



2. [16-90309](#)-E-7      MARK/JULIANNA RUNYON  
[16-9010](#)  
MARCHANT V. RUNYON

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
7-1-16 [\[1\]](#)

**Final Ruling:** No appearance at the January 26, 2017 Status Conference is required.  
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Plaintiff's Atty: Wylie P. Cashman  
Defendant's Atty: unknown

Adv. Filed: 7/1/16  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

Notes:  
Continued from 12/1/16 to afford Plaintiff the opportunity to have the default judgment entered.

**Judgment having been entered (Dckt. 25), the Status Conference is removed from the calendar.**

3. [15-90811-E-7](#)      ASSN., GOLD STRIKE  
[15-9061](#)              HEIGHTS HOMEOWNERS  
INDIAN VILLAGE ESTATES, LLC V.  
GOLD STRIKE HEIGHTS

PRE-TRIAL CONFERENCE RE:  
NOTICE OF REMOVAL  
11-18-15 [1]

**Final Ruling:** No appearance at the January 26, 2017 Pre-Trial Conference is required.  
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Plaintiff's Atty: James L. Brunello  
Defendant's Atty: Amanda Griffins; Peter G. Macaluso  
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15  
Answer: none

Nature of Action:  
Determination of removed claim or cause

Notes:

Defendant Chapter 7 Trustee's Motion for Summary Judgment or Alternatively for Partial Summary Judgment filed 7/1/16; Order denying filed 8/17/16 [Dckt 59]

Defendant Community Assessment Recovery Services' Notice of Motion and Motion for Summary Judgment, or Alternatively Partial Summary Judgment filed 11/3/16 [Dckt 68]; set for hearing on 12/20/16 at 1:30 p.m.; matter taken under submission

**Pursuant to prior order of the court, the Pre-Trial Conference has been continued to 2:00 p.m. on February 23, 2017**

4. [15-90811-E-7](#)      **ASSN., GOLD STRIKE**      **CONTINUED STATUS CONFERENCE**  
[16-9002](#)      **HEIGHTS HOMEOWNERS**      **RE: COMPLAINT**  
**FARRAR V. MASSELLA ET AL**      **1-13-16 [1]**

**Final Ruling:** No appearance at the January 26, 2017 Status Conference is required.

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Plaintiff's Atty: Clifford W. Stevens  
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16  
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
2/23/16 [Johnny Massella; Mary Massella]

Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
Answer: None  
Counterclaim Dismissed 5/2/16

Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]  
Answer: None  
Counterclaim Dismissed 5/2/16

Nature of Action:  
Validity, priority or extent of lien or other interest in property

Notes:  
Continued from 6/2/16 to be conducted in conjunction with the pretrial conference in related Adversary Proceeding 15-9061.

**The Status Conference is continued to 2:00 p.m. on February 23, 2017, to be conducted in conjunction with the Pre-Trial Conference in Adversary Proceeding 15-09061.**

5. [13-91315-E-7](#)      APLEGATE JOHNSTON, INC.  
[15-9026](#)  
MCGRANAHAN V. STEPHEN CIARI  
PLUMBING AND HEATING, INC.

**CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR  
(1) AVOIDANCE OF PREFERENTIAL  
TRANSFERS; (2) RECOVERY OF  
AVOIDED TRANSFERS AND OBJECTION  
TO CLAIM  
7-9-15 [1]**

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Matthew P. James

Adv. Filed: 7/9/15  
Answer: 8/21/15

Nature of Action:  
Recovery of money/property - preference

Notes:  
Continued from 1/5/17 to allow the Parties to develop a joint stipulation of facts.

**The Pre-Trial Conference is continued to 2:00 p.m. on January 26, 2017. The Pre-Trial Conference is continued to allow the parties to develop a joint stipulation of facts.**

### **JANUARY 26, 2017 PRETRIAL CONFERENCE**

The Pre-trial Conference was continued from January 5, 2017, to allow the parties to developed a joint statement of stipulated facts. As of the court's January 25, 2017 review of the Docket, no stipulation of facts had been filed.

At the Pre-Trial Conference the Parties reported **XXXXXXXXXXXXXXXXXXXX**.

### **SUMMARY OF COMPLAINT**

The Plaintiff-Trustee alleges that Defendant Stephen Ciari Plumbing and Heating, Inc. received payments totaling \$32,392.74 within ninety days of the commencement of the Debtor's bankruptcy case. It is asserted that this transfer may be avoided pursuant to 11 U.S.C. § 547 and recovered by the estate as provided in 11 U.S.C. § 550. The Plaintiff-Trustee also states as the Third Cause of Action an objection to the claim of Stephen Ciari Plumbing and Hearing, Inc. (Proof of Claim No. 86-1) in the Debtor's bankruptcy case.

## SUMMARY OF ANSWER

In the Answer Defendant admits and denies specific allegations in the Complaint. The Answer also states twenty-one affirmative defenses.

## FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A), (E), and (O). Complaint 3, 4, Dckt. 1. At the Status Conference, Defendant Stephen Ciari Plumbing and Heating, Inc. stated on the record that it concurred with the allegations that the claims asserted under 11 U.S.C. §§ 547 and 550 in the Complaint are core matters. Further, to the extent that any issues in the existing Complaint in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

Plaintiff-Trustee	Defendant
<p>Jurisdiction and Venue:</p> <p>The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint 3, 4, Dckt. 1. At the Status Conference, Defendant Stephen Ciari Plumbing and Heating, Inc. stated on the record that it concurred with the allegations that the claims asserted under 11 U.S.C. §§ 547 and 550 in the Complaint are core matters. Further, to the extent that any issues in the existing Complaint in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.</p>	
<p>Undisputed Facts:</p> <ol style="list-style-type: none"><li>1. Debtor Applegate Johnston made a transfer to Defendant on or after May 29, 2013 in the amount of \$32,392.74 (the “Challenged Payment.”) The transfer was made by check, a copy of which is attached as Exhibit 1.</li><li>2. The Challenged Payment was a transfer of property of the Debtor.</li><li>3. At the time of the transfer,</li></ol>	<p>Undisputed Facts:</p> <ol style="list-style-type: none"><li>1. Not identified, but Defendant believes that a joint statement with Plaintiff-Trustee is possible.</li></ol>

<p>Defendant was a creditor of Debtor.</p> <p>4. The Challenged Payment was made on account of an antecedent debt owed by Debtor to Defendant.</p> <p>5. Debtor commenced a Chapter 7 bankruptcy case on July 16, 2016. The Challenged Payment was made within 90 days of the bankruptcy filing.</p> <p>6. The Challenged Payment was made on account of a debt that was unsecured as to Debtor. Defendant had no security interest in property of the Debtor to secure the payment.</p> <p>7. The distribution to unsecured creditors in Debtor's case will be less than 100% of the amount of the debt.</p> <p>8. Defendant did not provide any new value to Debtor after the Challenged Payment.</p>	
<p>Disputed Facts:</p> <p>1. Defendant may seek to challenge the presumption that Debtor was insolvent in the 90 days prior to the bankruptcy case.</p> <p>2. Defendant contends that the Challenged Payment was made in the ordinary course of business or financial affairs of the Debtor and the transferee, or that it was made according to ordinary business terms.</p>	<p>Disputed Facts:</p> <p>1. That the remaining construction fund held by the City of San Jose on the Environmental Innovation Center Project, including matured subcontractor and supplier claims, was sufficient to satisfy a hypothetical claim by Defendant in the amount of the transfer at issue in this action (\$32,392.74).</p> <p>2. That Defendant maintained a valid claim against the project payment bond and would have had enforceable rights against the project payment bond and/or the remaining construction fund if the</p>

	<p>Trustee had not unreasonably waited nearly two years to file the present preference action related to a single payment.</p> <p>3. Whether the Debtor’s assets exceeded its liabilities as of the date of the transfer at issue.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None identified</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None identified</p>
<p>Relief Sought:</p> <p>1. Trustee seeks avoidance (11 U.S.C. § 547(b) and recovery (11 U.S.C. § 550) of the Challenged Payment.</p>	<p>Relief Sought:</p> <p>1. Defendant seeks a dismissal of the Trustee’s complaint, plus costs, and that Trustee recover nothing under his complaint.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 547(b)</p> <p>2. Bankruptcy Code provides a presumption that the Debtor is insolvent in the 90 days prior to the bankruptcy filing. (11 U.S.C. section 547(f).</p> <p>3. Section 547(b)(5) essentially means that the transfer satisfied what would have been an unsecured debt of the Debtor had the transfer not been made, and that unsecured creditors will receive less than a 100% dividend from the Chapter 7 case. The “greater amount test” was explained in <i>In re Lewis W Shurtleff, Inc.</i>, 778 F.2d 1416,1421 (9th Cir. 1985).</p>	<p>Points of Law:</p> <p>1. Asserts that Debtor was not insolvent, asserting that Schedules and Debtor’s statements were that bankruptcy was filed due to lack of liquidity, not insolvency.</p> <p>2. 11 U.S.C. § 547(c)(2), transfers were in the ordinary course of business.</p> <p>3. 11 U.S.C. § 547(c)(1), transfers were for a contemporaneous exchange by Defendant. Defendant provided a statutory waiver and release of its stop payment notice and payment bond rights in exchange for, and in the amount of, the transfer.</p> <p>It is further asserted that the transfer satisfies the requirements under <i>In re Modtech Holdings, Inc.</i> (Bankr. C.D. Cal. 2013) because the owner had sufficient amounts remaining in its construction</p>

	<p>fund (including deductions for matured claims against the construction fund) to satisfy a hypothetical claim in the amount of the transfer.</p> <p>4. Laches. The trustee should be precluded from recovering any amounts from Defendant because the Trustee waited nearly two years after the bankruptcy petition (and well over two years after the transfer at issue) to bring this preference action.</p> <p>It is asserted that the delay has prejudiced Defendant. Defendant's right to payment for its work on the project at issue in this action was secured by a payment bond issued by Liberty Mutual Insurance Company, as required by California Civil Code §9550, et seq.</p> <p>Pursuant to California law and the terms of the bond, the bond is payable in the event that the contractor (Debtor) fails to pay the subcontractor (Defendant). However, California Civil Code §9558 requires that any claim against a payment bond be filed no later than 6 months after completion (or cessation of labor). Cessation of labor occurred in or about July 2013, at the time Debtor filed bankruptcy. By waiting two years from the date of the bankruptcy filing to file the present action, the trustee foreclosed Defendant's right to recover the allegedly preferential payment from Liberty Mutual.</p> <p>5. Diversion of Construction Funds Intended for Defendant. It is asserted that the single payment at issue was from a construction fund paid by the City of San Jose for the San Jose Innovation Center Project, and avoidance of said payment would be a violation of California</p>
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	<p>Business &amp; Professions Code §§7108 and 7108.5; Public Contract Code §§10262.5 and 10263; Civil Code §9100; the payment bond and other similar statutes and documents which require that released funds must be used to pay for the construction of the project for which the funds were paid and not diverted for some other use.</p>
<p>Abandoned Issues:</p> <p>1. None Identified</p>	<p>Abandoned Issues:</p> <p>1. Waiver</p> <p>2. Offset</p>
<p>Plaintiff's Witnesses:</p> <p>1. Michael D. McGranahan</p> <p>2. Stephen Ciari</p>	<p>Witnesses:</p> <p>1. James Applegate</p> <p>2. Richard Applegate</p> <p>3. Christine Bartholdt</p> <p>4. John Bergman</p> <p>5. Rebecca L. Bosque</p> <p>6. Steve Ciari</p> <p>7. Daniel M. Connolly</p> <p>8. Anthony DiJulio</p> <p>9. Alena Hernandez</p> <p>10. Mike Herzog</p> <p>11. Timothy Johnston</p> <p>12. Diana Lehne</p> <p>13. David Printy</p> <p>14. Glenn Schwartzbach</p> <p>15. David Sykes</p> <p>16. Rod Tompkins</p> <p>17. Michael Haughy</p> <p>18. Celia Romero</p> <p>19. Bobbie Amos</p> <p>20. Yvonne Vigil</p> <p>21. Skip Mancini</p> <p>22. Marci A. Knapp</p> <p>23. Representative of Flat 6, Westcroft Court, Kingsbury Road, Houston, TX NW9 9PG</p>

	24.	Richard Barge
	25.	Daniel Cozart
	26.	Gleb Finkelman
	27.	Danielle Walker
	28.	Joseph A. Romeo
	29.	Danny Houston
	30.	Debera Wratten
	31.	Richard S. Long
	32.	Luz Smith
	33.	Renae Montemayor
	34.	John Sims
	35.	Diane Brand
	36.	Lloyd Attree
	37.	Terrence Rose
	38.	Representative of Fresh Coat Painters
	39.	Representative of A1 Quality Blinds
	40.	August A. Hioco
	41.	Ryan Eckert
	42.	Dan Watson
	43.	Jeff Qualle
	44.	Maureen Wood
	45.	Jordi Grant
	46.	Randall McClure
	47.	Michael Hernandez
	48.	Jill Foster
	49.	T Montez
	50.	Andy Tran
	51.	B-K Mill & Fixtures, Inc.
	52.	Sunstate Equipment
	53.	Mary DeSilva
	54.	Robert Yagmourian
	55.	Clark Pest Control
	56.	Shelco Industries
	57.	Collier Warehouse, Inc.
	58.	Wendy Biezkow, CFO
	59.	Karen Davani
	60.	Donald Phillips
	61.	Jay Fischer
	62.	Mitch Hajiaghai
	63.	Marlee Monty-Ingram
	64.	Ozzie Amparan
	65.	Hoc N. Hua
	66.	Karen Titus
	67.	Pacific Coast Trane Service Company, Inc.

	68. Jeff O’Connel 69. Jennifer Reynolds 70. Priscila Kunkel 71. Roger Dills 72. Debbie Nute 73. Representative of RH Concrete 74. Kevin McEntee 75. Kelly Baird 76. Titan Surveying & Mapping, Inc. dba RB Welty & Associates, Inc., Manager. 77. Representative of River City Plastics 78. Representative of Sierra Trench Protection. 79. Representative of Ortiz Construction 80. Representative of CT Welding 81. Representative of New Engineering 82. Representative of James Oki Consulting Engineering 83. Representative of Martina Landscape 84. Representative of Power Plus 85. Representative of HCS Engineering, Inc. 86. Representative of Rutherford and Cheyenne
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Exhibits for Plaintiff-Trustee:

1. Check dated May 17 2013 in the amount of \$32 392.74.
2. Applegate Johnston Construction Contract dated April 18 2012,
3. Claims Register in *In re Applegate Johnston*, Case No. 13-91315-E-7 and related claims.
4. Form 2 - Record of Receipts and Disbursements

Exhibit for Defendant:

Exhibit 1: Debtor’s Schedules and Summaries filed on July 30, 2013, Dckt Nos. 36–45, Case No. 13-91315-E-7.

Exhibit 2: Subcontract between Debtor and Defendant.

Exhibit 3: Prime Contract (including specifications) between Debtor and City of San Jose.

Exhibit 4: Payment Bond issued by Liberty Mutual Insurance Company.

Exhibit 5: Billings, including backup, from Defendant to Debtor.

Exhibit 6: Statutory Lien Waivers issued by Defendant.

Exhibit 7: Payments from Debtor to Defendant on the Innovation Center project.

Exhibit 8: Payment from Debtor to Defendant for \$32,392.74, dated May 17, 2013.

