

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

February 23, 2017 at 2:00 p.m.

1. [16-90500](#)-E-11 ELENA DELGADILLO CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
6-9-16 [1](#)

Debtor's Atty: David C. Johnston

The Chapter 11 Status Conference is XXXXXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 2/9/17 [continued by prior order of the court to 2/23/17 at 2:00 p.m.]

10/20/16: The Debtor in Possession's counsel will review hiring a bilingual accountant to make sure the reports are accurate and filed.

Supplemental Status Conference re Motion to Appoint a Chapter 11 Trustee filed 11/15/16 [Dckt 63]; heard 11/22/16 and continued to 12/15/16; further continued to 2/23/17 at 2:00 p.m.

Motion to Appoint Chapter 11 Trustee, or, in the Alternative, to Convert Action to Chapter 7 filed 11/23/16 [Dckt 65]; Order granting the appointment of trustee filed 12/21/16 [Dckt 80]

[UST-1] Application for Order Approving the Appointment of Chapter 11 Trustee filed 12/21/16 [Dckt 81]; Order granting filed 12/22/16 [Dckt 89]

[HSM-1] Application to Employ Hefner, Stark & Marois, LLP as Counsel for Trustee filed 12/23/16 [Dckt 90]; Order granting filed 1/2/17 [Dckt 98]

[JES-1] Trustee Irma Edmonds Application for Authority to Employ Certified Public Accountant, Combined with Declaration in Support Thereof filed 12/29/16 [Dckt 95]; Order granting filed 1/2/17 [Dckt 99]

Trustee's First Chapter 11 Status Report filed 2/16/17 [Dckt 101]

FEBRUARY 22, 2017 STATUS CONFERENCE

The Chapter 11 Trustee filed her Status Report for this case on February 16, 2017.

February 23, 2017 at 2:00 p.m.

Dckt, 101. The Trustee reports an unusually challenging set of facts in assessing the Debtor's finances due to her limited record keeping and operating on a cash basis, both pre and post-petition. The Trustee is continuing her investigation of Debtor's pre-petition transfers of assets and the ongoing reconveyance of the properties, now back to the Estate (which the Debtor had commenced and was recovering as the debtor in possession prior to the appointment of the Trustee). However, the Trustee notes that while the Debtor, acting as debtor in possession, was recovering the properties, she was not placing any insurance on the properties. The Trustee reports that the properties are now insured.

2. [16-90002-E-11](#) 1263 INVESTORS LLC

**CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
1-5-16 [1](#)**

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 2/9/17

[RLC-9] Confirmation hearing held 2/16/17 at 11:30 a.m. [in Sacramento]; plan confirmed as amended.

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.
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3. [16-90309-E-7](#) **MARK/JULIANNA RUNYON**
[16-9011](#)
HERRA V. RUNYON ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
7-1-16 [1]

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

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

Nature of Action:
Objection/revocation of discharge

Notes:

Continued from 12/1/16. Courtesy counsel appeared and stated that Plaintiff's counsel of record was preparing the motion for entry of default judgment, while home ill, and would have it filed in the next two weeks. Not filed as of 2/16/17.

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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FEBRUARY 22, 2017 STATUS CONFERENCE

This Adversary Proceeding was commenced on July 1, 2016. The Defaults of Defendants were entered on September 6, 2016. Dckts. 12, 13. The Status Conference has been continued twice, the first time to allow for the filing of a motion for entry of a default judgement. The second time (December 1, 2016) it was continued due to the illness of Plaintiff's counsel.

Notwithstanding the continuances, no motion for entry of default judgment has been filed.

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December 1, 2017 Status Conference

On September 7, 2016, the default of the Defendant-Debtor was entered. The court continued the September 8, 2016 Status Conference to December 1, 2016 to allow for the filing of a motion for entry of default judgment. The court has been advised in other cases of an illness affecting Plaintiff's counsel and his inability to work during the Fall of 2016. Courtesy counsel appeared, and communicated that Plaintiff's counsel of record was preparing the motion for entry of default judgment, while home ill, and would have it filed in the next two weeks.

4. [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 February 22, 2017 Pre-Trial Conference is required.

