

G COMPANIES CONSTRUCTION, INC.

1105 QUAIL STREET
NEWPORT BEACH, CA 92660
Phone: (949) 955-3832
Fax: (949) 752-7108


CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
[California Civil Code §3262 (d)(1)]

Upon receipt by the undersigned of a check from G COMPANIES CONSTRUCTION, INC.
(Maker of Check)
in the sum of \$ 441,609.12
(Amount of Check)
payable to CAPITAL DRYWALL
(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of MURRIETA VILLAGE WALK L.P. located at 24415 VILLAGE WALK PLACE, MURRIETA, CA 92562
(Owner) (Job Description)
to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to G COMPANIES CONSTRUCTION, INC. through 11-20-07 only and does not cover any retentions.
(Your Customer) (Date)

retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or times furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanics lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document release on it, said party should verify evidence of payment to the undersigned.

Dated: 11-20-07

CAPITAL DRYWALL
(Name)

(Title)
FRANK SCARDINO, PRESIDENT

**** ALL LABOR USED ON THE ABOVE REFERENCED PROJECT HAS BEEN PAID
THROUGH COMPANY PAYROLL.**

NOTE: CIVIL CODE SECTION 3262 (d)(1) PROVIDES: *Where claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form set forth above.*

USE REVERSE SIDE AS RELEASE FOR INDIVIDUALS PERFORMING LABOR FOR WAGES
(for a unconditional waiver and release upon progress payment use Wolcotts Form 32622 or 32622D)

<i>[Signature]</i> (Signature of Individual Performing Labor for Wages)	11-20-07 (Date)
<i>[Signature]</i> (Signature of Individual Performing Labor for Wages)	11-20-07 (Date)
<i>[Signature]</i> (Signature of Individual Performing Labor for Wages)	11-20-07 (Date)

[illegible]

Gateway Plastering, Inc. Claim No. 47

In re James C. Gianulias; Case No. 8:08-bk-13150-RK

ORIGINAL

B10 (Official Form 10 (12/07))

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: JAMES C. GIANULIAS		Case Number: 8:08-BK-13150-RK
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): GATEWAY PLASTERING, INC.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: C/O MARC S. HINES, ESQ., HINES SMITH CARDER LEASURE, 3080 Bristol Street, Suite 540, Costa Mesa, California 92626		Court Claim Number: (If known)
Telephone number: (714) 513-1122		Filed on: _____
Name and address where payment should be sent (if different from above): GATEWAY PLASTERING, INC. C/O KATHY SHUBIN 966 N AMELIA AVE., SAN DIMAS, CALIFORNIA 91773		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number: (909) 305-8724		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ 620,294.30 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: Services performed (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5) <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		Amount entitled to priority: \$ _____
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: 11/10/08	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Kathy Shubin Controller	FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
FEB 15 2008

MARC S. HINES (SBN 140065)
KATHERINE S. AGBAYANI (SBN 213812)
HINES SMITH CARDER
3080 Bristol Street, Suite 540
Costa Mesa, California 92626
Tel.: (714) 513-1122
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Attorneys for Plaintiff
GATEWAY PLASTERING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

GATEWAY PLASTERING, INC., a
California corporation,

Plaintiff,

vs.

G COMPANIES CONSTRUCTION, INC., a
California corporation; **MURRIETA**
VILLAGE WALK, LP, an entity, form
unknown; **JAMES CHRIS GIANULIAS**, an
individual; **DAVID D. GIANULIAS**, an
individual; **DAVID LETTERIE MAFFEI**, an
individual; **BANK OF THE WEST**, a
California corporation; and **DOES 1 through**
40, Inclusive,

Defendants.

CASE NO.: RIC 492912

(Assigned for All Purposes to 3)

**COMPLAINT OF PLAINTIFF GATEWAY
PLASTERING, INC. FOR:**

1. **Breach of Written Contract;**
2. **Quantum Merit;**
3. **Account Stated;**
4. **Open Book Account;**
5. **Foreclosure of Mechanic's Lien;**
6. **Enforcement of Bonded Stop Notice;**
7. **Conversion; and**
8. **Misappropriation of Construction Funds**

ACTION FILED:

DISCOVERY CUT-OFF: NONE

MOTION CUT-OFF: NONE

TRIAL DATE: NONE

Plaintiff, **GATEWAY PLASTERING, INC.**, a California corporation (hereinafter
"Plaintiff") alleges the following against Defendants, **G COMPANIES CONSTRUCTION, INC.**,
a California corporation ("**G COMPANIES**"); **MURRIETA VILLAGE WALK, LP**, an entity,
form unknown ("**MURRIETA**"); **JAMES CHRIS GIANULIAS**, an individual ("**JAMES**
GIANULIAS"); **DAVID D. GIANULIAS**, an individual ("**DAVID GIANULIAS**"); **DAVID**