Exhibit 9: Debtor's billings to the City of San Jose.

Exhibit 10: Payments from the City of San Jose to Debtor.

Exhibit 11: Correspondence between Defendant and Debtor regarding Innovation Center Project.

Exhibit 12: Takeover Agreement between the City of San Jose and Liberty Mutual Insurance Company.

Exhibit 13: Payment bond and stop notices on the Innovation Center Project.

Exhibit 14: Conditional lien waivers issued by Debtor to City of San Jose.

Exhibit 15: Debtor letter to Liberty Mutual dated February 10, 2012.

Exhibit 16: Kilik California Notice of Claim on Bond dated January 23, 2012 [Dismissed 4/9/14].

Exhibit 17: RAM Rick Albert Machinery, Inc. Notice to Principal and Surety on Payment Bond on Public Work dated March 23, 2012.

Exhibit 18: RAM Rick Albert Machinery, Inc. Release of Stop Notice dated April 9, 2012.

Exhibit 19: Griffin Soil Stop Notice dated March 22, 2012.

Exhibit 20: Griffin Soil Release of Stop Notice dated March 26, 2012.

Exhibit 21: Double B Demolition, Inc. Stop Payment Notice dated August 22, 2012.

Exhibit 22: Valley Iron, Inc. Stop Payment Notice dated November 9, 2012.

Exhibit 23: Skyline Steel Erectors' Stop Payment Notice dated November 19, 2012 in the amount of \$167,584.74.

Exhibit 24: Email from Stephanie Miller to Diana Lehne dated February 7, 2013, confirming active

claims.

Exhibit 25: Brown-Strauss Steel Payment Bond Claim dated November 21, 2012 in the amount of \$9,230.64.

Exhibit 26: Brown-Strauss Steel Payment Bond Claim dated July 17, 2013 in the amount of \$7,368.48.

Exhibit 27: Brown-Strauss Steel Stop Payment Notice dated July 17, 2013 in the amount of \$7,368.48.

Exhibit 28: C&T Welding, Inc.'s stop payment notice dated November 20, 2012, in the amount of \$253,095.20.

Exhibit 29: Ratification Agreement between C&T Welding, Inc. and Liberty Mutual dated October 9, 2013.

Exhibit 30: Amendment to Ratification Agreement between C&T Welding, Inc. and Liberty Mutual dated October 15, 2013.

Exhibit 31: IES notice of payment bond claim dated January 8, 2013 in the amount of \$74,236.87.

Exhibit 32: Granite Rock letter dated January 28, 2013 to Stephani Miller at Liberty Mutual enclosing proof of claim for \$4,281.35.

Exhibit 33: Email from Diana Lehne to Stephani Miller dated February 4, 2013, noting payment of Granite Rock claim as of \$4,281.35 as of February 1, 2013.

Exhibit 34: Granite Rock's unconditional waiver and release on final payment dated March 8, 2013.

Exhibit 35: Blackwood Associates, Inc. Stop Notice dated November 2, 2012 in the amount of \$42,671.70.

Exhibit 36: Blackwood Associates, Inc. release of stop notice dated February 14, 2013, in the amount of \$42,671.70.

Exhibit 37: Blackwood Associates, Inc. unconditional waiver and release on final payment dated February 14, 2013, waiving all claims except as to interest in the amount of \$2,836.92.

Exhibit 38: Blackwood Associates, Inc. Stop Notice in the amount of \$2,836.92 dated February 14, 2013.

Exhibit 39: Blackwood Associates, Inc. Release of Stop Notice in the amount of \$2,836.92, dated October 4, 2013.

Exhibit 40: Ahern Rentals, Inc.'s claim against payment bond in the amount of \$32,535.32, dated February 6, 2013.

Exhibit 41: Ahern Rentals, Inc.'s claim against payment bond in the amount of \$2,959.95, dated February 6, 2013.

Exhibit 42: Applegate joint check to C&T Welding, Inc. and Ahern Rentals in the amount of \$2,959.95, dated March 8, 2013.

Exhibit 43: Ahern Rentals, Inc. Unconditional wavier and release on final dated November 6, 2013.

Exhibit 44: Ahern Rentals, Inc. Release of lien claim, bond claim and stop notice in the amount of \$12,857.62, dated April 26, 2013.

Exhibit 45: Industrial Acoustics' Stop Notice in the amount of \$83,124.71, dated February 12, 2013.

Exhibit 46: Liberty Mutual check for \$24,187.21 to Industrial Acoustics dated August 15, 2013.

Exhibit 47: Email to Stephani Miller from Diana Lehne dated June 4, 2013, confirming \$50,000 payment to Industrial Acoustics.

Exhibit 48: Cresco Equipment Rentals' stop payment notice in the amount of \$12,197.84 dated February 25, 2013.

Exhibit 49: Cresco Equipment Rentals' Unconditional Waiver and Release on Final Payment dated April 17, 2013.

Exhibit 50: United Rentals' payment bond claim notice in the amount of \$44,988.31 dated April 17, 2013.

Exhibit 51: United Rentals' release of stop payment notice in its entirety, dated May 13, 2013.

Exhibit 52: United Rentals' Unconditional Waiver and Release on Final Payment dated May 14, 2013.

Exhibit 53: Letter from Last & Faoro dated March 26, 2013 referencing claim against payment bond by LGM Construction in the amount of \$130,882.63.

Exhibit 54: Email from Diana Lehne to Stephani Miller dated April 9, 2013, confirming only remaining amount due LGM Construction is retention.

Exhibit 55: Letter from Michael Zarate to Liberty Mutual dated March 25, 2013, noticing payment bond claim in the amount of \$495,645.87.

Exhibit 56: Letter from Karen Alarcon of Bay City Mechanical, Inc. to Liberty Mutual dated July 11, 2013 noting \$390,898.54 unpaid.

Exhibit 57: Bay City Mechanical, Inc.'s release of stop payment notice for \$430,815.60 dated April 16, 2013, signed by Bobbie Amos, CFO.

Exhibit 58: Industrial Acoustics' stop notice dated February 12, 2013 in the amount of \$83,124.71.

Exhibit 59: Check from Liberty Mutual to Industrial Acoustics dated August 15, 2013, in the amount of \$24,187.21.

Exhibit 60: Accent Clean & Sweep, Inc.'s notice of claim to Liberty Mutual dated July 2, 2013 in the amount of \$35,246.98, signed by Mike Haughey.

Exhibit 61: Accent Clean and Sweep's conditional waiver and release on final payment in the amount of \$35,246.98, dated September 18, 2013, signed by Mike Haughey.

Exhibit 62: Groundlevel Underground Grading & Excavating's claim information to Liberty Mutual dated July 9, 2013, with claim amount of \$7,325.00.

Exhibit 63: Groundlevel Construction's proof of claim form for the payment bond claim, dated August 5, 2013, in the amount of \$7,325.00.

Exhibit 64: A.J.R. Door Service, Inc.'s notice of claim (without amount) signed by Celia Romero, dated July 12, 2013.

Exhibit 65: PCS Professional Construction Services' notice of payment bond claim to Liberty Mutual dated July 11, 2013, in the amount of \$18,880. Signed by John Sims.

Exhibit 66: HFS, Inc. dba Houston Fire Services' payment bond claim dated July 10, 2013, in the amount of \$33,659.08, signed by Danny Houston.

Exhibit 67: Ratification agreement between HFS, Inc. and Liberty Mutual dated October 22, 2013, signed by Danny Houston.

Exhibit 68: HD Supply's notice of non payment and lienor's demand for copy of payment bond, dated July 11, 2013, signed by Diane Brand, in the amount of \$3,514.85.

Exhibit 69: HD Supply's notice to Liberty Mutual dated November 14, 2013 that HD was paid in full.

Exhibit 70: Corix Water Products, Inc.'s Stop Notice in the amount of \$780.97, dated July 12, 2013.

Exhibit 71: Chester C. Lehmann Company dba Electrical Distributors Co.'s stop payment notice claim in the amount of \$12,078.82, dated September 6, 2013.

Exhibit 72: Graybar Electric Co., Inc's payment bond claim, dated July 15, 2013, in the amount of \$78,565.94.

Exhibit 73: TA Rose Transportation's notice to principal and surety on payment bond, dated July 29, 2013, in the amount of \$17,590.00.

Exhibit 74: Cozart Brothers, Inc.'s notice and claim upon surety and bond principal, dated July 26, 2013, in the amount of \$196,735.

Exhibit 75: Liberty Mutual letter from Christine Bartholdt of Liberty Mutual confirming payment bond claim dated July 30, 2013 on behalf of Fresh Coat Painters.

Exhibit 76: Liberty Mutual letter from Christine Bartholdt of Liberty Mutual dated August 2, 2013, confirming payment bond claim dated July 30, 2013 on behalf of A1 Quality Blinds.

Exhibit 77: Letter from Lombardo Diamond Core Drilling Company, Inc. dated July 24, 2013, alleging a claim of \$2,405.20.

Exhibit 78: Notice of payment bond claim from Ciari to Liberty Mutual dated July 30, 2016, in the amount of \$133,205.08.

Exhibit 79: Notice of claim by Krazan & Associates to Liberty dated July 30, 2013, in the amount of \$49,792.19.

Exhibit 80: Ratification Agreement between B T Mancini Co. Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$10,115.10.

Exhibit 81: Ratification Agreement between Service Metal Products, Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$7,529.40.

Exhibit 82: Ratification Agreement between Atlantis Interiors, Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$6,746.18.

Exhibit 83: Ratification Agreement between Better Built Truss and Liberty Mutual dated July 23, 2013, amount currently due is \$45.

Exhibit 84: Western Electrical Contractors Association, Inc.'s payment bond claim dated August 1, 2013, in the amount of \$5,111.40.

Exhibit 85: Stop payment notice from Western Electrical Contractors Association, Inc. in the amount of \$5,111.40, dated September 9, 2013.

Exhibit 86: Ratification Agreement between 3 C JR Painting, Inc., dba Freshcoat Painters and Liberty Mutual dated August 7, 2013.

Exhibit 87: Ratification Agreement between Corporate Sign Systems, Inc. and Liberty Mutual dated July 23, 2013.

Exhibit 88: Ratification Agreement between ACE Automatic Garage Doors and Liberty Mutual dated July 23, 2013.

Exhibit 89: Letter of Transmittal from San Benito Drywall, Inc. to Liberty Mutual dated August 6, 2013, in the amount of \$46,872.84, with backup.

Exhibit 90: Ratification Agreement between Montez Glass and Liberty Mutual dated August 7, 2013.

Exhibit 91: Ratification Agreement between Control Technologies and Liberty Mutual dated August 8, 2013.

Exhibit 92: Ratification Agreement between B-K Mill & Fixtures, Inc. and Liberty Mutual dated August 7, 2013.

Exhibit 93: Email from Luis Aragon at Liberty confirming new claim by Sunstate Equipment, dated August 15, 2013.

Exhibit 94: Proof of claim form for Sunstate dated August 26, 2013.

Exhibit 95: Ratification Agreement between US Overhead Door Co., Inc. and Liberty Mutual dated August 9, 2013.

Exhibit 96: Ratification Agreement between YAG Manufacturing and Liberty Mutual dated July 23, 2016.

Exhibit 97: Email chain dated August 21, 2013 between Rodney Tomkins and Jeff Robbins confirming no money due Clark Pest Control.

Exhibit 98: Email chain dated August 21, 2013 between Rodney Tomkins, Rudy Mueller and Jeff Robbins confirming no money due Shelco Industries.

Exhibit 99: Ratification Agreement dated August 16, 2013 between Collier Warehouse, Inc. and Liberty Mutual.

Exhibit 100: Ratification Agreement dated August 21, 2013 between Creative Masonry, Inc. and Liberty Mutual. Total amount currently due is \$1,070.92.

Exhibit 101: Letter from Karen Davani, Commercial Collector, dated September 11, 2013, on behalf of Sunbelt Rentals.

Exhibit 102: Cemex Notice of Intent to File a Stop Notice or Bond Claim, dated August 16, 2013.

Exhibit 103: Ratification Agreement dated August 14, 2013 between Pacific Design Associates, Inc. and Liberty Mutual. Total amount currently due is \$5,609.22.

Exhibit 104: Ratification Agreement dated July 8, 2013 between Fischer Tile & Marble, Inc. and Liberty Mutual.

Exhibit 105: Email from Mitch Hajiaghai of Sierra Environmental to Christine Bartholdt dated August 27, 2013, asserting a claim against the payment bond.

Exhibit 106: Letter from Christine Bartholdt at Liberty to Richard Applegate noting a claim presented against the payment bond on behalf of Sierra Environmental on August 27, 2013 in the amount of \$6,992.00.

Exhibit 107: Letter from Christine Bartholdt at Liberty to Richard Applegate dated September 9, 2013, referencing a payment bond claim by Ace Portable Services dated September 2, 2013, in the amount of \$2,290.

Exhibit 108: ACE Portable Services payment bond claim dated September 2, 2013 in the amount of \$2,290.00.

Exhibit 109: Ratification Agreement dated July 23, 2013 between Amparan Flooring, Inc. and Liberty Mutual.

Exhibit 110: Ratification Agreement dated August 7, 2013 between H Square Mechanical, Inc. and Liberty Mutual.

Exhibit 111: Ratification Agreement dated August 8, 2013 between R Titus Waterproofing and Liberty Mutual.

Exhibit 112: Ratification Agreement dated August 21, 2013 between Pacific Coast Trane Service Company, Inc. and Liberty Mutual.

Exhibit 113: Ratification Agreement dated August 21, 2013 between Glendon Company and Liberty Mutual.

Exhibit 114: Ratification Agreement dated August 20, 2013 between SignaWest Systems, Inc. and Liberty Mutual.

Exhibit 115: Ratification Agreement dated August 27, 2013 between Green Bay Builders and Liberty Mutual.

Exhibit 116: Construction Collection Specialists letter dated September 6, 2013 on behalf of Sunstate Equipment Co., LLC.

Exhibit 117: Email from Ronnie Collins dated September 10, 2016 from Roxanne Collins to Christine Bartholdt regarding claims against payment bond on behalf of Dr. Deutch in the amount of \$1,400.

Exhibit 118: Ratification Agreement dated September 19, 2013 between RH Concrete and Liberty

Mutual.

Exhibit 119: Ratification Agreement dated September 12, 2013 between SecureCom, Inc. and Liberty Mutual.

Exhibit 120: Ratification Agreement dated October 7, 2013 between WSP Roofing and Liberty Mutual.

Exhibit 121: Ratification Agreement dated August 8, 2013 between Titan Surveying & Mapping, Inc. dba RB Welty & Associates, Inc. and Liberty Mutual.

Exhibit 122: Ratification Agreement between River City Plastics and Liberty Mutual dated October 10, 2013

Exhibit 123: Invoice dated October 14, 2013 from River City Plastics \$2,574.

Exhibit 124: Conditional waiver and release on progress payment from Hertz Equipment Rental Corp. dated November 13, 2013 in the amount of \$6,410.80.

Exhibit 125: Conditional waiver and release on progress payment from Sierra Trench Protection dated November 18, 2013 in the amount of \$1,760.

Exhibit 126: Email from Christine Bartholdt to Amanda Marutsky regarding Ortiz Construction claim of \$10,848.92 dated October 24, 2013

Exhibit 127: Ratification Agreement between Ortiz Construction and Liberty Mutual dated October 14, 2013.