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

The Pretrial Conference is continued to 11:00 a.m. on April 6, 2017, to be conducted in Courtroom 33 of the Federal Courthouse in Sacramento, California (as requested by the parties).

Notes:
Defendant Community Assessment Recovery Services' Pretrial Conference Statement filed 2/13/17 [Dckt 98]

[ELG-2] Defendant's Ex Parte Application for Continuance of Date and Location of Pretrial Conference filed 2/15/17 [Dckt 102]; Order granting filed 2/16/17 [Dckt 106], set for 4/6/17 at 11:00 a.m. in the court in Sacramento, California.

5. [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 February 22, 2017 Status Conference is required.

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

The Status Conference is continued to 11:00 a.m. on April 6, 2017, to be conducted in Courtroom 33 of the Federal Courthouse in Sacramento, California, to be conducted in in conjunction with the Pre-Trial Conference in Adversary Proceeding 15-9061. Counsel and Parties may appear telephonically at the Status Conference.

Notes:
Continued from 1/26/17 to be conducted in conjunction with the Pre-Trial Conference in Adversary Proceeding 15-9061.

6. [13-91315-E-7](#) **APPLEGATE 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 1/26/17 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 they need some additional time to work out the stipulated facts.

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.

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-Trustee shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- C. Defendant Stephen Ciari Plumbing and Heating, inc. 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. 36, 38, 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-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"> 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. 2. The Challenged Payment was a transfer of property of the Debtor. 3. At the time of the transfer, Defendant was a creditor of Debtor. 4. The Challenged Payment was made on account of an antecedent debt owed by Debtor to Defendant. 5. Debtor commenced a Chapter 7 bankruptcy case on July 16, 2016. The Challenged Payment was made within 90 days of the bankruptcy filing. 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. 7. The distribution to unsecured creditors in Debtor’s case will be less than 100% 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. Not identified, but Defendant believes that a joint statement with Plaintiff-Trustee is possible.

<p>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> <ol style="list-style-type: none"> 1. Defendant may seek to challenge the presumption that Debtor was insolvent in the 90 days prior to the bankruptcy case. 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>Disputed Facts:</p> <ol style="list-style-type: none"> 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). 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 Trustee had not unreasonably waited nearly two years to file the present preference action related to a single payment. 3. Whether the Debtor's assets exceeded its liabilities as of the date of the transfer at issue.
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None identified 	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None identified
<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. Trustee seeks avoidance (11 U.S.C. § 547(b) and recovery (11 U.S.C. § 550) of the Challenged Payment. 	<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. Defendant seeks a dismissal of the Trustee's complaint, plus costs, and that Trustee recover nothing under his complaint.
<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. § 547(b) 2. Bankruptcy Code provides a presumption that the Debtor is insolvent 	<p>Points of Law:</p> <ol style="list-style-type: none"> 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>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>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 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</p>
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	<p>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 Business & 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>Defendant's Witnesses</p> <p>1. Gleb Finkelman</p> <p>2. Danielle Walker</p> <p>3. Joseph A. Romeo</p> <p>4. Danny Houston</p> <p>5. Debera Wratten</p> <p>6. Richard S. Long</p> <p>7. Luz Smith</p> <p>8. Renae Montemayor</p> <p>9. John Sims</p> <p>10. Diane Brand</p> <p>11. Lloyd Attree</p> <p>12. Terrence Rose</p> <p>13. Representative of Fresh Coat Painters</p> <p>14. Representative of A1 Quality Blinds</p> <p>15. August A. Hioco</p> <p>16. Ryan Eckert</p> <p>17. Dan Watson</p> <p>18. Jeff Qualle</p> <p>19. Maureen Wood</p>	<p>Defendant Witnesses</p> <p>33. Wendy Biezkow, CFO</p> <p>34. Karen Davani</p> <p>35. Donald Phillips</p> <p>36. Jay Fischer</p> <p>37. Mitch Hajiaghahi</p> <p>38. Marlee Monty-Ingram</p> <p>39. Ozzie Amparan</p> <p>40. Hoc N. Hua</p> <p>41. Karen Titus</p> <p>42. Pacific Coast Trane Service Company, Inc.</p> <p>43. Jeff O'Connel</p> <p>44. Jennifer Reynolds</p> <p>45. Priscila Kunkel</p> <p>46. Roger Dills</p> <p>47. Debbie Nute</p> <p>48. Representative of RH Concrete</p> <p>49. Kevin McEntee</p> <p>50. Kelly Baird</p> <p>51. Titan Surveying & Mapping, Inc. dba RB</p>

