and, on that basis, denies each and every allegation therein.

22. Defendant admits that during the course of the Debtor's and Defendant's relationship, the Parties entered into one or more written and/or verbal agreements that may or may not have been evidenced by invoices, communications, and/or other documents. Defendant denies that the details of any such agreements are set forth on a Statement of Account attached as Exhibit A to the Complaint. Defendant admits that it issued invoices to one or more of the Debtor prior to the Petition date, but does not admit that the details of such invoices, as set forth on Exhibit A to the Complaint, are entirely accurate. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 of the Complaint and, on that basis, denies the remaining allegations contained therein.

23. With regard to paragraph 23 of the Complaint, the Defendant admits that it conducted business with one or more of the Debtor though and including the Petition Date. As the Complaint does not clearly identify the alleged "Agreements," the Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 23 of the Complaint and on that basis denies the remaining allegations contained therein.

24. As the Complaint does not clearly identify the alleged "Agreements," the Defendant is without information or knowledge sufficient to form a belief as to the truth of the

allegations in paragraph 24 of the Complaint and, on that basis, denies each and every allegation contained therein.

25. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and, on that basis, denies each and every allegation contained therein.

26. With regard to paragraph 26 of the Complaint, it is admitted that Defendant received certain payments during the Preference Period relating to the goods and/or services it provided to the Debtors. Defendant denies that the payment detail on Exhibit A to the Complaint is entirely accurate. It is further denied that any of the payments alleged on Exhibit A to the Complaint constituted preferential transfers. The Defendant is without information or knowledge sufficient to from a belief as to the truth of the remaining allegations in paragraph 26 of the Complaint and, on that basis, denies each and every remaining allegation contained therein.

27. The Defendant admits the Plaintiff sent Defendant a Demand Letter. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 27 of the Complaint and, on that basis, denies each and every remaining allegation contained therein.

28. It is denied that Plaintiff may avoid some or all of the alleged transfers in this matter. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 of the Complaint and, on that basis, denies each and every remaining allegation contained therein.

29. Paragraph 29 of the Complaint does not appear to contain allegations requiring a response. To the extent a response is required, the allegations are denied.

30. With regard to paragraph 30 of the Complaint, it is admitted that in the event the Plaintiff meets its burden of proof under Bankruptcy Code section 547(b), such transfers are subject to defenses including, but not limited to, the defenses under Bankruptcy Code section 547(c). The remaining allegation in paragraph 30 of the Complaint is denied as a conclusion of law.

CLAIMS FOR RELIEF

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

31. The Defendant incorporates all preceding paragraphs as though fully set forth herein.

32. With regard to paragraph 32 of the Complaint, it is admitted that Defendant received certain payments during the Preference Period relating to the goods and/or services it provided to the Debtors. Defendant denies that the payment detail on Exhibit A to the Complaint is entirely accurate. It is further denied that any of the payments alleged on Exhibit A to the Complaint constituted preferential transfers. The Defendant is without information or knowledge sufficient to from a belief as to the truth of the remaining allegations in paragraph 32 of the Complaint and, on that basis, denies each and every remaining allegation contained therein.

33. The Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaint and, on that basis, denies each and every allegation contained therein.

34. The Defendant admits only that it received certain payments during the Preference Period, but denies that the payment detail on Exhibit A to the Complaint is entirely accurate. The remaining allegations in paragraph 34 of the Complaint contain legal conclusions to which no

response is required. To the extent a further response is required, the Defendant is also without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 34.

35. The allegations in paragraph 35 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and, on that basis, denies each and every allegation contained therein.

36. The allegations in paragraph 36 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint and, on that basis, denies each and every allegation contained therein.

37. The allegations in paragraph 37 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and, on that basis, denies each and every allegation contained therein.

38. With regard to paragraph 38 of the Complaint, it is admitted that Defendant received certain payments on Exhibit A from the Debtor during the Preference Period. Defendant is still reconciling the payment data for the relevant time period and denies that the payment detail on Exhibit A to the Complaint is entirely accurate. It is further denied that any of the payments alleged on Exhibit A to the Complaint constituted preferential transfers.