Exhibit 128: Conditional waiver and release on progress payment from CT Welding and New Engineering dated October 21, 2013 in the amount of \$7,101.25.

Exhibit 129: Conditional waiver and release on progress payment from CT Welding and James Oki Consulting Engineering dated illegible in the amount of \$6000.

Exhibit 130: Conditional waiver and release on progress payment from CT Welding and Star Seismic dated October 21, 2013 in the amount of \$18,599.00.

Exhibit 131: Ratification Agreement between Martina Landscape and Liberty Mutual dated October 22, 2013.

Exhibit 132: Conditional waiver and release on progress payment from Power Plus dated December 10, 2013 in the amount of \$682.50.

Exhibit 133: Email from Ron Ashlock to Christine Bartholdt dated December 30, 2013 regarding settlement of HCS Engineering, Inc's claim \$1,747.00.

Exhibit 134: Email from Ron Ashlock to Christine Bartholdt dated December 30, 2013 asking for payment of \$840.00 for Rutherford and Cheyenne.

Exhibit 135: Stop notice summary from Liberty Mutual dated June 27, 2014.

Exhibit 136: Release of stop notice by Accent Clean and Sweep Supply, Inc. dated October 14, 2013.

Exhibit 137: Release of stop notice by AJR Door Service dated October 16, 2013.

Exhibit 138: Release of stop payment notice by Bay City Mechanical, Inc. dated September 13, 2013.

Exhibit 139: Unconditional waiver and release on progress payment by Bay City Mechanical, Inc. dated September 19, 2013.

Exhibit 140: Release of stop notice by Brown-Strauss Steel dated November 18, 2013.

Exhibit 141: Release of stop notice by B.T. Mancini Co., Inc. dated December 9, 2013.

Exhibit 142: Release of stop notice by Cemex dated October 7, 2013.

Exhibit 143: Release of stop notice by Stephen Ciari Plumbing & Heating, Inc. dated November 12, 2013.

Exhibit 144: Release of stop notice by Corix Water Products (US), Inc. dated October 19, 2013.

Exhibit 145: Release of stop notice by Cozart Brothers dated October 4, 2013.

Exhibit 146: Release of stop notice by Electrical Distributers dated December 2, 2013.

Exhibit 147: Release of stop notice by Graybar Electric Co., Inc. dated October 3, 2013.

Exhibit 148: Release of stop notice by Ground Level Construction dated November 27, 2013.

Exhibit 149: Release of stop notice by Houston Fire Systems dated November 9, 2013.

Exhibit 150: Release of stop notice by Industrial Acoustics Co. dated November 27, 2013.

Exhibit 151: Release of stop notice by Lombardo Diamond Core Drilling dated December 2, 2013.

Exhibit 152: Release of stop notice by Skyline Steel Erectors dated November 08, 2013.

Exhibit 153: Release of stop notice by Valley Iron, Inc. dated November 27, 2013.

Exhibit 154: Letter dated July 3, 2013 from David Sykes at the City of San Jose to Liberty Mutual demanding performance under performance bond.

Exhibit 155: Applegate A/R History by Job dated August 18, 2015.

Exhibit 156: Applegate A/R History by Job dated October 14, 2015.

Exhibit 157: City of San Jose Application and Certificate for Payment.

Exhibit 158: City of San Jose Stop Notice Logs

Exhibit 159: City of San Jose spreadsheet reflecting amounts withheld from and paid to Applegate.

Exhibit 160: Stipulation Re Non-Party Discovery, Protective Order for Document Production and PMK Deposition.

Exhibit 161: Supplemental Declaration of Christine Bartholdt in support of Liberty Mutual Insurance Company's Motion for Partial Summary Judgment.

Exhibit 162: Liberty Mutual Insurance Company Loss Run Report dated May 2, 2016.

Exhibit 163: Liberty Mutual General Agreement of Indemnity dated November 9, 2010. Letter dated July 3, 2013 from David Sykes of the City of San Jose to Jim Applegate regarding abandonment of Environmental Innovation Center Project.

Exhibit 164: Letter dated July 3, 2013 from David Sykes of the City of San Jose to Luis Aragon regarding demand to takeover project.

Exhibit 165: Email dated February 7, 2013 from Stephanie Miller to Diana Lehne.

Exhibit 166: Email dated December 7, 2012 from Alena Hernandez, Ciari, to Michael Solgaard and others at Applegate re August Funds.

Exhibit 167: Email dated March 27, 2013 from Alena Hernandez, Ciari, to Diane Lehne and others at Applegate re corrected invoice with attached application for payment and Conditional waiver and release.

Exhibit 168: Email dated October 25, 2012 from Alena Hernandez, Ciari, to Mike Herzog.

Exhibit 169: Email dated March 26, 2013 from Alena Hernandez, Ciari, to Diane Lehne and others at Applegate.

Exhibit 170: Email dated January 11, 2013 from Diane Lehne to Alena Hernandez.

Exhibit 171: Email dated April 19, 2013 from Diane Lehne to Alena Hernandez.

Exhibit 172: Email dated October 31, 2012 from Alena Hernandez, Ciari, to Diane Lehne and others at Applegate.

Exhibit 173: Email dated May 21, 2013 from Diane Lehne to Alena Hernandez.

Exhibit 174: Email dated January 11, 2013 from Diane Lehne to Alena Hernandez.

Exhibit 175: Email dated May 25, 2012 from Alena Hernandez, Ciari, to Mike Herzog.

Exhibit 176: Email dated January 11, 2013 from Alena Hernandez, Ciari, to John Bergman and others at Applegate.

Exhibit 177: Email dated June 25, 2012 from Alena Hernandez, Ciari, to Diane Lehne and Mike Herzog.

Exhibit 178: Email dated February 25, 2013 from Alena Hernandez, Ciari, to Diane Lehne and Mike Herzog.

Exhibit 179: Email dated October 25, 2012 from Alena Hernandez, Ciari, to Anthony De Julio.

Exhibit 180: Email dated June 17, 2013 from Alena Hernandez, Ciari, to Diane Lehne and Mike Herzog.

Exhibit 181: Email dated May 21, 2013 from Alena Hernandez, Ciari, to Diane Lehne and Mike Herzog.

Exhibit 182: Email dated March 26, 2013 from Alena Hernandez, Ciari, to Diane Lehne.

Exhibit 183: Email dated December 14, 2012 from Alena Hernandez, Ciari, to Diane Lehne and Mike Herzog.

<p>Discovery Documents:</p> <ol style="list-style-type: none"><li>1. Defendant's Response to Requests for Admissions, Set No.1.</li><li>2. Defendant's Response to Plaintiffs Interrogatories, Set No.1.</li><li>3. Deposition Transcript of Liberty Mutual.</li></ol>	<p>Discovery Documents:</p> <ol style="list-style-type: none"><li>1. Defendant's Special Interrogatories to Trustee served on February 12, 2016 and the Trustee's Responses dated March 25, 2016, as reflected below.</li></ol>
<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"><li>1. None identified</li></ol>	<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"><li>1. None identified</li></ol>

<p>Stipulations:</p> <p>1. None identified</p>	<p>Stipulations:</p> <p>1. Defendant believes that stipulation as to certain facts is possible. The parties have agreed to meet and confer on this point.</p>
<p>Amendments:</p> <p>1. None identified</p>	<p>Amendments:</p> <p>1. None identified</p>
<p>Dismissals:</p> <p>1. None identified</p>	<p>Dismissals:</p> <p>1. None identified</p>
<p>Agreed Statement of Facts:</p> <p>1. None identified</p>	<p>Agreed Statement of Facts:</p> <p>1. Parties have agreed to meet and confer to determine what may be included in an agreed statement of facts.</p>
<p>Attorneys' Fees Basis:</p> <p>1. Attorneys' fees not requested</p>	<p>Attorneys' Fees Basis:</p> <p>1. Attorneys' fees not requested</p>
<p>Additional Items</p> <p>1. None identified</p>	<p>Additional Items</p> <p>1. None identified</p>
<p>Trial Time Estimation: One-Half Day</p>	<p>Trial Time Estimation: Five to Seven Days</p>

6. [13-91315-E-7](#)      **APPLEGATE JOHNSTON, INC.**      **CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR (1)  
AVOIDANCE OF PREFERENTIAL  
TRANSFERS; AND (2) RECOVERY OF  
AVOIDED TRANSFERS**  
[15-9027](#)  
**MCGRANAHAN V. AJR DOOR  
SERVICE, INC.**      **7-9-15 [1]**

**Final Ruling:** No appearance at the January 26, 2017 Pre-Trial Conference is required.  
-----

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Douglas W. Allan

Adv. Filed: 7/9/15  
Answer: 8/3/15

Nature of Action:  
Recovery of money/property - preference

**The Pre-Trial Conference is continued to 12:00 p.m. on May 4, 2017, to afford the parties time to complete their settlement and have this Adversary Proceeding dismissed.**

Notes:  
Continued from 9/29/16

#### **JANUARY 26, 2017 PRETRIAL CONFERENCE**

No updated Status Reports have been filed. The court infers that the settlement is being performed and the Conference should be further continued. The court continues the Conference to avoid the parties incurring otherwise unnecessary costs and expenses.

#### **SEPTEMBER 29, 2016 PRETRIAL CONFERENCE**

On May 17, 2016, the court entered its order approving the compromise between the Plaintiff-Trustee and Defendant AJR Door Service, Inc. 13-91315, Dckt. 640. Under the terms of the settlement, AJR Door Service, Inc. is to make installment payments to the Plaintiff-Trustee through March 2017.

7. [13-91315-E-7](#)      APPLGATE JOHNSTON, INC.  
[15-9029](#)  
MCGRANAHAN V. STRUCK

CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR  
(1) AVOIDANCE OF PREFERENTIAL  
TRANSFERS; AND (2) RECOVERY OF  
AVOIDED TRANSFERS  
7-9-15 [1]

**ADV. PROCEEDING DISMISSED:**  
**01/05/2017**

**Final Ruling:** No appearance at the January 26, 2017 Pre-Trial Conference is required.  
-----

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Matthew J. Olson

Adv. Filed: 7/9/15  
Answer: 8/26/15

Nature of Action:  
Recovery of money/property - preference

Notes:  
Stipulation for Dismissal of Adversary Proceeding with Prejudice filed 1/4/17 [Dckt 42]; Order approving stipulation filed 1/5/17 [Dckt 43]

**The Adversary Proceeding having been dismissed, the Pre-Trial Conference is removed from the calendar.**

8. [13-91315-E-7](#)      **APPLEGATE JOHNSTON, INC.**  
[15-9030](#)  
**MCGRANAHAN V. ACE AUTOMATIC  
GARAGE DOORS, INC.**

**CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR  
(1) AVOIDANCE OF PREFERENTIAL  
TRANSFERS; AND (2) RECOVERY OF  
AVOIDED TRANSFERS  
7-9-15 [1]**

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Helga A. White

Adv. Filed: 7/9/15  
Answer: 8/6/15

Nature of Action:  
Recovery of money/property - preference

**The Pre-Trial Conference is ~~XXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:  
Continued from 12/15/16 to afford the Parties the opportunity to consummate the settlement and dismiss this Adversary Proceeding.

**JANUARY 26, 2017 PRE-TRIAL CONFERENCE**

As of the court's January 25, 2017 review of the Docket, the dismissal of this Adversary Proceeding had not been filed.

**DECEMBER 15, 2016 PRE-TRIAL CONFERENCE**

The court granted the Plaintiff-Trustee's Motion to Approve Settlement with Defendant that resolves all issues in this Adversary Proceeding.

9. [13-91315-E-7](#)      **APPLEGATE JOHNSTON, INC.**  
[15-9032](#)  
**MCGRANAHAN V. GRAYBAR ELECTRIC  
COMPANY, INC.**

**CONTINUED PRE-TRIAL  
CONFERENCE RE: AMENDED  
COMPLAINT FOR (1) AVOIDANCE  
OF PREFERENTIAL TRANSFERS; (2)  
RECOVERY OF AVOIDED TRANSFERS;  
AND (3) OBJECTION TO CLAIM  
7-13-15 [7]**

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Matthew P. James; R. Scott Moore

Adv. Filed: 7/9/15  
Answer: none

Amd Cmplt Filed: 7/13/15  
Answer: 9/2/15

Nature of Action:  
Recovery of money/property - preference

Notes:  
Pre-Trial Conference Statement [Defendant Graybar Electric Company, Inc.] filed 1/17/17 [Dckt 42]  
Chapter 7 Trustee, Michael D. McGranahan's Pretrial Conference Statement filed 1/17/17 [Dckt 43]

### **SUMMARY OF COMPLAINT**

The Plaintiff-Trustee alleges that Defendant Graybar Electric Company, Inc. received payments totaling \$246,762.09 within ninety days of the commencement of the Debtor's bankruptcy case. It is asserted that this transfer may be avoided pursuant to 11 U.S.C. 547 and recovered by the estate as provided in 11 U.S.C. 550. The Plaintiff Trustee also includes a Third Cause of Action objection to Proof of Claim No. 75-1 filed by Defendant.

### **SUMMARY OF ANSWER**

An Answer to the Amended Complaint was filed on September 2, 2015. In the Answer, the Defendant admits the allegations of federal jurisdiction. Answer 3, Dckt. 11.

With respect to this Adversary Proceeding for the avoidance of a preference pursuant to 11 U.S.C. 547, Defendants do not admit that this is a core proceeding, and also do not consent to the bankruptcy judge entering order or final judgment.

## FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint 3, 4, Dckt. 1. At the hearing, Defendant Graybar Electric Company, Inc. stated on the record that it concurred with the allegations that the claims asserted under 11 U.S.C. 547 and 550 in the Complaint are core matters. Further, to the extent that any issues in the existing Complaint in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2017**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2017**.
- F. The Trial shall be conducted at ----**x.m. on** -----, **2017**.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

### Plaintiff

### Defendant

Jurisdiction and Venue:

The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint 3, 4, Dckt. 1. At the hearing, Defendant Graybar Electric Company, Inc. stated on the record that it concurred with the allegations that the claims asserted under 11 U.S.C. 547 and 550 in the Complaint are core matters. Further, to the extent that any issues in the existing Complaint in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

**Plaintiff's Undisputed Facts:**

a. Debtor Applegate Johnston made the following transfers to Defendant on or after the dates corresponding to the transfer below (the "Challenged Payments.")

Transfer No.	Check No.	Date	Amount	Exhibit
1.	76486	May 24,2013	\$52,180	201
	Joint Checks			
2.	685-0001	April 23, 2013	\$41,423	203
3.	719-0001	April 26, 2013	\$ 1,547	204
4.	986-0001	May 24, 2013	\$ 5,053	205
5.	084-0001	June 10, 2013	\$43,019	206
6.	206-0001	June 24, 2013	\$ 2,690	207
	Credit Card Payments			
7.	666-0001	April 18, 2013	\$18,028	XXX
8.	829-0001	May 1, 2013	<u>\$82,822</u>	401
	Total		\$246,762	

b. Transfer 1 was made by check payable from Debtor. Transfers 2–6 were made by joint check payable jointly to Debtor and Defendant. Transfers 7 and 8 were made by credit card.

c. Each of the Transfers is evidenced by the Exhibit number corresponding to the transfer.

d. The Challenged Payments were transfers of property of the Debtor.

e. At the time of the transfers, Defendant was a creditor of Debtor.

f. The Challenged Payments were made on account of antecedent debts owed by Debtor to Defendant.

g. Debtor commenced a Chapter 7 bankruptcy case on July 16, 2016. The Challenged Payments were

made within 90 days of the bankruptcy filing.

h. The Challenged Payments were made on account of debts that were unsecured as to Debtor. Defendant had no security interest in property of the Debtor to secure the payment.