20. Jordi Grant 21. Randall McClure 22. Michael Hernandez 23. Jill Foster 24. T Montez 25. Andy Tran 26. B-K Mill & Fixtures, Inc. 27. Sunstate Equipment 28. Mary DeSilva 29. Robert Yagmourian 30. Clark Pest Control 31. Shelco Industries 32. Collier Warehouse, Inc.	52. Welty & Associates, Inc., Manager. 53. Representative of River City Plastics 54. Representative of Sierra Trench Protection. 55. Representative of Ortiz Construction 56. Representative of CT Welding 57. Representative of New Engineering 58. Representative of James Oki Consulting Engineering 59. Representative of Martina Landscape 60. Representative of Power Plus 61. Representative of HCS Engineering, Inc. 62. Representative of Rutherford and Cheyenne
<p>Exhibits for Plaintiff-Trustee:</p> <ol style="list-style-type: none"> 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 <i>In re Applegate Johnston</i>, Case No. 13-91315-E-7 and related claims. 4. Form 2 - Record of Receipts and Disbursements 	
<p>Exhibit for Defendant:</p> <p>Exhibit 1: Debtor's Schedules and Summaries filed on July 30, 2013, Dckt Nos. 36-45, Case No. 13-91315-E-7.</p> <p>Exhibit 2: Subcontract between Debtor and Defendant.</p> <p>Exhibit 3: Prime Contract (including specifications) between Debtor and City of San Jose.</p> <p>Exhibit 4: Payment Bond issued by Liberty Mutual Insurance Company.</p> <p>Exhibit 5: Billings, including backup, from Defendant to Debtor.</p> <p>Exhibit 6: Statutory Lien Waivers issued by Defendant.</p> <p>Exhibit 7: Payments from Debtor to Defendant on the Innovation Center project.</p> <p>Exhibit 8: Payment from Debtor to Defendant for \$32,392.74, dated May 17, 2013.</p> <p>Exhibit 9: Debtor's billings to the City of San Jose.</p>	

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 Hajiaghahi 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 Distributors 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.

Discovery Documents:

1. Defendant's Response to Requests for Admissions, Set No.1.
2. Defendant's Response to Plaintiffs Interrogatories, Set No.1.
3. Deposition Transcript of Liberty Mutual.

Discovery Documents:

1. Defendant's Special Interrogatories to Trustee served on February 12, 2016 and the Trustee's Responses dated March 25, 2016, as reflected below.

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

7. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED PRE-TRIAL
[15-9030](#) CONFERENCE RE: COMPLAINT FOR

**MCGRANAHAN V. ACE AUTOMATIC
GARAGE DOORS, INC.**

**(1) AVOIDANCE OF PREFERENTIAL
TRANSFERS; AND (2) RECOVERY
OF AVOIDED TRANSFERS
7-9-15 [\[1\]](#)**

**ADVERSARY PROCEEDING
DISMISSED: 01/29/2017**

Final Ruling: No appearance at the February 22, 2017 Pre-Trial Conference is required.

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

<p>The Adversary Proceeding having been dismissed (Dckts. 26, 27), the Pre-Trial Conference is removed from the Calendar.</p>
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Notes:
Stipulation for Dismissal of Adversary Proceeding filed 1/26/17 [Dckt 26]; Order approving filed 1/29/17 [Dckt 27]

8. [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

The Pretrial Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.
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Notes:
Continued from 1/26/17 to allow the Parties to work further on a stipulated set of facts.

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:

The Parties in their respective Pretrial Conference Statements, have presented to the court the following:

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.

Plaintiff’s 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.