39. Defendant denies that as a result of each alleged transfer, Defendant received more than Defendant would have received if: (i) the Debtors' cases were under chapter 7 of the Bankruptcy Code; (ii) the alleged transfers had not been made; and (iii) Defendant received

payments of its debts under the provisions of the Bankruptcy Code. Defendant without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 39 and, on that basis, denies each and every remaining allegation therein.

40. The allegations in paragraph 40 of the Complaint are denied.

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

41. The Defendant incorporates all preceding paragraphs as though fully set forth herein.

42. The Defendant denies the allegations set forth in paragraph 42 of the Complaint and its subparts.

43. The Defendant denies the allegations set forth in paragraph 43 of the Complaint.

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

44. The Defendant incorporates all preceding paragraphs as though fully set forth herein.

45. The Defendant denies the allegations set forth in paragraph 45 of the Complaint.

46. The allegations in paragraph 46 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

47. The Defendant denies the allegations set forth in paragraph 47 of the Complaint.

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

48. The Defendant incorporates all preceding paragraphs as though fully set forth herein.

49. The Defendant denies the allegations set forth in paragraph 49 of the Complaint.

50. With regard to paragraph 50 of the Complaint, the Defendant admits that it has not paid back the amount of the alleged transfers in the Complaint and denies that it has any liability under 11 U.S.C. § 550 or otherwise.

51. The Defendant denies the allegations set forth in paragraph 51 of the Complaint.

52. The Defendant denies the allegations set forth in paragraph 52 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The transfers alleged in the Complaint, to the extent they occurred and were on account of an antecedent debt, were on account of a debt incurred by one or more of the Debtors in the ordinary course of business or financial affairs of one or more of the Debtors and Defendant, and were made in the ordinary course of business or financial affairs of one or more of the Debtors and Defendant or according to ordinary business terms. Such transfers, therefore, are not subject to avoidance. 11 U.S.C. § 547(c)(2).

SECOND AFFIRMATIVE DEFENSE

To the extent that any of the transfers alleged in the Complaint occurred, after each such transfer occurred, Defendant gave new value to or for the benefit of one or more of the Debtors which was not secured by an otherwise unavoidable security interest, and was on account of which new value one or more of the Debtors did not make an otherwise unavoidable transfer to or for the benefit of Defendant. Such transfers, therefore, are not subject to avoidance. 11 U.S.C. § 547(c)(4).

THIRD AFFIRMATIVE DEFENSE

To the extent that any of the transfers alleged in the Complaint occurred, and were intended by one or more of the Debtors and Defendant to be a contemporaneous exchange for new value

given to one or more of the Debtors, and were in fact a substantially contemporaneous exchange, such transfers are not subject to avoidance. 11 U.S.C. § 547(c)(1).

FOURTH AFFIRMATIVE DEFENSE

To the extent any of the transfers alleged in the Complaint created a security interest in property acquired by the debtor -(A) to the extent such security interest secures new value that was—(i) given at or after the signing of a security agreement that contains a description of such property as collateral; (ii) given by or on behalf of the secured party under such agreement; (iii) given to enable the debtor to acquire such property; and (iv) in fact used by the debtor to acquire such property; and (B) that is perfected on or before 30 days after the debtor receives possession of such property; said alleged transfers are not subject to avoidance. 11 U.S.C. § 547(c)(3).

FIFTH AFFIRMATIVE DEFENSE

To the extent any of the transfers alleged in the Complaint create a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or (ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or (B) the date on which new value was first given under the security agreement creating such security interest; said alleged transfers are not subject to avoidance. 11 U.S.C. § 547(c)(5).

SIXTH AFFIRMATIVE DEFENSE

To the extent any of the transfers alleged in the Complaint are the fixing of a statutory lien that is not avoidable under 11 U.S.C. § 545, said alleged transfers are not subject to avoidance. 11 U.S.C. § 547(c)(6).

SEVENTH AFFIRMATIVE DEFENSE

Defendant took any alleged transfer from the Debtors in good faith and is entitled to retain such transfer to the extent of the value given within the provisions of 11 U.S.C. § 548(c).

EIGHTH AFFIRMATIVE DEFENSE

The plaintiff has failed to state a claim upon which relief may be granted. The Complaint did not allege facts sufficient to establish a prima facie case under 11 U.S.C. §§ 502, 548 and 550.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are subject to Defendant's rights of setoff and recoupment.