I. The distribution to unsecured creditors in Debtor's case will be less than 100% of the amount of the debt.

j. There were no joint check agreements between Defendant and the makers of the joint checks constituting Transfers 2–6.

k. Defendant provided new value to Debtor after the Challenged Payments in the amount of exactly \$1,246.14.

l. Debtor was the prime contractor on the San Jose Environmental Innovation Project in San Jose, California ("Project"), which is a public works project.

m. The City of San Jose ("City") was the owner of the Project.

n. Liberty Mutual Insurance Company ("Liberty") issued the payment and performance bonds (the "Bonds") as required by California Civil Code §9554. A true and correct copy is attached as Exhibit 106.

o. On or about January 23, 2012, Kilik General Engineering, Inc. made a claim on the Bonds in the amount of \$162,486.25 for amounts allegedly owed for work performed on the Project. Liberty acknowledged the bond claim by letter dated February 29, 2012, a copy of which is attached as Exhibit 110. Kilik General Engineering, Inc. subsequently commenced an action against the City of San Jose. A copy of the complaint is attached at Exhibit 134. Liberty acknowledged that the bond claim remained outstanding on February 7, 2013 in an e-mail, a copy of which is attached as Exhibit 112. The Kilik General Engineering, Inc. bond claim remained outstanding until January 10, 2014, when Liberty paid Kilik General Engineering the sum of \$100,000. Exhibit 104.

p. On or about November 20, 2012 C&T Welding, Inc. issued a stop notice claim in the amount of \$253,095.20 for amounts allegedly owed for work performed on the Project. A true and correct copy of the stop notice claim is attached as Exhibit 113. Liberty acknowledged a claim against the Bond on March 11, 2013. A true and correct copy of the March 11, 2013 letter from Liberty is attached as Exhibit 114. The C&T Welding, Inc. claim remained outstanding, at least to the extent of \$189,711.57, until October 30, 2013, when Liberty paid C&T Welding the sum of \$28,991.63 and Skyline Steel Erectors/C&T Welding, Inc. the sum of \$160,719.94. See, Exhibit 104.

q. A copy of the Ratification Agreement between Liberty and C&T Welding is attached as Exhibit 116. A copy of the Amendment to Ratification Agreement is attached as Exhibit 117.

r. On February 25, 2013 Independent Electric Supply, Inc. made a claim on the Bonds in the amount of \$92,268.14. A copy of the claim is attached as Exhibit 123. Liberty acknowledged the claim by letter

dated March 11,2013, a copy of which is attached as Exhibit 124. On or about May 1,2013, Independent Electric Supply, Inc. submitted a proof of claim for the claim on the Bonds in the amount of \$89,795.25 for labor and materials provided on the Hillview Middle School project. A true and correct copy is attached as Exhibit 125.

s. On July 9, 2013, Independent Electric Supply, Inc. acknowledged that its claim had been paid by Applegate. A true and correct copy of the letter is attached as Exhibit 127.

t. On or about March 28, 2013, Bay City Mechanical, Inc. made a claim on the Bonds in the amount of \$495,645.87. A true and correct copy of the Claim is attached as Exhibit 118. Bay City Mechanical, Inc. was subsequently paid amounts by Applegate, but continued to work on the Project and accrue claims against the Bonds. By July 11, 2013, the amount of Bay City Mechanical’s claim had grown to \$390,898.53. A true and correct copy of Bay City Mechanical, Inc.’s letter to Liberty dated July 11, 2013, is attached as Exhibit 119. Liberty paid Bay City Mechanical, Inc. the sum of \$284,664.72 on August 28, 2013. See, Exhibit 104. Liberty and Bay City Mechanical, Inc. entered into a Ratification Agreement on or about August 7, 2013. A true and correct copy of the ratification agreement is attached as Exhibit 121.

u. At the time of the Payment, the following matured claims had been made against the Bond:

Claimant	Maximum Claim Amount	Paid
Kilik Engineering	\$162,486.25	\$100,000.00
C&T Welding	\$253,095.20	\$189,711.57
Independent Electric	\$ 89,795.25	\$89,795.25
Bay City Mechanical	<u>\$495,645.87</u>	<u>\$284.664.72</u>
Total	\$1,001,002.57	\$664,171.72

v. On May 20,2013 the City paid Debtor Applegate Johnston, Inc. the sum of \$53,129.62 on account of the Project. It also issued checks in the amount of\$70,471.65 on May 20, 2013 and \$51,494.29 on May 28,2013 relating to the Project. It is unknown if these latter checks were paid to Applegate or were issued as joint checks to Applegate and Applegate’s subcontractors. The payments of \$53,129.62, \$70,471.65 and \$51,494.29 are the only payments from the City to Applegate for the Project after May 17, 2013.

w. The owner of the Hillview Project issued three joint checks after May 17, 2013, in the aggregate amount of\$89,795.25, but made no further payments to Applegate Johnston.

x. Applegate Johnston stopped work on the Project on June 28, 2013. On or about July 3, 2013, the

City notified Applegate that it considered Applegate to have abandoned the project. A true and correct copy of the July 3, 2013 letter is attached as Exhibit 108. On that same date, the City demanded that Liberty perform its obligations under the performance bond. A true and correct copy of the demand is attached as Exhibit 109.

y. On July 16, 2016, Applegate Johnston, Inc. filed a Chapter 7 bankruptcy petition.

z. Liberty Mutual executed a “Takeover Agreement” with City relating to the Project. A copy of the Takeover Agreement, without Exhibits, is attached as Exhibit 103. Under the Takeover Agreement, Liberty retained RJT Construction, Inc. to complete the Project.

aa. Liberty has prepared a “Loss Run” report showing amounts received under the Takeover Agreement, and amounts paid on claims and to RJT Construction, Inc. to complete the project. A true and correct copy of the Loss Run report dated May 2, 2016, is attached as Exhibit 104. The Loss Run report shows that Liberty paid \$6,932,200.92 more to complete the project and pay bond claims than it received from the City to complete the project.

**Defendant’s Undisputed Facts:**

1. While Plaintiff and Defendant have not conferred regarding a list of undisputed factual issues, Defendant has compiled the amount of claims against project funds on the four public works projects at issue in this action as of the dates of the transfers at issue. This information is relevant to Defendant’s contemporaneous exchange for new value defense. Further, Defendant believes that the timing and amounts of the transfers at issue in this litigation and the timing and amount of prior payments from the Debtor to Defendant, the issuance of the performance and payment bonds on the subject projects, the timing and amount of Defendant’s releases of claims in exchange for payments, and the amount remaining in the owners’ construction funds as of the date of the transfers and the date and amount of Defendant’s exchange of value should also be undisputed.

**Disputed Facts:**

- a. Defendant may seek to challenge the presumption that Debtor was insolvent in the 90 days prior to the bankruptcy case.
- b. Defendant contends that the Challenged Payments were made in the ordinary course of business or financial affairs of the Debtor and the transferee, or that they were made according to ordinary business terms.

**Disputed Facts:**

1. That the remaining construction fund held by the City of San Jose on the San Jose Environmental Innovation Center Project, including matured subcontractor and supplier claims, was sufficient to satisfy a hypothetical claim by Defendant in the amount of the transfer at issue in this action (\$51,785.41).

	<ol style="list-style-type: none"><li data-bbox="894 247 1479 506">2. That the remaining construction fund held by the City of Palo Alto on the Mitchell Park Project, including matured subcontractor and supplier claims, was sufficient to satisfy a hypothetical claim by Defendant in the amount of the transfers</li><li data-bbox="894 548 1479 919">3. That the remaining construction fund held by the Palo Alto Unified School District on the J.L. Stanford Middle School Project, including matured subcontractor and supplier claims, was sufficient to satisfy a hypothetical claim by Defendant in the amount of the transfers at issue in this action (\$82,822.00, \$1,546.84 and \$5,053.31).</li><li data-bbox="894 961 1479 1333">4. That the remaining construction fund held by the Dublin Unified School District on the Dublin High School Project, including matured subcontractor and supplier claims, was sufficient to satisfy a hypothetical claim by Defendant in the amount of the transfers at issue in this action (\$2,690.66 and \$521.13).</li><li data-bbox="894 1375 1479 1703">5. That Defendant maintained valid claims against the project payment bonds and would have had enforceable rights against the project payment bonds and/or the remaining construction funds if the Trustee had not unreasonably waited nearly two years to file the present preference action.</li><li data-bbox="894 1745 1479 1856">6. Whether the Debtor's assets exceeded its liabilities as of the dates of the transfers at issue.</li></ol>
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<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified.</li> </ol>	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified.</li> </ol>
<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. Trustee seeks avoidance and recovery of the Challenged Payments.</li> </ol>	<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. Defendant seeks a dismissal of the Trustee’s complaint, plus costs, and that Trustee recover nothing under his complaint.</li> </ol>
<p><b>Plaintiff’s Points of Law:</b></p> <ol style="list-style-type: none"> <li>1. 11 U.S.C. § 547(b)</li> <li>2. <i>In re Sierra Steel, Inc.</i>, 96 B.R. 275, 279(B.A.P. 9th Cir. 1989.)</li> <li>3. The “greater amount test” was explained in <i>In re Lewis W Shurtleff, Inc.</i>, 778 F.2d 1416,1421 (9th Cir. 1985).</li> </ol>	
<p style="text-align: right;"><b>Defendant’s Points of Law:</b></p> <ol style="list-style-type: none"> <li>1. Insolvency. Debtor’s bankruptcy schedules and the testimony of its principals confirm that Debtor filed bankruptcy due to a lack of liquid funds available to it to run its projects, and not because of any purported insolvency.</li> <li>2. The Trustee appears to be basing his analysis on the assumption that liabilities incurred post-petition should be included on the Debtor’s balance sheet as of the date of the (pre-petition) payments to Defendant.</li> <li>3. Ordinary Course of Business under 11 U.S.C. § 547(c)(2). The payments at issue were made according to ordinary business terms because the Debtor made payments to Defendant only after Debtor was paid by the owners and/or prime contractors on the public works projects. Payments at issue in this action were made in the ordinary course of business due to the timing, amounts and manner of payments.</li> <li>4. Contemporaneous exchange for new value under 11 U.S.C. § 547(c)(1). Defendant provided waivers and releases of its stop payment notice and payment bond rights in exchange for, and in the amount of, the transfers.</li> <li>5. <i>In re Modtech Holdings, Inc.</i> (Bankr. C.D. Cal. 2013)</li> <li>6. The payments at issue were transfers of property in which the Debtor had no interest: Defendant</li> </ol>	

received joint checks from prime contractors and these payments were not transfers of an interest of the debtor's property under section 547(b) of the Bankruptcy Code. These payments were held in trust for the benefit of the defendant and therefore were not transfers of the property in which the debtor had an interest.

7. New Value: Defendant provided new value that gave the Debtor amounts sufficient to diminish and/or eliminate any recovery to which the Plaintiff alleges it is entitled in the Complaint pursuant to section 547(c)(4) of the Bankruptcy Code.
8. Laches. Defendant's right to payment for its work on the projects at issue in this action were secured by payment bonds, as required by California Civil Code §9550, et seq. California Civil Code §9558 requires that any claim against a payment bond be filed no later than 6 months after completion (or cessation of labor). Cessation of labor occurred in or about July 2013, at the time Debtor filed bankruptcy. By waiting nearly two years from the date of the bankruptcy filing to file the present action, the trustee foreclosed Defendant's right to recover the allegedly preferential payments from the payment bonds.
9. Diversion of Construction Funds Intended for Defendant. The payments at issue were from construction funds paid by public agencies and were specifically earmarked for the four public works projects at issue, and avoidance of said payment would be a violation of California Business & Professions Code §§7108 and 7108.5; Public Contract Code §§10262.5 and 10263; Civil Code §9100

<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> </ol>	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified</li> </ol>
<p><b>Plaintiff's Witnesses:</b></p> <ol style="list-style-type: none"> <li>1. Michael D. McGranahan</li> <li>2. Matthew McConaughy (adverse)</li> <li>3. Najam Chohan (adverse)</li> <li>4. Liberty Mutual Insurance Company (by deposition)</li> <li>5. City of San Jose (by deposition)</li> </ol>	
<p><b>Defendant's Witnesses:</b></p> <ol style="list-style-type: none"> <li>1. James Applegate, Principal of debtor</li> </ol>	

2. Richard Applegate, Principal of debtor
3. Timothy Johnston, Principal of debtor
4. John Bergman, Principal of debtor
5. Diana Lehne, bookkeeper of debtor
6. Antonio Velez, employee of debtor
7. Christine Bartholdt, Surety Claims Counsel, Person Most Knowledgeable for Liberty Mutual Insurance Company
8. Brad Eggleston, City of Palo Alto,
9. David Arntz, Arntz Builders, Inc.,
10. Kevin Mosher, Flintco Pacific, Inc.,
11. Matthew McConaughy, Graybar Electric Company, Inc.
12. Najam Chohan, Graybar Electric Company, Inc.,
13. Komal Chauhan, former employee of Graybar Electric Company, Inc.
14. David Printy, City of San Jose
15. Rebecca L. Bosque,
16. Sherri Dukes, Graybar Electric Company, Inc.
17. John Kershner, Director of Credit, Independent Electric Supply, Inc.
18. Ross Cirrincione, Credit Manager, Ganahl Lumber Company
19. July Kuta-Showers, Subcontractor Compliance Administrator, Sausal Corporation
20. Rebecca Nuttall, Project Coordinator, Flintco Pacific, Inc.,
21. Daniel M. Connolly, Liberty Mutual Insurance Company
22. Glenn Schwartzbach, Senior Deputy City Attorney, City of San Jose
23. David Sykes, Department of Public Works, City of San Jose

24. Rod Tompkins, RJT Consulting, Inc.
25. Michael Haughey, President, Accent Clean and Sweep, Inc.
26. Celia Romero, AJR Door Service
27. Bobbie Amos, CFO, Bay City Mechanical, Incorporated
28. Yvonne Vigi
29. Skip Mancini, President, Liz Johnson Controller & Corporate Secretary, B. T. Mancini, Co., Inc.
30. Marci A. Knapp, Credit Manager, Pamela East, Senior Credit Representative, Cemex, Inc.
31. Representative of Flat 6, Westcroft Court, Kingsbury Road, Houston, TX NW9 9PG.
32. Richard Barge, General Manager, Corix Water Products (US), Inc.
33. Daniel Cozart, President, Cozart Brothers, Inc.,
34. Gleb Finkelman, Credit Manager, Electrical Distributors
35. Danielle Walker, Electrical Distributors
36. Danny Houston, Debera Wratten, Accounting, Houston Fire Systems,
37. Richard S. Long, Vice President, Judy M. Wagner, A/R Collections
38. Luz Smith, Skyline Steel Erectors
39. Renae Montemayor, Valley Iron, Inc.,
40. John Sims, P C S / Professional Contractors Service
41. Diane Brand, HD Supply.
42. Lloyd Attree, Controller, Industrial Acoustics, Inc.
43. Terrence Rose, TA Rose Transportation.
44. Representative of Fresh Coat Painters
45. Representative of A1 Quality Blinds.