Defendant’s 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).
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

<p>hypothetical claim by Defendant in the amount of the transfers</p> <p>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).</p> <p>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).</p> <p>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.</p> <p>6. Whether the Debtor's assets exceeded its liabilities as of the dates of the transfers 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 and recovery of the Challenged Payments.</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>Plaintiff's Points of Law:</p> <p>1. 11 U.S.C. § 547(b)</p> <p>2. <i>In re Sierra Steel, Inc.</i>, 96 B.R. 275, 279(B.A.P. 9th Cir. 1989.)</p> <p>3. 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 style="text-align: right;">Defendant's Points of Law:</p> <p>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.</p>	

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.
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.
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.
5. *In re Modtech Holdings, Inc.* (Bankr. C.D. Cal. 2013)
6. The payments at issue were transfers of property in which the Debtor had no interest: Defendant 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

Abandoned Issues:

1. None Identified

Abandoned Issues:

1. None Identified

Plaintiff's Witnesses:

February 23, 2017 at 2:00 p.m.

- Page 32 of 64-

1. Michael D. McGranahan
2. Matthew McConaughy (adverse)
3. Najam Chohan (adverse)
4. Liberty Mutual Insurance Company (by deposition)
5. City of San Jose (by deposition)

Defendant's Witnesses	Defendant's Witnesses:
1. James Applegate, Principal of debtor	49. Michael Hernandez, President, ACE
2. Richard Applegate, Principal of debtor	Automatic Garage Doors.
3. Timothy Johnston, Principal of debtor	50. Jill Foster, San Benito Drywall, Inc.
4. John Bergman, Principal of debtor	51. T Montez, Montez Glass.
5. Diana Lehne, bookkeeper of debtor	52. Andy Tran, President, Control
6. Antonio Velez, employee of debtor	Technologies.
7. Christine Bartholdt, Surety Claims	53. Representative of B-K Mill & Fixtures,
Counsel, Person Most Knowledgeable for	Inc.
Liberty Mutual Insurance Company	54. Representative of Sunstate Equipment.
8. Brad Eggleston, City of Palo Alto,	55. Mary DeSilva, Secretary, US Overhead
9. David Arntz, Arntz Builders, Inc.,	Door Co., Inc.
10. Kevin Mosher, Flintco Pacific, Inc.,	56. Robert Yagmourian, YAG
11. Matthew McConaughy, Graybar Electric	Manufacturing.
Company, Inc.	57. Representative of Clark Pest Control.
12. Najam Chohan, Graybar Electric	58. Representative of Shelco Industries.
Company, Inc.,	59. Representative of Collier Warehouse,
13. Komal Chauhan, former employee of	Inc.
Graybar Electric Company, Inc.	60. Wendy Biezkow, CFO, Creative
14. David Printy, City of San Jose	Masonry, Inc.
15. Rebecca L. Bosque,	61. Karen Davani, Commercial Collector,
	Sunbelt Rentals.
16. Sherri Dukes, Graybar Electric Company,	62. Donald Phillips, President, Pacific
Inc.	Design Associates, Inc.
17. John Kershner, Director of Credit,	63. Jay Fischer, Fischer Tile & Marble, Inc.
Independent Electric Supply, Inc.	64. Mitch Hajiaghahi, Sierra Environmental.
18. Ross Cirrincione, Credit Manager, Ganahl	65. Marlee Monty-Ingram, ACE Portable
Lumber Company	Services
19. July Kuta-Showers, Subcontractor	66. Ozzie Amparan, Amparan Flooring, Inc.
Compliance Administrator, Sausal	67. Hoc N. Hua, H Square Mechanical, Inc.
Corporation	68. Karen Titus, Operations Manager, R
20. Rebecca Nuttall, Project Coordinator,	Titus Waterproofing.
Flintco Pacific, Inc.,	69. Pacific Coast Trane Service Company,
21. Daniel M. Connolly, Liberty Mutual	Inc.
Insurance Company	70. Jeff O'Connell, Credit Manager, Glendon
22. Glenn Schwartzbach, Senior Deputy City	Company, Jennifer Reynolds, Manager.
Attorney, City of San Jose	71. Priscila Kunkel, Operations Manager,
23. David Sykes, Department of Public Works,	SignaWest Systems, Inc.
City of San Jose	72. Roger Dills, Green Bay Builders.
	73. Debbie Nute, President, Sunstate