TENTH AFFIRMATIVE DEFENSE

Plaintiff should be denied recovery on the alleged transfers based on the defenses of accord and satisfaction, estoppel, waiver, laches and/or unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent the transfers alleged in the Complaint occurred and Defendant acted in good faith and merely as a conduit between the Debtors and a third party, and Defendant did not have control over the transfers, Defendant was not an "initial transferee," "mediate transferee," or "immediate transferee" pursuant to Section 550 of the Bankruptcy Code. Therefore, under such circumstances, said transfers are not subject to avoidance.

TWELFTH AFFIRMATIVE DEFENSE

The plaintiff may not recover on its claims to the extent they are barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent the alleged transfers occurred, but were not on account of an antecedent debt, they are not avoidable.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent the alleged transfers occurred, they are not avoidable by the Plaintiff to the extent they are protected by the earmarking doctrine.

FIFTEENTH AFFIRMATIVE DEFENSE

To the extent that a contract existed between Defendant and the Debtor, and was assumed, or assumed and assigned, by the Plaintiffs or the Debtors under 11 U.S.C. § 365, the Plaintiffs are estopped from pursuing the claims asserted in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

The transfers alleged in the Complaint are not recoverable to the extent Defendant was entitled to full payment of all amounts owed pursuant to a payment bond in the event the Debtor did not pay the Defendant the payments alleged in the Complaint. Plaintiff cannot establish that as a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors' cases were under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Defendant held statutory and/or inchoate lien rights securing payment on the work performed and/or materials provided and, therefore, the alleged transfers are not avoidable.

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent the Plaintiff establishes that the alleged transfers are avoidable and the transferee was an immediate or mediate transferee who took for value, in good faith, and without knowledge of the voidability of the transfers avoided, pursuant to 11 U.S.C. § 550(b)(1), the Plaintiff cannot recover from the alleged transferee.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent Defendant received the alleged transfers, the transferee provided value and reasonably equivalent value in exchange.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent Defendant received the alleged transfers, said transfers were not made without reasonably equivalent value while the Debtors were engaged or were about to engage in a business or transaction for which the remaining assets of the Debtors were unreasonably small in relation to their business or transaction.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent Defendant received the alleged transfers, those transfers were not made without reasonably equivalent value while the Debtors intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent Defendant received the alleged transfers, the transferee took for value and in good faith and, therefore, is entitled to a reduction in the amount of liability to the extent that the transferee gave value.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The plaintiff cannot establish all the requisite elements of a preference claim under 11 U.S.C. 547(b).

RESERVATION OF RIGHTS

Defendant reserves the right to assert any claims, setoffs, or additional defenses as may be available, or become available to Defendant during the course of discovery and specifically reserves the right to amend its answer to allege such defenses as they become known.

REQUESTED RELIEF

WHEREFORE, Defendant requests entry of an Order and Judgment:

(i) dismissing the Complaint with prejudice;

(ii) granting the Defendant costs of suit, including all reasonable counsel fees; and

(iii) for such other and further relief as the Court deems just, proper and equitable.

Dated: December 23, 2020

Respectfully submitted,

AUSTRIA LEGAL, LLC

/s/ Matthew P. Austria
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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CERTIFICATE OF SERVICE

I, Matthew P. Austria, hereby certify that on the 23rd day of December, 2020, I caused a true and correct copy of the foregoing ***Answer and Affirmative Defenses of MAXX HDD, LLC to Plaintiff's 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*** to be served on the following parties in the manner indicated as well as on all parties receiving service through the Electronic Case Filing (ECF) system in this adversary proceeding:

VIA FIRST CLASS MAIL AND E-MAIL	**VIA FIRST CLASS MAIL AND E-MAIL**
Joseph L. Steinfeld, Jr., Esq. ASK LLP 2600 Eagan Woods Drive, Suite 400 St. Paul, MN 55121 E-mail: jsteinfeld@askllp.com	Josef W. Mintz, Esq. Blank Rome LLP 1201 Market Street, Suite 800 Wilmington, DE 19801 E-mail: mintz@blankrome.com

[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).

Date: December 23, 2020

AUSTRIA LEGAL, LLC

/s/Matthew P. Austria
Matthew P. Austria (No. 4827)