46. August A. Hioco, President, Krazan & Associates
47. Ryan Eckert, Vice President, Service Metal Products, Inc.
48. Dan Watson, President, Atlantis Interiors, Inc.
49. Jeff Qualle, President, Better Built Truss.
50. Maureen Wood, Finance Director,
51. Jordi Grant, Western Electrical Contractors Association, Inc.
52. Randall McClure, VP of Operations, Corporate Sign Systems, Inc.
53. Michael Hernandez, President, ACE Automatic Garage Doors.
54. Jill Foster, San Benito Drywall, Inc.
55. T Montez, Montez Glass.
56. Andy Tran, President, Control Technologies.
57. Representative of B-K Mill & Fixtures, Inc.
58. Representative of Sunstate Equipment.
59. Mary DeSilva, Secretary, US Overhead Door Co., Inc.
60. Robert Yagmourian, YAG Manufacturing.
61. Representative of Clark Pest Control.
62. Representative of Shelco Industries.
63. Representative of Collier Warehouse, Inc.
64. Wendy Biezkow, CFO, Creative Masonry, Inc.
65. Karen Davani, Commercial Collector, Sunbelt Rentals.
66. Donald Phillips, President, Pacific Design Associates, Inc.
67. Jay Fischer, Fischer Tile & Marble, Inc.

68. Mitch Hajiaghahi, Sierra Environmental.
69. Marlee Monty-Ingram, ACE Portable Services
70. Ozzie Amparan, Amparan Flooring, Inc.
71. Hoc N. Hua, H Square Mechanical, Inc.
72. Karen Titus, Operations Manager, R Titus Waterproofing.
73. Pacific Coast Trane Service Company, Inc.
74. Jeff O'Connell, Credit Manager, Glendon Company, Jennifer Reynolds, Manager.
75. Priscila Kunkel, Operations Manager, SignaWest Systems, Inc.
76. Roger Dills, Green Bay Builders.
77. Debbie Nute, President, Sunstate Equipment Co., LLC.
78. Representative of RH Concrete.
79. Kevin McEntee, President, SecureCom, Inc.
80. Kelly Baird, President, WSP Roofing.
81. Titan Surveying & Mapping, Inc. dba RB Welty & Associates, Inc.
82. Representative of River City Plastics.
83. Representative of Sierra Trench Protection.
84. Representative of Ortiz Construction.
85. Representative of CT Welding.
86. Representative of New Engineering.
87. Representative of James Oki Consulting Engineering.
88. Representative of Martina Landscape.
89. Representative of Power Plus.
90. Representative of HCS Engineering, Inc.

91. Representative of Rutherford and Cheyenne.

**Plaintiff's Exhibits:**

Exhibit No.	Description	Bates No.
102	Supplemental Declaration of Christine Bartholdt (Documents 52-3)	
103	Takeover Agreement	LIBAP 7716-7730
104	Liberty Mutual Loss Run dated May 2, 2016	LIBAP 8276-8283
105	Letter dated May 1, 2013 from Earle Cohen to Stephani J. Miller	LIBAP 8416-841 7
106	Contractor's Bond	LIBAP 00001-12
107	General Agreement of Indemnity	LIBAP 8336-8351
108	Letter dated July 3, 2013 from David Sykes to Jim Applegate	
109	Letter dated July 3, 2013 from Davis Sykes to Luis Aragon	
110	Letter dated February 29, 2012 from Stephani Miller to Alan Killick	
111	Letter dated May 16, 2012 from Stephani J. Miller to Richard Applegate	
112	E-mail from Stephani Miller to Diana Lehne-dated February 7, 2013	LIBAP 000578003223
113	Stop Payment Noticed dated November 20, 2012 by C&T Welding	LIBAP 6351-2
114	Letter dated March 11, 2013 from Stephani Miller to Charles DeLucci	
115	E-mail from Stephani Miller to Charles DeLucci	LIBAP 6345
116	Ratification Agreement	LIBAP 6355-6369
117	Amendment to Ratification Agreement	LIBAP 6372-6389
118	Letter dated March 26, 2013 from Michael Zarate to Liberty Mutual	
119	Letter dated July 11, 2013 from Karen Alarcon to Liberty Mutual	

120 Letter dated July 30,2013 from Liberty Mutual to Richard Applegate	
121 Ratification Agreement between Liberty Mutual and Bay City Mechanical	LIBAP 1098-1104
123Letter dated February 25,2013 from Earle Cohen to Liberty Mutual	LIBAP 8357-8364
125 Letter dated May 1, 2013 from Earle Cohen to Stephani Miller	LIBAP 08416-841 7
126 E-mail from Stephani Miller to Diana Lehne	LIBAP 8325-8326
127 Letter from Earle H. Cohen to Stephani J. Miller dated July 9, 2013	LIBAP 8404
128 Letter dated July 11, 2013 from Applegate Johnston, Inc. to C. Overaci & Co.	LIBAP 8352
129 Letter dated July 12, 2013 to C. Overaci & Co. from Charles J. Phillips	LIBAP 8353-54
130 Amendment to Ratification Agreement	LIBAP 6404-6406
134 Letter dated July 3, 2012 from City of San Jose to Liberty Mutual	LIBAP 000494-501
201 Check No. 76486 dated May 24, 2013 in the amount of \$52,180.26	Graybar 0042
203 Check No. 500008867 from Flintco Pacific, Inc. dated April 18, 2013 in the amount of \$41 ,422.97	Graybar 0047
204 Check No. 52006 from Sausal Corporation dated April 23, 2013 in the amount of \$1,546.84	Graybar 0046
205 Check No. 52307 from Sausal Corporation dated May 23,2013 in the amount of \$5,053.31	Graybar 0045
206 Check No. 500009086 from Flintco Pacific, Inc. dated June 3, 2013 in the amount of \$43,019.10	Graybar 0044
207 Check No. 023175 dated June 19,2013 from Arntz Builders, Inc. in the amount of \$2690.68	Graybar 0043

209 E-mail conversation dated April 12, 2013	Graybar 0175
210 E-mail from Matthew McConaughy dated April 10, 2013	Graybar 0176
211 E-mail dated April 17, 2013 from Matthew McConaughy	Graybar 0177
212 E-mail from Matthew McConaughy	Graybar 0178
213 E-mail from Matthew McConaughy dated June 17, 2013	Graybar 0195
214 E-mail from D. Lehne dated April 11,2013	Graybar 0196
215 Graybar Invoices	Graybar 62-72
216 Report regarding Application of Payments	
218 Graybar Invoices	Graybar 149-17
219 Graybar Invoices	Graybar 133-136
342 Account and Line Item Notes	348-349
343 CC CAR Clearing	350-354
344 E-mail dated April 18, 2013 enclosing T-Report	313-314
345 E-mail dated May 2,2013 enclosing T-Report	316-317
346 E-mail dated May 2,2013	315
347 E-mail dated May 19,2013 enclosing T-Report	318-321
328 Various E-mail conversations	324-347
401 American Express statement dated May 28, 2013	
402 Claims Register for In Re Applegate Johnston, Inc.	
403 Form 2 - List of Deposits and Receipts	
404 Letter from Matthew McConaughy to Daniel L. Egan dated March 17, 2015	

**Defendant's Exhibits:**

- Exhibit 1: AJI Application for Credit dated June 21, 2001.
- Exhibit 2: Graybar Credit Application dated February 7, 2000.
- Exhibit 3: AJI request for quote 911206006 dated July 27, 2011.
- Exhibit 4: AJI purchase order 110047280 dated November 12, 2012.
- Exhibit 5: AJI purchase order 755000005 dated June 11, 2012.
- Exhibit 6: Graybar Preliminary Notice for Mitchell Park Project, dated February 10, 2012.
- Exhibit 7: Graybar Preliminary Notice for Dublin High Project, dated August 17, 2012.
- Exhibit 8: Graybar Preliminary Notice for San Jose Environmental Project, dated August 3, 2011.
- Exhibit 9: Graybar Preliminary Notice for JL Stanford Project, dated June 21, 2012.
- Exhibit 10: Check from AJI to Graybar dated May 24, 2013 for \$52,180.26.
- Exhibit 11: Joint Check from Flintco Pacific to Graybar and AJI dated April 18, 2013 for \$41,422.97.
- Exhibit 12: Joint Check from Flintco Pacific to Graybar and AJI dated June 3, 2013 for \$43,019.10.
- Exhibit 13: Joint Check from Arntz to Graybar and AJI dated June 19, 2013 for \$2,690.66.
- Exhibit 14: Joint Check from Sausal Corporation to Graybar and AJI dated May 23, 2013 for \$5,053.31.
- Exhibit 15: Joint Check from Sausal Corporation to Graybar and AJI dated April 23, 2013 for \$1,564.84.
- Exhibit 16: Receipt for credit card payment from AJI to Graybar dated April 30, 2013 for \$82,822.
- Exhibit 17: AJI American Express statement referencing April 30, 2013 credit card payment for \$82,822.
- Exhibit 18: Receipt for credit card payment from AJI for \$18,027.61 dated April 19, 2013.
- Exhibit 19: Graybar invoice 964665943 dated January 28, 2013 for \$51,716.85.
- Exhibit 20: Graybar invoice 964699295 dated January 30, 2013 for \$68.56.
- Exhibit 21: Graybar invoice 965031761 dated February 19, 2013 for \$300.36.

Exhibit 22: Graybar invoice 965031760 dated February 19, 2013 for \$65.79.

Exhibit 23: Graybar invoice 965319536 dated March 7, 2013 for \$28.70.

Exhibit 24: Graybar invoice 964241961 dated December 31, 2012 for \$3,504.91.

Exhibit 25: Graybar invoice 964293037 dated January 4, 2013 for \$1,228.20.

Exhibit 26: Graybar invoice 963453636 dated November 9, 2012 for \$1,217.74.

Exhibit 27: Graybar invoice 963977823 dated December 12, 2012 for \$9,292.42.

Exhibit 28: Graybar invoice 964706802 dated January 30, 2013 for \$746.67.

Exhibit 29: Graybar invoice 964586919 dated January 23, 2013 for \$123.85.

Exhibit 30: Graybar invoice 963303680 dated November 1, 2012 for \$38.44.

Exhibit 31: Graybar invoice 963397599 dated November 7, 2012 for \$51.00.

Exhibit 32: Graybar invoice 965149408 dated February 26, 2013 for \$34.47.

Exhibit 33: Graybar invoice 963397597 dated November 7, 2012 for \$1,124.31.

Exhibit 34: Graybar invoice 963891949 dated December 8, 2012 for \$521.13.

Exhibit 35: Graybar invoice 962202679 dated November 1, 2012 for \$368.30.

Exhibit 36: Graybar invoice 964586918 dated January 23, 2013 for \$3.23.

Exhibit 37: Graybar invoice 966025007 dated April 18, 2013 for \$266.42.

Exhibit 38: Graybar invoice 965031759 dated February 19, 2013 for \$1,548.84.

Exhibit 39: Graybar invoice 966000477 dated April 17, 2013 for \$4,787.62.

Exhibit 40: Graybar invoice 966108593 dated April 23, 2013 for \$52.87.

Exhibit 41: Graybar invoice 966195224 dated April 29, 2013 for \$99.65.

Exhibit 42: Graybar invoice 965923004 dated April 12, 2013 for \$113.17.

Exhibit 43: Graybar invoice 965343143 dated March 8, 2013 for \$1,804.21.

Exhibit 44: Graybar invoice 965677529 dated March 28, 2013 for \$79,794.11.

Exhibit 45: Graybar invoice 966218845 dated April 30, 2013 for \$1,223.98.

Exhibit 46: Graybar invoice 966025005 dated April 18, 2013 for \$430.05.

Exhibit 47: Graybar invoice 966025006 dated April 18, 2013 for \$129.76.

Exhibit 48: Graybar invoice 965766079 dated April 3, 2013 for \$1,796.92.

Exhibit 49: Graybar invoice 966000474 dated April 17, 2013 for \$333.93.

Exhibit 50: Graybar invoice 964079102 dated December 18, 2012 for \$69,325.08.

Exhibit 51: Graybar invoice 96587648 dated March 28, 2013 for \$187.06.

Exhibit 52: Graybar invoice 964065299 dated December 17, 2012 for \$5.39.

Exhibit 53: Graybar invoice 965709710 dated March 29, 2013 for \$43.18.

Exhibit 54: Graybar invoice 964586917 dated January 23, 2013 for \$634.61.

Exhibit 55: Graybar invoice 964199550 dated December 27, 2012 for \$1,074.62.

Exhibit 56: Graybar invoice 96473308 dated January 31, 2013 for \$1,523.74.

Exhibit 57: Graybar invoice 964079103 dated December 18, 2012 for \$183.62.

Exhibit 58: Graybar invoice 964079104 dated December 18, 2012 for \$5.39.

Exhibit 59: Graybar invoice 965713929 dated March 31, 2013 for \$143.16.

Exhibit 60: Graybar invoice 964254416 dated January 2, 2013 for \$2,545.17.

Exhibit 61: Graybar invoice 964030495 dated December 14, 2012 for \$9,331.40.

Exhibit 62: Graybar invoice 964154144 dated December 21, 2012 for \$2,977.42.

Exhibit 63: Graybar credit memo 964474783 dated January 16, 2013 for \$490.29.

Exhibit 64: Fidelity & Deposit Company of Maryland and Federal Insurance Company Payment Surety Bond.

Exhibit 65: Liberty Mutual Insurance Company Payment Bond.

Exhibit 66: Liberty Mutual Insurance Company Payment Bond.

Exhibit 67: Great American Insurance Company Payment Bond.

Exhibit 68: Unconditional Waiver and Release on Progress Payment dated June 3, 2013.

Exhibit 69: Conditional Waiver and Release on Progress Payment dated March 27, 2013.

Exhibit 70: Conditional Waiver and Release Upon Progress Payment dated April 17, 2013.

Exhibit 71: Conditional Waiver and Release Upon Progress Payment dated April 17, 2013.

Exhibit 72: Unconditional Waiver and Release on Progress Payment dated May 9, 2013.

Exhibit 73: Conditional Waiver and Release Upon Progress Payment dated May 2, 2013.

Exhibit 74: Unconditional Waiver and Release on Progress Payment dated May 2, 2013.

Exhibit 75: Conditional Waiver and Release on Progress Payment dated May 22, 2013.

Exhibit 76: Unconditional Waiver and Release on Progress Payment dated May 2, 2013.

Exhibit 77: Conditional Waiver and Release on Progress Payment dated April 8, 2013.

Exhibit 78: Unconditional Waiver and Release on Progress Payment dated April 30, 2013.

Exhibit 79: Conditional Waiver and Release on Progress Payment dated April 30, 2013.

Exhibit 80: Unconditional Waiver and Release on Progress Payment dated April 30, 2013.

Exhibit 81: Conditional Waiver and Release on Progress Payment dated May 17, 2013.

Exhibit 82: Unconditional Waiver and Release on Progress Payment dated May 31, 2013.

Exhibit 83: Graybar Statement dated June 10, 2013 for Fire Station 36 and Maui Project.

Exhibit 84: Graybar Statement dated June 10, 2013 for Fire Station 36 and Maui Project.

Exhibit 85: Graybar Statement dated June 10, 2013 for San Jose Environmental Project.

Exhibit 86: Graybar Statement dated June 10, 2013 for Mitchell Park Project.

Exhibit 87: Graybar Statement dated June 10, 2013.