24. Rod Tompkins, RJT Consulting, Inc.	Equipment Co., LLC.
25. Michael Haughey, President, Accent Clean and Sweep, Inc.	74. Representative of RH Concrete.
26. Celia Romero, AJR Door Service	75. Kevin McEntee, President, SecureCom, Inc.
27. Bobbie Amos, CFO, Bay City Mechanical, Incorporated	76. Kelly Baird, President, WSP Roofing.
28. Yvonne Vigi	77. Titan Surveying & Mapping, Inc. dba RB Welty & Associates, Inc.
29. Skip Mancini, President, Liz Johnson Controller & Corporate Secretary, B. T. Mancini, Co., Inc.	78. Representative of River City Plastics.
30. Marci A. Knapp, Credit Manager, Pamela East, Senior Credit Representative, Cemex, Inc.	79. Representative of Sierra Trench Protection.
31. Representative of Flat 6, Westcroft Court, Kingsbury Road, Houston, TX NW9 9PG.	80. Representative of Ortiz Construction.
32. Richard Barge, General Manager, Corix Water Products (US), Inc.	81. Representative of CT Welding.
33. Daniel Cozart, President, Cozart Brothers, Inc.,	82. Representative of New Engineering.
34. Gleb Finkelman, Credit Manager, Electrical Distributors	83. Representative of James Oki Consulting Engineering.
35. Danielle Walker, Electrical Distributors	84. Representative of Martina Landscape.
36. Danny Houston, Debera Wratten, Accounting, Houston Fire Systems,	85. Representative of Power Plus.
37. Richard S. Long, Vice President, Judy M. Wagner, A/R Collections	86. Representative of HCS Engineering, Inc.
38. Luz Smith, Skyline Steel Erectors	87. Representative of Rutherford and Cheyenne.
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. Maureen Wood, Finance Director,	
47. Jordi Grant, Western Electrical Contractors Association, Inc.	
48. Randall McClure, VP of Operations, Corporate Sign Systems, Inc.	

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
123	Letter 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 Hajiaghahi 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 Distributers 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 Electric Company, Inc.'s Requests for Admission, Set One dated October 14, 2016.
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>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>
<p>Dismissals:</p> <p>1. None Anticipated</p>	<p>Dismissals:</p> <p>1. None Anticipated</p>
<p>Agreed Statement of Facts:</p> <p>1. None Anticipated</p>	<p>Agreed Statement of Facts:</p> <p>1. Defendant believes that the foundational facts in sections 2 and 12 herein should be presented in an Agreed Statement of Facts.</p>
<p>Attorneys' Fees Basis:</p> <p>1. Fees Not Requested</p>	<p>Attorneys' Fees Basis:</p> <p>1. Fees Not Requested</p>
<p>Additional Items</p> <p>1. None At This Time</p>	<p>Additional Items</p> <p>1. None At This Time</p>

Trial Time Estimation: One Day	Trial Time Estimation: Five to Seven Days

9. [16-90817-E-7](#) DANIEL ANDERSEN
[16-9017](#)
ANDERSEN V. UNITED STATES OF
AMERICA, INTERNAL REVENUE

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
11-10-16 [[1](#)]

Final Ruling: No appearance at the February 22, 2017 Status Conference is required.

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

Adv. Filed: 11/10/16
Answer: none

Nature of Action:

<p>The Court having granted Plaintiff-Debtor's Motion for Entry of Default Judgment, the Status Conference is continued to 2:00 p.m. on May 4, 2017, to allow the court to enter the judgment thereon.</p>

Dischargeability - priority tax claims

Notes:

Continued from 1/5/17 to afford Plaintiff-Debtor the opportunity to prosecute his motion for entry of default judgment.

Order granting motion for default judgment filed 2/1/17 [Dckt 24]

Debtor's Atty: David C. Johnston

Notes:

Continued from 2/9/17 to be heard in conjunction with the court's order to show cause.