Exhibit 88: Graybar Statement dated June 10, 2013 for Henry Gunn project.

Exhibit 89: Graybar Statement dated June 10, 2013 for JL Stanford project.

Exhibit 90: Graybar Statement dated June 10, 2013 for Arroyo HS project.

Exhibit 91: Graybar Statement dated June 10, 2013 for Dublin HS project.

Exhibit 92: Graybar Statement dated June 10, 2013 for Defenders Lodge project.

Exhibit 93: Graybar Statement (general) dated June 10, 2013.

Exhibit 94: Graybar Statement of payments per project.

Exhibit 95: A/R Invoice History by Job for San Jose Innovation Center Project dated August 18, 2015.

Exhibit 96: A/R Invoice History by Job for Mitchell Park Project dated November 14, 2015.

Exhibit 97: A/R Invoice History by Job for JL Stanford Middle School Project dated November 14, 2015.

Exhibit 98: A/R Invoice History by Job for Dublin High School Project dated November 14, 2015.

Exhibit 99: Email from Diana Lehne to Matthew McConaughy dated April 30, 2016.

Exhibit 100: AJI American Express Statement referencing \$82,822.30 payment to Graybar.

Exhibit 101: AJI check/deposit listing spreadsheet for May 2013, dated June 13, 2013.

Exhibit 102: AJI General Ledger History report dated June 13, 2013.

Exhibit 103: AJI check/deposit listing spreadsheet dated May 22, 2013.

Exhibit 104: AJI General Ledger History report for April 2013, dated June 13, 2013.

Exhibit 105: AJI General Ledger History report for March 2013, dated April 11, 2013.

Exhibit 106: AJI check/deposit listing spreadsheet dated April 11, 2013.

Exhibit 107: AJI check/deposit listing spreadsheet dated May 22, 2013.

Exhibit 108: Check/Deposit listing for transactions dated April 1, 2013 through July 31, 2013, dated November 26, 2013.

Exhibit 109: Escrow bank account statement for Mitchell Park Project.

Exhibit 110: Spreadsheet reflecting Flintco Payment Bond Claims.

Exhibit 111: Check from Palo Alto Unified School District to Sausal dated April 16, 2013 in the amount of \$370,929.50.

Exhibit 112: Check from Palo Alto Unified School District to Sausal dated April 18, 2013 in the amount of \$428,153.21.

Exhibit 113: Check from Palo Alto Unified School District to Sausal dated May 17, 2013 in the amount of \$784,214.73.

Exhibit 114: Check from Palo Alto Unified School District to Sausal dated June 25, 2013 in the amount of \$736,518.86.

Exhibit 115: Email string between Diana Lehne and Komal Chauhan dated October 8, 2012.

Exhibit 116: Email with attachments from Diana Lehne to Sara Gil dated February 8, 2013.

Exhibit 117: Email with attachments from Diana Lehne to Sara Gil dated March 26, 2013.

Exhibit 118: Email with attachments from Diana Lehne to Sara Gil dated June 4, 2013.

Exhibit 119: Email with attachments from Diana Lehne to Sara Gil dated April 2, 2013.

Exhibit 120: Letter from Matthew McConaughy to Daniel Egan dated March 17, 2015 with attachment.

Exhibit 121: Email string between Diana Lehne and Matthew McConaughy dated April 10-17, 2013.

Exhibit 122: Email from Matthew McConaughy to Diana Lehne dated April 17, 2013.

Exhibit 123: Emails to and from Matthew McConaughy and Diana Lehne dated April 30, 2013.

Exhibit 124: Email from Matthew McConaughy to John Bergman and Tim Johnston dated June 27, 2013.

Exhibit 125: Email from Diana Lehne to Tim Johnston dated June 27, 2013 with attachment.

Exhibit 126: Email from Mark Peters to Rich Applegate and Tim Johnston dated June 28, 2013 with attachment.

Exhibit 127: Email from Antonio Velez to Jim Applegate, Rich Applegate, Tim Johnston and John Bergman dated June 21, 2013 with attachment.

Exhibit 128: Email from Diana Lehne to Matthew McConaughy dated March 31, 2013 with attachment.

Exhibit 129: Email string from Diana Lehne to Tim Johnston dated October 17, 2012.

Exhibit 130: Email string from Diana Lehne to Matthew McConaughy dated January 9, 2013 with attachment.

Exhibit 131: Email string from Diana Lehne to Matthew McConaughy dated April 11, 2013 with attachment.

Exhibit 132: Email string from Diana Lehne to Matthew McConaughy dated February 5, 2013.

Exhibit 133: Email string From Diana Lehne and Marcus Raposas dated August 14, 2012.

Exhibit 134: Email from Antonio Velez to Rich Applegate, Tim Johnston, Jim Applegate and John Bergman dated June 26, 2013.

Exhibit 135: Declaration of Dennis Walsh on Behalf of Fidelity and Deposit Company of Maryland.

Exhibit 136: Declaration of Kim McNeely on Behalf of Dublin Unified School District.

Exhibit 137: Declaration of Ron Smith.

Exhibit 138: Takeover Agreement between City of San Jose and Liberty Mutual Insurance Company dated September 17, 2013.

Exhibit 139: Notice of Final Completion for JL Stanford Project, dated May 27, 2014.

Exhibit 140: City of Palo Alto Public Works letter dated March 27, 2014 enclosing notice of cessation of labor.

Exhibit 141: Debtor's Schedules and Summaries filed on July 30, 2013, Dckt Nos. 36-45, Case No. 13-91315-E-7.

Exhibit 142: Prime Contract (including specifications) between Sausal and Palo Alto Unified School District.

Exhibit 143: Prime Contract (including specifications) between Flintco and City of Palo Alto.

Exhibit 144: Prime Contract (including specifications) between Arntz Builders and Dublin Unified School District.

Exhibit 145: Prime Contract (including specifications) between Debtor and City of San Jose.

Exhibit 146: Subcontract between AJI and Flintco.

Exhibit 147: Subcontract between AJI and Sausal.

Exhibit 148: Subcontract between AJI and Arntz Builders.

Exhibit 149: Payments from Sausal to AJI.

Exhibit 150: Payments from Flintco to AJI.

Exhibit 151: Payments from Arntz to AJI.

Exhibit 152: Payments from City of San Jose to AJI.

Exhibit 153: Payment Bond issued by Liberty Mutual Insurance Company.

Exhibit 154: Billings, including backup, from Defendant to Debtor.

Exhibit 155: Statutory Lien Waivers issued by Defendant.

Exhibit 156: Debtor's billings to the City of San Jose.

Exhibit 157: Debtor's billings to the Flintco.

Exhibit 158: Debtor's billings to the Sausal.

Exhibit 159: Debtor's billings to the Arntz.

Exhibit 160: Correspondence between Defendant and Debtor regarding Innovation Center Project.

Exhibit 161: Takeover Agreement between the City of San Jose and Liberty Mutual Insurance Company.

Exhibit 162: Email from James Reece dated June 12, 2012 forwarding email from Greg Gillis.

Exhibit 163: Email from Diana Lehne to Judy Showers dated 2-14-13.

Exhibit 164: Email string between Diana Lehne and Judy Showers dated May 22, 2013.

Exhibit 165: Email from Diana Lehne to Judy Showers dated 2-27-13.

Exhibit 166: Email string between Diana Lehne and Judy Showers dated April 25, 2013.

Exhibit 167: Email string between Diana Lehne and Judy Showers dated March 21, 2013.

Exhibit 168: Email from Diana Lehne to Matthew McConaughy dated March 21, 2013.

Exhibit 169: Email from Diana Lehne to Matthew McConaughy dated May 9, 2013.

Exhibit 170: Email string between Diana Lehne and Matthew McConaughy dated March 5, 2013.

Exhibit 171: Email from Rebecca Nuttall to Diana Lehne dated April 11, 2013.

Exhibit 172: Email from Rebecca Nuttall and Diana Lehne dated May 6, 2013.

Exhibit 173: Email from Rebecca Nuttall to Diana Lehne dated June 25, 2013.

Exhibit 174: Email from Dan Lapizco to Diana Lehne dated March 12, 2013.

Exhibit 175: Email string between Diana Lehne and Mike Herzog at the City of San Jose dated April 25, 2013.

Exhibit 176: Payment bond claims and stop notices on the Innovation Center Project.

Exhibit 177: Payment bond claims and stop notices on the Mitchell Park Project.

Exhibit 178: Payment bond claims and stop notices on the JL Stanford Project.

Exhibit 179: Expert report from Ross Cirrincione

Exhibit 180: Debtor letter to Liberty Mutual dated February 10, 2012.

Exhibit 181: Kilik California Notice of Claim on Bond dated January 23, 2012.

Exhibit 182: RAM Rick Albert Machinery, Inc. Notice to Principal and Surety on Payment Bond on Public Work dated March 23, 2012.

Exhibit 183: RAM Rick Albert Machinery, Inc. Release of Stop Notice dated April 9, 2012.

Exhibit 184: Griffin Soil Stop Notice dated March 22, 2012.

Exhibit 185: Griffin Soil Release of Stop Notice dated March 26, 2012.

Exhibit 186: Double B Demolition, Inc. Stop Payment Notice dated August 22, 2012.

Exhibit 187: Valley Iron, Inc. Stop Payment Notice dated November 9, 2012.

Exhibit 188: Skyline Steel Erectors' Stop Payment Notice dated November 19, 2012 in the amount of \$167,584.74.

Exhibit 189: Email from Stephanie Miller to Diana Lehne dated February 7, 2013.

Exhibit 190: Brown-Strauss Steel Payment Bond Claim dated November 21, 2012 in the amount of \$9,230.64.

Exhibit 191: Brown-Strauss Steel Payment Bond Claim dated July 17, 2013 in the amount of \$7,368.48.

Exhibit 192: Brown-Strauss Steel Stop Payment Notice dated July 17, 2013 in the amount of \$7,368.48.

Exhibit 193: C&T Welding, Inc.'s stop payment notice dated November 20, 2012, in the amount of \$253,095.20.

Exhibit 194: Ratification Agreement between C&T Welding, Inc. and Liberty Mutual dated October 9, 2013.

Exhibit 195: Amendment to Ratification Agreement between C&T Welding, Inc. and Liberty Mutual dated October 15, 2013.

Exhibit 196: IES notice of payment bond claim dated January 8, 2013 in the amount of \$74,236.87.

Exhibit 197: Granite Rock letter dated January 28, 2013 to Stephani Miller at Liberty Mutual enclosing proof of claim for \$4,281.35.

Exhibit 198: Email from Diana Lehne to Stephani Miller dated February 4, 2013, noting payment of Granite Rock claim as of \$4,281.35 as of February 1, 2013.

Exhibit 199: Granite Rock's unconditional waiver and release on final payment dated March 8, 2013.

Exhibit 200: Blackwood Associates, Inc. Stop Notice dated November 2, 2012 in the amount of \$42,671.70.

Exhibit 201: Blackwood Associates, Inc. release of stop notice dated February 14, 2013, in the amount of \$42,671.70.

Exhibit 202: Blackwood Associates, Inc. unconditional waiver and release on final payment dated February 14, 2013, waiving all claims except as to interest in the amount of \$2,836.92.

Exhibit 203: Blackwood Associates, Inc. Stop Notice in the amount of \$2,836.92 dated February 14, 2013.

Exhibit 204: Blackwood Associates, Inc. Release of Stop Notice in the amount of \$2,836.92, dated October 4, 2013.

Exhibit 205: Ahern Rentals, Inc.'s claim against payment bond in the amount of \$32,535.32, dated February 6, 2013.

Exhibit 206: Ahern Rentals, Inc.'s claim against payment bond in the amount of \$2,959.95, dated February 6, 2013.

Exhibit 207: Applegate joint check to C&T Welding, Inc. and Ahern Rentals in the amount of \$2,959.95, dated March 8, 2013.

Exhibit 208: Ahern Rentals, Inc. Unconditional wavier and release on final dated November 6, 2013.

Exhibit 209: Ahern Rentals, Inc. Release of lien claim, bond claim and stop notice in the amount of \$12,857.62, dated April 26, 2013.

Exhibit 210: Industrial Acoustics' Stop Notice in the amount of \$83,124.71, dated February 12, 2013.

Exhibit 211: Liberty Mutual check for \$24,187.21 to Industrial Acoustics dated August 15, 2013.

Exhibit 212: Email to Stephani Miller from Diana Lehne dated June 4, 2013, confirming \$50,000 payment to Industrial Acoustics.

Exhibit 213: Cresco Equipment Rentals' stop payment notice in the amount of \$12,197.84 dated February 25, 2013.

Exhibit 214: Cresco Equipment Rentals' Unconditional Waiver and Release on Final Payment dated April 17, 2013.

Exhibit 215: United Rentals' payment bond claim notice in the amount of \$44,988.31 dated April 17, 2013.

Exhibit 216: United Rentals' release of stop payment notice in its entirety, dated May 13, 2013.

Exhibit 217: United Rentals' Unconditional Waiver and Release on Final Payment dated May 14, 2013.

Exhibit 218: Letter from Last & Faoro dated March 26, 2013 referencing claim against payment bond by LGM Construction in the amount of \$130,882.63.

Exhibit 219: Email from Diana Lehne to Stephani Miller dated April 9, 2013, confirming only remaining amount due LGM Construction is retention.

Exhibit 220: Letter from Michael Zarate to Liberty Mutual dated March 25, 2013, noticing payment bond claim in the amount of \$495,645.87.

Exhibit 221: Letter from Karen Alarcon of Bay City Mechanical, Inc. to Liberty Mutual dated July 11, 2013 noting \$390,898.54 unpaid.

Exhibit 222: Bay City Mechanical, Inc.'s release of stop payment notice for \$430,815.60 dated April 16, 2013, signed by Bobbie Amos, CFO.

Exhibit 223: Industrial Acoustics' stop notice dated February 12, 2013 in the amount of \$83,124.71.

Exhibit 224: Check from Liberty Mutual to Industrial Acoustics dated August 15, 2013, in the amount of \$24,187.21.

Exhibit 225: Accent Clean & Sweep, Inc.'s notice of claim to Liberty Mutual dated July 2, 2013 in the amount of \$35,246.98, signed by Mike Haughey.

Exhibit 226: Accent Clean and Sweep's conditional waiver and release on final payment in the amount of \$35,246.98, dated September 18, 2013, signed by Mike Haughey.

Exhibit 227: Groundlevel Underground Grading & Excavating's claim information to Liberty Mutual dated July 9, 2013, with claim amount of \$7,325.00.

Exhibit 228: Groundlevel Construction's proof of claim form for the payment bond claim, dated August 5, 2013, in the amount of \$7,325.00.

Exhibit 229: A.J.R. Door Service, Inc.'s notice of claim (without amount) signed by Celia Romero, dated July 12, 2013.

Exhibit 230: PCS Professional Construction Services' notice of payment bond claim to Liberty Mutual dated July 11, 2013, in the amount of \$18,880. Signed by John Sims.

Exhibit 231: HFS, Inc. dba Houston Fire Services' payment bond claim dated July 10, 2013, in the amount of \$33,659.08, signed by Danny Houston.

Exhibit 232: Ratification agreement between HFS, Inc. and Liberty Mutual dated October 22, 2013, signed by Danny Houston.

Exhibit 233: HD Supply's notice of non-payment and lienor's demand for copy of payment bond, dated July 11, 2013, signed by Diane Brand, in the amount of \$3,514.85.