Trustee Report at 341 Meeting filed 2/15/17

FEBRUARY 23, 2017 STATUS CONFERENCE

The Chapter 12 Debtor in Possession filed a Status Report on February 22, 2017, for the February 23, 2017 Status Conference. Dckt. 24. In the Status Report, the Debtor in Possession advises the court and parties in interest of the following:

- A. The farming activity is a beekeeping business.
- B. The Debtor in Possession anticipates filing a Chapter 12 Plan on or before the March 30, 2017 statutory deadline.
- C. The U.S. Farm Service Agency claims a security interest in accounts receivable. There were no accounts receivable as of the commencement of the bankruptcy case.
- D. Debtor in Possession does not anticipate any significant objections to claims being filed.
- E. The Plan is not anticipated to provide for the sale of any property.

Review of Schedules

I. Schedule A/B - Real Property

- A. Ellenwood Rose Property
 - 1. Value.....\$300,000

II. Schedule A/B - Personal Property

- A. Total Value.....\$97,730
- B. Notable Items
 - 1. Farm Equipment.....\$71,000

III. Schedule D - Secured Claims

- A. Vehicles

B. Ellenwood Property

1. Deed of Trust.....(\$380,000)
2. 2nd Deed of Trust.....(\$300,000)
3. Beehives.....(\$ 30,000)

IV. Schedule E - Priority Claims

A. Taxes.....(\$ 3,500)

V. Schedule F- General Unsecured Claims

A. Total.....(\$ 4,600)

VI. Schedule I - Income

A. Total Net.....\$3,373

VII. Schedule J - Expenses

A. Total.....(\$3,829)

B. Notable Expenses

1. Rent/Mortgage.....(\$2,500) [74%]
2. Repair/Maintenance.....(-\$0-)
3. Food/Supplies.....(\$ 200)
4. Clothing/Laundry.....(\$ -0-)
5. Medical/Dental.....(\$ -0-)
6. Transportation.....(\$ 60)
7. Charitable Contrib.....(\$ 350)

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

This Bankruptcy Case was filed on December 30, 2016. Debtor and Debtor Counsel (who notified the court of having suffered an injury and an illness during the Christmas Holiday) did not attend the First Meeting of Creditors on January 24, 2017. Trustee's January 24, 2017 Docket Entry Report.

The First Meeting of Creditors was continued to February 1, 2017. The Trustee reports that Debtor and Debtor's Counsel did not attend the continued meeting. Trustee's February 1, 2017 Docket Entry Report. However, Debtor and Debtor's counsel did attend the February 15, 2017 second continued First Meeting of Creditors. Trustee's February 15, 2017 Docket Entry Report.

The court issued an Order to Show Cause on January 31, 2017, based on Debtor's failure to file the required Schedules and Statement of Financial Affairs in this case. Notice of Incomplete Filings and Order to Show Cause, Dckts. 3 and 16.

The missing documents were filed on February 9, 2017. Dckts. 18, 19.

The Debtor having filed the documents, the Order to Show Cause is Discharged.

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 issued by the Court having been considered at the February 23, 2017 hearing, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions or other relief ordered.

Debtor's Atty: David M. Meegan; Anthony Asebedo

The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2017.

Notes:

Continued from 12/1/16.

Operating Reports filed: 12/16/16; 1/19/17; 2/16/17

[MHK-17] Report of Sale of Real Property of the Estate filed 12/12/16 [Dckt 450]

[MHK-19] Debtors' Motion for Authority to Sell Real Property, to Pay Broker's Commission, and to Disburse Proceedings [201 W. Syracuse Avenue, Turlock, California] filed 12/15/16 [Dckt 452]; heard 1/5/17 and continued to 1/18/17 at 2:30 p.m.; motion dismissed without prejudice 1/25/17 [Dckt 475]

[MHK-20] Debtors in Possession's Application for Relief from Final Order filed 1/20/17 [Dckt 469]; Order granting filed 1/30/17 [Dckt 476]

[MHK-21] Debtors in Possession's Application to Employ Real Estate Broker filed 2/1/17; Order granting filed 2/3/17 [Dckt 486]

[MHK-1] Order granting use of cash collateral; continuing hearing to 5/18/17 at 10:00 a.m. On or before 4/18/17 the Debtor in Possession shall file a Supplement to the Motion, if any, along with a Notice of Continued Hearing. Opposition to such further use, if any, shall be filed and served on or before 5/2/17. Filed 2/1/17 [Dckt 485]

Debtors in Possession's Sixth Chapter 11 Status Report filed 2/7/17 [Dckt 489]

Amended Schedule E filed 2/13/17 [Dckt 491]

Amended Verification and Master Address List filed 2/13/17 [Dckt 492]

FEBRUARY 23, 2017 STATUS CONFERENCE

On February 22, 2017, the U.S. Trustee filed a Motion to Convert or Dismiss this bankruptcy case. Motion, Dckt. 500. First, Debtors in Possession have failed to propose a plan in this case, notwithstanding it now having been pending for two years. The Debtor in Possession has also defaulted in \$975.00 in U.S. Trustee fees.

Debtor in Possession Status Report

On February 7, 2017, the Debtor in Possession filed an updated Status Report. The Report does not projected when the Debtor in Possession intends to proceed with advancing a Plan in this case.

13. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9007](#)
KATAKIS ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
2-20-15 [1]

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 12/15/16, a settlement between Plaintiff and the Chapter 7 Trustee having been approved by the court.

Plaintiffs' Unilateral Status Report filed 2/14/17 [Dckt 77]

FEBRUARY 23, 2017 STATUS CONFERENCE

The Plaintiff filed an updated Status Report on February 14, 2017. Dckt. 77. Pursuant to the settlement approved by this court, Plaintiff submitted a dismissal with prejudice of the Katakis et al. v. Flake et al., action pending in the California Superior Court for the County of Stanislaus, case no. 668157. The dismissal was signed by counsel for Plaintiff and counsel for the Chapter 7 Trustee. The Superior Court rejected the dismissal, indicating that counsel for the Debtor must sign the dismissal. A hearing on the dismissal is set for February 24, 2017.

14. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9007](#)
KATAKIS ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE
RE: MOTION FOR SUMMARY
JUDGMENT
10-28-16 [53]

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 12/15/16, a settlement between Plaintiff and the Chapter 7 Trustee having been approved by the court.

Plaintiffs' Unilateral Status Report filed 2/14/17 [Dckt 77]

FEBRUARY 23, 2017 STATUS CONFERENCE

The Plaintiff filed an updated Status Report on February 14, 2017. Dckt. 77. Pursuant to the settlement approved by this court, Plaintiff submitted a dismissal with prejudice of the Katakis et al. v. Flake et al., action pending in the California Superior Court for the County of Stanislaus, case no. 668157. The dismissal was signed by counsel for Plaintiff and counsel for the Chapter 7 Trustee. The Superior Court rejected the dismissal, indicating that counsel for the Debtor must sign the dismissal. A hearing on the dismissal is set for February 24, 2017.

15. [14-91565](#)-E-7 RICHARD SINCLAIR
[15-9008](#)
CALIFORNIA EQUITY MANAGEMENT
GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
2-23-15 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15
Answer: 3/30/15; 4/8/16

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

The Status Conference is continued to xxxxxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 12/15/16, the Parties reporting that they are diligently prosecuting the District Court action.

Status Report by Plaintiffs filed 2/16/17 [Dckt 64]

FEBRUARY 23, 2017 STATUS CONFERENCE

Plaintiff reports that the Defendant-Debtor's motion for reconsideration in the District Court Action is still under submission. The motion was taken under submission July 19, 2016, and there is no reported date when the ruling is expected to be issued.

16. [14-91565](#)-E-7 RICHARD SINCLAIR
[15-9009](#) HAR-2
KATAKIS ET AL V. SINCLAIR

MOTION FOR SUMMARY JUDGMENT
AND/OR MOTION FOR SUMMARY
ADJUDICATION O.S.T.
1-23-17 [[74](#)]

Due To The Length of the Draft of the Ruling, No Tentative is Posted for this Motion