Exhibit 234: HD Supply's notice to Liberty Mutual dated November 14, 2013 that HD was paid in full.

Exhibit 235: Corix Water Products, Inc.'s Stop Notice in the amount of \$780.97, dated July 12, 2013.

Exhibit 236: Chester C. Lehmann Company dba Electrical Distributors Co.'s stop payment notice claim in the amount of \$12,078.82, dated September 6, 2013.

Exhibit 237: Graybar Electric Co., Inc's payment bond claim, dated July 15, 2013, in the amount of \$78,565.94.

Exhibit 238: TA Rose Transportation's notice to principal and surety on payment bond, dated July 29, 2013, in the amount of \$17,590.00.

Exhibit 239: Cozart Brothers, Inc.'s notice and claim upon surety and bond principal, dated July 26,

2013, in the amount of \$196,735.

Exhibit 240: Liberty Mutual letter from Christine Bartholdt of Liberty Mutual confirming payment bond claim dated July 30, 2013 on behalf of Fresh Coat Painters.

Exhibit 241: Liberty Mutual letter from Christine Bartholdt of Liberty Mutual dated August 2, 2013, confirming payment bond claim dated July 30, 2013 on behalf of A1 Quality Blinds.

Exhibit 242: Letter from Lombardo Diamond Core Drilling Company, Inc. dated July 24, 2013, alleging a claim of \$2,405.20.

Exhibit 243: Notice of payment bond claim from Ciari to Liberty Mutual dated July 30, 2016, in the amount of \$133,205.08.

Exhibit 244: Notice of claim by Krazan & Associates to Liberty dated July 30, 2013, in the amount of \$49,792.19.

Exhibit 245: Ratification Agreement between B T Mancini Co. Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$10,115.10.

Exhibit 246: Ratification Agreement between Service Metal Products, Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$7,529.40.

Exhibit 247: Ratification Agreement between Atlantis Interiors, Inc. and Liberty Mutual dated July 23, 2013, amount currently due is \$6,746.18.

Exhibit 248: Ratification Agreement between Better Built Truss and Liberty Mutual dated July 23, 2013, amount currently due is \$45.

Exhibit 249: Western Electrical Contractors Association, Inc.'s payment bond claim dated August 1, 2013, in the amount of \$5,111.40.

Exhibit 250: Stop payment notice from Western Electrical Contractors Association, Inc. in the amount of \$5,111.40, dated September 9, 2013.

Exhibit 251: Ratification Agreement between 3 C JR Painting, Inc., dba Freshcoat Painters and Liberty Mutual dated August 7, 2013.

Exhibit 252: Ratification Agreement between Corporate Sign Systems, Inc. and Liberty Mutual dated July 23, 2013.

Exhibit 253: Ratification Agreement between ACE Automatic Garage Doors and Liberty Mutual dated July 23, 2013.

Exhibit 254: Letter of Transmittal from San Benito Drywall, Inc. to Liberty Mutual dated August 6,

2013, in the amount of \$46,872.84, with backup.

Exhibit 255: Ratification Agreement between Montez Glass and Liberty Mutual dated August 7, 2013.

Exhibit 256: Ratification Agreement between Control Technologies and Liberty Mutual dated August 8, 2013.

Exhibit 257: Ratification Agreement between B-K Mill & Fixtures, Inc. and Liberty Mutual dated August 7, 2013.

Exhibit 258: Email from Luis Aragon at Liberty confirming new claim by Sunstate Equipment, dated August 15, 2013.

Exhibit 259: Proof of claim form for Sunstate dated August 26, 2013.

Exhibit 260: Ratification Agreement between US Overhead Door Co., Inc. and Liberty Mutual dated August 9, 2013.

Exhibit 261: Ratification Agreement between YAG Manufacturing and Liberty Mutual dated July 23, 2016.

Exhibit 262: Email chain dated August 21, 2013 between Rodney Tomkins and Jeff Robbins confirming no money due Clark Pest Control.

Exhibit 263: Email chain dated August 21, 2013 between Rodney Tomkins, Rudy Mueller and Jeff Robbins confirming no money due Shelco Industries.

Exhibit 264: Ratification Agreement dated August 16, 2013 between Collier Warehouse, Inc. and Liberty Mutual.

Exhibit 265: Ratification Agreement dated August 21, 2013 between Creative Masonry, Inc. and Liberty Mutual. Total amount currently due is \$1,070.92.

Exhibit 266: Letter from Karen Davani, Commercial Collector, dated September 11, 2013, on behalf of Sunbelt Rentals.

Exhibit 267: Cemex Notice of Intent to File a Stop Notice or Bond Claim, dated August 16, 2013.

Exhibit 268: Ratification Agreement dated August 14, 2013 between Pacific Design Associates, Inc. and Liberty Mutual. Total amount currently due is \$5,609.22.

Exhibit 269: Ratification Agreement dated July 8, 2013 between Fischer Tile & Marble, Inc. and Liberty Mutual.

Exhibit 270: Email from Mitch Hajiaghai of Sierra Environmental to Christine Bartholdt dated August

27, 2013, asserting a claim against the payment bond.

Exhibit 271: Letter from Christine Bartholdt at Liberty to Richard Applegate noting a claim presented against the payment bond on behalf of Sierra Environmental on August 27, 2013 in the amount of \$6,992.00.

Exhibit 272: Letter from Christine Bartholdt at Liberty to Richard Applegate dated September 9, 2013, referencing a payment bond claim by Ace Portable Services dated September 2, 2013, in the amount of \$2,290.

Exhibit 273: ACE Portable Services payment bond claim dated September 2, 2013 in the amount of \$2,290.00.

Exhibit 274: Ratification Agreement dated July 23, 2013 between Amparan Flooring, Inc. and Liberty Mutual.

Exhibit 275: Ratification Agreement dated August 7, 2013 between H Square Mechanical, Inc. and Liberty Mutual.

Exhibit 276: Ratification Agreement dated August 8, 2013 between R Titus Waterproofing and Liberty Mutual.

Exhibit 277: Ratification Agreement dated August 21, 2013 between Pacific Coast Trane Service Company, Inc. and Liberty Mutual.

Exhibit 278: Ratification Agreement dated August 21, 2013 between Glendon Company and Liberty Mutual.

Exhibit 279: Ratification Agreement dated August 20, 2013 between SignaWest Systems, Inc. and Liberty Mutual.

Exhibit 280: Ratification Agreement dated August 27, 2013 between Green Bay Builders and Liberty Mutual.

Exhibit 281: Construction Collection Specialists letter dated September 6, 2013 on behalf of Sunstate Equipment Co., LLC.

Exhibit 282: Email from Ronnie Collins dated September 10, 2016 from Roxanne Collins to Christine Bartholdt regarding claims against payment bond on behalf of Dr. Deutch in the amount of \$1,400.

Exhibit 283: Ratification Agreement dated September 19, 2013 between RH Concrete and Liberty Mutual.

Exhibit 284: Ratification Agreement dated September 12, 2013 between SecureCom, Inc. and Liberty Mutual.

Exhibit 285: Ratification Agreement dated October 7, 2013 between WSP Roofing and Liberty Mutual.

Exhibit 286: Ratification Agreement dated August 8, 2013 between Titan Surveying & Mapping, Inc. dba RB Welty & Associates, Inc. and Liberty Mutual.

Exhibit 287: Ratification Agreement between River City Plastics and Liberty Mutual dated October 10, 2013

Exhibit 288: Invoice dated October 14, 2013 from River City Plastics \$2,574.

Exhibit 289: Conditional waiver and release on progress payment from Hertz Equipment Rental Corp. dated November 13, 2013 in the amount of \$6,410.80.

Exhibit 290: Conditional waiver and release on progress payment from Sierra Trench Protection dated November 18, 2013 in the amount of \$1,760.

Exhibit 291: Email from Christine Bartholdt to Amanda Marutsky regarding Ortiz Construction claim of \$10,848.92 dated October 24, 2013

Exhibit 292: Ratification Agreement between Ortiz Construction and Liberty Mutual dated October 14, 2013.

Exhibit 293: Conditional waiver and release on progress payment from CT Welding and New Engineering dated October 21, 2013 in the amount of \$7,101.25.

Exhibit 294: Conditional waiver and release on progress payment from CT Welding and James Oki Consulting Engineering dated illegible in the amount of \$6000.

Exhibit 295: Conditional waiver and release on progress payment from CT Welding and Star Seismic dated October 21, 2013 in the amount of \$18,599.00.

Exhibit 296: Ratification Agreement between Martina Landscape and Liberty Mutual dated October 22, 2013.

Exhibit 297: Conditional waiver and release on progress payment from Power Plus dated December 10, 2013 in the amount of \$682.50.

Exhibit 298: Email from Ron Ashlock to Christine Bartholdt dated December 30, 2013 regarding settlement of HCS Engineering, Inc's claim \$1,747.00.

Exhibit 299: Email from Ron Ashlock to Christine Bartholdt dated December 30, 2013 asking for payment of \$840.00 for Rutherford and Cheyenne.

Exhibit 300: Stop notice summary from Liberty Mutual dated June 27, 2014.

Exhibit 301: Release of stop notice by Accent Clean and Sweep Supply, Inc. dated October 14, 2013.

Exhibit 302: Release of stop notice by AJR Door Service dated October 16, 2013.

Exhibit 303: Release of stop payment notice by Bay City Mechanical, Inc. dated September 13, 2013.

Exhibit 304: Unconditional waiver and release on progress payment by Bay City Mechanical, Inc. dated September 19, 2013.

Exhibit 305: Release of stop notice by Brown-Strauss Steel dated November 18, 2013.

Exhibit 306: Release of stop notice by B.T. Mancini Co., Inc. dated December 9, 2013.

Exhibit 307: Release of stop notice by Cemex dated October 7, 2013.

Exhibit 308: Release of stop notice by Stephen Ciari Plumbing & Heating, Inc. dated November 12, 2013.

Exhibit 309: Release of stop notice by Corix Water Products (US), Inc. dated October 19, 2013.

Exhibit 310: Release of stop notice by Cozart Brothers dated October 4, 2013.

Exhibit 311: Release of stop notice by Electrical Distributors dated December 2, 2013.

Exhibit 312: Release of stop notice by Graybar Electric Co., Inc. dated October 3, 2013.

Exhibit 313: Release of stop notice by Ground Level Construction dated November 27, 2013.

Exhibit 314: Release of stop notice by Houston Fire Systems dated November 9, 2013.

Exhibit 315: Release of stop notice by Industrial Acoustics Co. dated November 27, 2013.

Exhibit 316: Release of stop notice by Lombardo Diamond Core Drilling dated December 2, 2013.

Exhibit 317: Release of stop notice by Skyline Steel Erectors dated November 08, 2013.

Exhibit 318: Release of stop notice by Valley Iron, Inc. dated November 27, 2013.

Exhibit 319: Letter dated July 3, 2013 from David Sykes at the City of San Jose to Liberty Mutual demanding performance under performance bond.

Exhibit 320: Applegate A/R History by Job dated August 18, 2015.

Exhibit 321: Applegate A/R History by Job dated October 14, 2015.

Exhibit 322: City of San Jose Application and Certificate for Payment.

Exhibit 323: City of San Jose Stop Notice Logs.

Exhibit 324: City of San Jose spreadsheet reflecting amounts withheld from and paid to Applegate.

Exhibit 325: Stipulation Re Non-Party Discovery, Protective Order for Document Production and PMK Deposition.

Exhibit 326: Supplemental Declaration of Christine Bartholdt in support of Liberty Mutual Insurance Company's Motion for Partial Summary Judgment.

Exhibit 327: Liberty Mutual Insurance Company Loss Run Report dated May 2, 2016.

Exhibit 328: Liberty Mutual General Agreement of Indemnity dated November 9, 2010. Letter dated July 3, 2013 from David Sykes of the City of San Jose to Jim Applegate regarding abandonment of Environmental Innovation Center Project.

Exhibit 329: Letter dated July 3, 2013 from David Sykes of the City of San Jose to Luis Aragon regarding demand to takeover project.

Exhibit 330: Email dated February 7, 2013 from Stephanie Miller to Diana Lehne.

Discovery Documents:

1. Defendant's Response to Requests for Admissions, Set No.2 and Set No.3.
2. Defendant's Response to Plaintiffs Interrogatories, Set No.1 and Set No.2.
3. Deposition Transcript of Liberty Mutual and Exhibits.
4. Deposition Transcript of City of San Jose.

Discovery Documents:

1. McGranahan's Response to Graybar Electric Company, Inc.'s Special Interrogatories, Set One dated March 25, 2016.
2. McGranahan's Response to Graybar Electric Company, Inc.'s Request for Production of Documents, Set One dated March 25, 2016.
3. McGranahan's Response to Graybar Electric Company, Inc.'s Request for Production of Documents, Set Two dated July 15, 2016.
4. McGranahan's Response to Graybar Electric Company, Inc.'s Request for Production of Documents, Set Three dated October 14, 2016.
5. McGranahan's Response to Graybar

	<p>Electric Company, Inc.'s Requests for Admission, Set One dated October 14, 2016.</p> <p>6. Deposition of Christine Bartholdt as PMK of Liberty Mutual Insurance Company, at the following page and line references: 7:6-9, 7:21-22, 8:11-15, 12:4-15:8, 15:19-20:7, 21:7-20, 22:5-21, 23:1-24:15, 25:4-23, 26:3-20, 27:3-34:1, 48:11-54:11, 54:22-57:21, 61:15-67:24, 68:14-69:19, 69:20-70:19, 76:1-24, 77:15-80:19, 82:1-8, 83:15-84:7, 87:3-93:21, 143:10-144:12, 149:12-150:2.</p>
<p>Further Discovery or Motions:</p> <p>1. None Anticipated</p>	<p>Further Discovery or Motions:</p> <p>1. None Anticipated</p>
<p>Stipulations:</p> <p>1. None Anticipated</p>	<p>Stipulations:</p> <p>1. Defendant expects that the parties will stipulate to certain foundational facts at issue in this action, including the timing and amounts of the transfers at issue, the issuance of the performance and payment bonds, the timing and amount of Defendant's releases of claims in exchange for payment, and the amount remaining in the owners' construction funds as of the date of the transfers and the dates and amounts of Defendant's exchange of value.</p>
<p>Amendments:</p> <p>1. None Anticipated</p>	<p>Amendments:</p> <p>1. None Anticipated</p>

Dismissals: 1. None Anticipated	Dismissals: 1. None Anticipated
Agreed Statement of Facts: 1. None Anticipated	Agreed Statement of Facts: 1. Defendant believes that the foundational facts in sections 2 and 12 herein should be presented in an Agreed Statement of Facts.
Attorneys' Fees Basis: 1. Fees Not Requested	Attorneys' Fees Basis: 1. Fees Not Requested
Additional Items 1. None At This Time	Additional Items 1. None At This Time
Trial Time Estimation: One Day	Trial Time Estimation: Five to Seven Days

10. [13-91315-E-7](#)      APPLGATE JOHNSTON, INC.  
[15-9037](#)  
MCGRANAHAN V. INDEPENDENT  
ELECTRIC SUPPLY, INC.

CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR  
(1) AVOIDANCE OF PREFERENTIAL  
TRANSFERS; AND (2) RECOVERY OF  
AVOIDED TRANSFERS  
7-13-15 [1]

**Final Ruling:** No appearance at the January 26, 2017 Pre-Trial Conference is required.  
-----

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Matthew P. James

Adv. Filed: 7/13/15  
Answer: 8/21/15

Nature of Action:  
Recovery of money/property - fraudulent transfer

Notes:  
Continued from 12/1/16

**The Parties having filed a Stipulation for Dismissal of this Adversary Proceeding, the Pre-Trial Conference is removed from the calendar and the Clerk may close the file in this Adversary Proceeding.**

#### **JANUARY 26, 2017 PRE-TRIAL CONFERENCE**

On January 24, 2017, the Parties filed a Stipulation to Dismiss the Adversary Proceeding. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) the parties may so dismiss the adversary proceeding, no order of the court required.

11. [13-91315-E-7](#)      APPLGATE JOHNSTON, INC.  
[15-9038](#)  
MCGRANAHAN V. ELECTRICAL  
DISTRIBUTORS, CO.

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT FOR (1) AVOIDANCE  
OF PREFERENTIAL TRANSFERS; AND  
(2) RECOVERY OF AVOIDED  
TRANSFERS  
7-13-15 [1]

**ADV. PROCEEDING DISMISSED:**  
**01/05/2017**

**Final Ruling:** No appearance at the January 26, 2017 Status Conference is required.  
-----

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Gleb Finkelman

Adv. Filed: 7/13/15  
Answer: 9/16/15

Nature of Action:  
Recovery of money/property - preference

**The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

Notes:  
Stipulation for Dismissal of Adversary Proceeding filed 1/4/17 [Dckt 105]; Order approving filed 1/5/17 [Dckt 106]

12. [13-91315-E-7](#)      APPLGATE JOHNSTON, INC.  
[15-9044](#)  
MCGRANAHAN V. GRANITE  
ELECTRICAL SUPPLY, INC.

**CONTINUED STATUS CONFERENCE  
RE: COMPLAINT FOR (1) AVOIDANCE  
OF PREFERENTIAL TRANSFER; AND  
(2) RECOVERY OF AVOIDED TRANSFER  
7-13-15 [1]**

**ADV. PROCEEDING DISMISSED:  
01/05/2017**

**Final Ruling:** No appearance at the January 26, 2017 Status Conference is required.  
-----

Plaintiff's Atty: Daniel Egan  
Defendant's Atty: Gleb Finkelman; Pamela J. Scholefield; Michael A. Sweet

Adv. Filed: 7/13/15  
Answer: 9/16/15

Nature of Action:  
Recovery of money/property - preference

Notes:  
Stipulation for Dismissal of Adversary Proceeding filed 1/4/17 [Dckt 62]; Order approving filed 1/5/17 [Dckt 63]

**The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

13. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA CONTINUED STATUS CONFERENCE RE:  
Peter L. Fear CHAPTER 12 VOLUNTARY PETITION  
2-25-13 [1]

**Final Ruling:** No appearance at the January 26, 2017 Status Conference is required.  
-----

Debtors' Atty: Peter L. Fear

**The Status Conference is continued to 2:00 p.m. on June 29, 2017.**

Notes:

Continued from 1/14/16

[FLG-15] Modified Chapter 12 Plan Dated June 26, 2013 filed 3/2/16 [Dckt 209]; Order confirming filed 7/24/16 [Dckt 251]

#### **JANUARY 26, 2017 STATUS CONFERENCE**

The Chapter 12 Plan in this case was confirmed on July 24, 2016. No post-confirmation motions have been filed and no post-confirmation reports have been filed by the Chapter 12 Trustee or the Plan Administrators/Debtors. It appearing that the case is proceeding, the court continues the Status Conference to avoid the parties incurring unnecessary costs and expenses.

14. [16-90424-E-7](#)      SANDRA ESPINO-ORTEGA  
[16-9013](#)  
PACIFIC MOTORS, INC. V.  
ESPINO-ORTEGA

CONTINUED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
9-12-16 [6]

Plaintiff's Atty: Pro Se  
Defendant's Atty: unknown

Adv. Filed: 9/9/16  
Answer: none  
Amd Cmplt Filed: 9/22/16  
Answer: none

Nature of Action:  
Objection/revocation of discharge

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:  
Continued from 12/15/16 to allow for the court to issue an order to show cause why this Adversary Proceeding should not be dismissed.

Status Conference on Amended Complaint set for 2/9/17 at 2:00 p.m. filed 12/6/16 [Dckt 8]

[RHS-1] Order to Show Cause filed 12/16/16 [Dckt 13], set for hearing 1/26/17 at 2:00 p.m.

15. [16-90424-E-7](#) SANDRA ESPINO-ORTEGA  
[16-9013](#) RHS-1  
PACIFIC MOTORS, INC. V.  
ESPINO-ORTEGA

ORDER TO SHOW CAUSE  
12-16-16 [13]

**APPEARANCE OF ASHOK KUMAR AND PACIFIC MOTORS, INC.  
REQUIRED AT THE STATUS CONFERENCE**

**ASHOK KUMAR SHALL APPEAR IN PERSON, NO TELEPHONIC  
APPEARANCE PERMITTED**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

-----

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Defendant, Chapter 7 Trustee, and Office of the United States Trustee as stated on the Certificate of Service on December 21, 2016. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Plaintiff's failure to appear at a Status Conference and failure to be represented by a licensed attorney.

**The Order to Show Cause is **xxxx**.**

The court issued an Order to Show Cause why the court should not dismiss this adversary proceeding for failure to prosecute.

Pacific Motors, Inc. ("Plaintiff") has failed to appear at the Status Conference in this Adversary Proceeding. Additionally, Plaintiff, a corporation, is purporting to prosecute this Adversary Proceeding in pro se. Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceedings in *pro se* or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993); *In re America West Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F.2d 771, 773 (9th Cir. 1986); *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), *aff'd*, 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

At the hearing, Plaintiff reported that the court should not dismiss the case because **xxxx**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is **xxxx**.

16. [16-90733-E-7](#)      **NELSON GUTIERREZ**      **CONTINUED STATUS CONFERENCE**  
[16-9016](#)      **RE: COMPLAINT**  
**TRAVIS CREDIT UNION V.**      **11-4-16 [1]**  
**GUTIERREZ**

Plaintiff's Atty: John Mendonza  
Defendant's Atty: Scott D. Mitchell

Adv. Filed: 11/4/16  
Answer: 12/16/16

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

**The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxx.**

Notes:  
Order Continuing Status Conference [pursuant to stipulation of the parties] filed 12/6/16 [Dckt 9]

**SUMMARY OF COMPLAINT**

Travis Credit Union ("Plaintiff") requests the court to determine that the obligation of Debtor in the amount of \$27,763.36, plus interest and costs, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B). It is asserted that the financial information provided by Defendant-Debtor to obtain credit from Plaintiff misstated Defendant-Debtor's Income.

**SUMMARY OF ANSWER**

Nelson Guitierrez ("Defendant-Debtor") has filed an Answer (Dckt. 11) in which he admits and denies specific allegations in the Complaint.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding arising under 11 U.S.C. § 523(a)(2)(B) to determine the nondischargeability of a debt. . Complaint ¶¶ 1, Dckt. 1. In his answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 11. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

## ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding arising under 11 U.S.C. § 523(a)(2)(B) to determine the nondischargeability of a debt. . Complaint ¶¶ 1, Dckt. 1. In his answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 11. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before -----, **2017**.
- c. Expert Witnesses shall be disclosed on or before -----, **2017**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2017**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2017**.
- e. Dispositive Motions shall be heard before -----, **2017**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2017**.

17. [16-90634-E-7](#)      **LESTER/ANA RODRIGUEZ**  
[16-9018](#)  
**CHAIRES V. RODRIGUEZ ET AL**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**11-14-16 [1]**

Plaintiff's Atty: Wilber Manuel Salgado  
Defendant's Atty: Mario Blanco

Adv. Filed: 11/14/16  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury

Notes:  
[MB-1] Motion to Dismiss Adversary Proceeding of Margarita Chairez filed 12/13/16 [Dckt 10], set for hearing 1/26/17 at 10:30 a.m.

**The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.**

**JANUARY 26, 2017 STATUS CONFERENCE**

On January 26, 2017, the court heard, and denied without prejudice the Defendant's motion to dismiss the complaint.

Summary of Complaint

The Complaint seeks to have a debt in the amount of \$10,711.94, plus interest, determined nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6). Plaintiff alleges that she obtained a judgment from the California Labor Commissioner against Defendant-Debtor. It is alleged that Defendant-Debtor made false representations that Plaintiff would be paid for her services, that said representation were relied upon by Plaintiff, that the representations were knowingly made to deceive Plaintiff, and that Defendant-Debtor maliciously and fraudulently did not intend to pay Plaintiff.

It is asserted that the Commissioner's award in the amount of \$10,711.94 plus interest is nondischargeable.

A copy of the Labor Commissioners Award is an exhibit to the Complaint. Dckt. 6 at 10. The Award appears to contain specific findings of fact and conclusions of law. What appears to be a certified copy of a judgment from the California Superior Court, County of Stanislaus, on the Commissioner's Award is also attached as an exhibit to the Complaint. *Id.* at 8.

18. [16-90736](#)-E-11      **RONALD/SUSAN SUNDBURG**  
Edward Smith      **STATUS CONFERENCE RE:  
STIPULATION FOR INTERIM USE OF  
CASH COLLATERAL  
1-5-17 [45]**

Debtors' Atty: Edward A. Smith

Notes:

Set by order of the court filed 1/17/17 [Dckt 56]

19. [12-93049](#)-E-11      **MARK/ANGELA GARCIA**  
Mark Hannon      **CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-30-12 [1]**

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 12/15/16 to allow the U.S. Trustee time to file a motion for appointment of replacement plan administrators or conversion of this case.

Operating Reports filed: 1/13/17 [12/2016], 1/13/17 [9/2016]

[MJH-19] Debtors' Motion for Replacement of Plan Administrators filed 1/12/17 [Dckt 903], set for hearing 1/26/17 at 2:00 p.m.

[UST-4] Motion of the United States Trustee for Order Converting or Dismissing Case filed 1/13/17 [Dckt 907], set for hearing 2/23/17 at 10:30 a.m.

**The Status Conference is continued to 10:30 a.m. on February 23, 2017 (specially set time).**

20.

[12-93049](#)-E-11  
MJH-19

MARK/ANGELA GARCIA  
Mark Hannon

MOTION FOR REPLACEMENT OF  
PLAN ADMINISTRATORS  
1-12-17 [[903](#)]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Replacement of Plan Administrators was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The hearing on the Motion for Replacement of Plan Administrators is continued to 10:30 a.m. on February 23, 2017.**

Mark Garcia and Angela Garcia ("Plan Administrators/Debtors") seek an order for replacement of themselves as plan administrators in this case. At a prior hearing, the court determined that the Plan Administrators/Debtors have breached their duties and must be replaced or the case converted to one under Chapter 7. Dckt. 896.

Plan Administrators/Debtors argue that conversion of the case would result in a dividend to unsecured claims of less than 8%, whereas the confirmed Chapter 11 plan of reorganization provides for a 50% dividend.

A review of the docket shows that the United States Trustee has filed a Motion for Order Converting or Dismissing this case pursuant to the court's prior determination that it should be converted or plan administrators replaced. Dckt. 907. The U.S. Trustee's motion is set for hearing on February 23,

2017. In the Motion, the U.S. Trustee does not expressly address the alternative of appointing a replacement plan administrator, reasons for why such may not be practical, and whether persons approached on taking such position rejected the opportunity.

The U.S. Trustee having filed a Motion to Convert or Dismiss this case, the court continues this matter to 10:30 a.m. on February 23, 2017, for the matters and arguments from each party in interest to be heard concurrently.

The court further requires the Debtors to submit the names of several (at least three) independent, third-party fiduciaries who are experienced in serving as receivers, trustees in bankruptcy, or other court (state or federal) appointed representatives who they propose to fulfill the role of plan administrator under the confirmed Chapter 11 plan rather than having the case converted to one under Chapter 7.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Order of Replacement of Plan Administrators having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Order of Replacement of Plan Administrators is continued to 10:30 a.m. on February 23, 2017.

**IT IS FURTHER ORDERED** that on or before February 10, 2017, Mark and Angela Garcia, the two Debtors who are currently the Chapter 11 Plan Administrators under the confirmed plan, shall file with the court and serve on all parties in interest a list of at least three proposed replacement plan administrators. The proposed replacement administrators shall be independent third-parties who are experienced serving as court (state or federal) appointed receivers, trustees, or other representatives, or have experience serving as a professional fiduciary.

The proposed replacement plan administrator who will serve as the fiduciary under the confirmed Chapter 11 plan shall not be related to, employed by, or have any other personal, business, or financial dealings with the Debtors or Debtor's attorney, or any entities in which the Debtors or Debtor's attorney have any interest.

21. [14-91565-E-7](#)      RICHARD SINCLAIR  
[15-9055](#)  
FLAKE V. SINCLAIR

CONTINUED PRE-TRIAL  
CONFERENCE RE: COMPLAINT FOR  
NONDISCHARGEABILITY  
7-24-15 [1]

**Final Ruling:** No appearance at the January 26, 2017 Pre-Trial Conference is required.  
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Plaintiff's Atty: Kelly L. Pope; Jamie P. Dreher  
Defendant's Atty: Pro Se

Adv. Filed: 7/24/15

Answer: 12/9/15

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

**The Parties having filed a Stipulation dismissing this Adversary Proceeding, the Pre-Trial Conference is removed from the calendar.**

Notes:

Continued from 12/1/16. The respective Pretrial Conference statements must be filed at least fourteen days (the period specified in the Pretrial Conference Order) before 1/26/17.

#### **JANUARY 26, 2017 PRE-TRIAL CONFERENCE**

On January 23, 2017, the Parties filed a Stipulation to Dismiss the Adversary Proceeding. Dckt. 25. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) the parties may so dismiss the adversary proceeding, no order of the court required.

22. [16-91096-E-12](#) **J & B DAIRY**  
**David Johnston**

**STATUS CONFERENCE RE: CHAPTER  
12 VOLUNTARY PETITION  
12-9-16 [1]**

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Debtor's Application for Seven Additional Days to File Schedules A to J, Summary of Assets and Liabilities, and Statement of Financial Affairs filed 12/23/16 [Dckt 15]; Order granting filed 12/27/16 [Dckt 20]

[AAS-1] Creditor Bank of Stockton's Motion for Relief from Automatic Stay or, in the Alternative, Request for Adequate Protection filed 12/29/16 [Dckt 23], set for hearing 1/26/17 at 10:00 a.m.

Trustee Report at 341 Meeting docketed 1/10/17

**The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.**

#### **JANUARY 26, 2017 STATUS CONFERENCE**

The Chapter 12 Trustee reports that Debtor in Possession and counsel failed to appear at the January 10, 2017 First Meeting of Creditors or the January 24, 2017 Continued First Meeting of Creditors.

The Debtor has failed to file Schedules A/B, Schedule D, Schedules E/F, Schedule G, Schedule H, the Statement of Financial Affairs, and the Summary of Assets and Liabilities. Notice of Incomplete Filing, Dckt. 3. The court granted Debtor an extension to January 13, 2017, to have the documents filed. As if the court's January 25, 2017 review of the Docket, none of the above required documents have been filed.

There is pending the issuance of an order dismissing the case for failure to file the above documents, the time for compliance having expired.

At the Status Conference, XXXXXXXXXXXXXXXXXXXXXXXXXXXX.