1 LETTERIE MAFFEI, an individual ("MAFFEI"); BANK OF THE WEST, a California
2 corporation ("BANK OF THE WEST"); and Does 1 through 40, inclusive, and each of them:

3 **PARTIES AND VENUE**

4 1. Plaintiff is a California corporation engaged, generally, as a subcontractor in the
5 trade of installation of lath and plaster at residential construction within the State of California,
6 and at the time of entering into the subcontract agreement with Defendant G COMPANIES,
7 which is the subject of this Complaint, and at all relevant times, was properly registered with and
8 performing business in the State of California, with a principle place of business located at 966
9 North Amelia Avenue, San Dimas, California. At all relevant times, Plaintiff was also properly
10 licensed by the California State Contractor's Board and possessed the requisite classifications to
11 engage in the installation of lath and plaster trade.

12 2. Plaintiff is informed and believes, and based thereon alleges, that Defendant G
13 COMPANIES is, and at all times mentioned herein was, a California corporation, conducting
14 business within the County of Riverside, State of California, with a principal address at 1105
15 Quail Street, Newport Beach, California 92660, and is engaged, generally, in the business of
16 acting as a general contractor or builder on residential construction projects located within the
17 State of California.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant
19 MURRIETA is, and at all times mentioned herein was, an entity, form unknown, and conducting
20 business within the County of Riverside, State of California, with a principal address at 1105
21 Quail Street, Newport Beach, California 92660.

22 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 JAMES GIANULIAS, an individual, is, and at all times mentioned herein was, a controlling
24 shareholder of Defendant G COMPANIES, responsible in some manner for the control of its
25 business operations and decisions.

26 5. Plaintiff is informed and believes, and based thereon alleges, that Defendant
27 DAVID GIANULIAS, an individual, is, and at all times mentioned herein was, a controlling
28

1 shareholder of Defendant G COMPANIES, responsible in some manner for the control of its
2 business operations and decisions.

3 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant
4 MAFFEI, an individual, is, and at all times mentioned herein was, a controlling shareholder of
5 Defendant G COMPANIES, responsible in some manner for the control of its business
6 operations and decisions.

7 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 BANK OF THE WEST is, and at all times mentioned herein was, a California corporation,
9 conducting business within the County of Riverside, State of California, with a principal address
10 at 3000 Oak Road, Suite 400, Walnut Creek, California 94597.

11 8. Venue for this matter is proper in the above-entitled County and Court because
12 the real properties which are the subject of this action are located in the City of Murrieta, County
13 of Riverside, for a project known as the Murrieta 453/Village Walk.

14 9. Plaintiff is ignorant of the true names, capacities and basis for liability of
15 Defendants DOES 1 through 40, inclusive, whether individual, corporate, associate, member or
16 otherwise and therefore sues said defendants by their fictitious names. Plaintiff is informed and
17 believes and based thereon alleges that DOES 1 through 40, and each of them, are in some
18 manner liable to Plaintiff, were and are legally responsible for the damages or losses suffered by
19 Plaintiff, or have, or claim to have, some right, title or interest in the money Plaintiff alleges is
20 due Plaintiff, the exact nature of which claims is unknown to Plaintiff, but which claims are
21 subject and subordinate to the claim of Plaintiff. Plaintiff will amend this Complaint to allege
22 their true names, capacities and basis for liability when the same has been ascertained.

23 10. Plaintiff alleges on information and belief that, at all times mentioned herein,
24 Defendants, and each of them, including those fictitiously named, were acting on their own
25 behalf and also as the agent, servant, employee, representative, partner, member or joint
26 venturer, of each other and in doing the things alleged herein, acted within the purpose, scope
27 and authority of said agency, employment, representation, partnership, membership or venture,
28

1 with the advance knowledge, consent, approval and ratification of the remaining defendants, and
2 each of them.

3 **GENERAL ALLEGATIONS**

4 11. Plaintiff is informed and believes, and thereupon alleges, that Defendants G
5 COMPANIES and DOES 1 through 10 acted as the general contractor/builder of a project known
6 as Murrieta 453/Village Walk, located in the City of Murrieta, County of Riverside, specifically
7 for Buildings 1(B), 2(D), 3(E), 4(F) 5(G), 7(C) and 8(A) (hereinafter as "Subject Work of
8 Improvement"), which is the subject of the within Action.

9 12. Plaintiff is informed and believes, and thereupon alleges, that on or about May 23,
10 2006, Plaintiff entered into a contract with Defendant G COMPANIES (hereinafter as "Subject
11 Subcontract"), whereby Plaintiff agreed to perform construction improvements at certain
12 portions of the Subject Work of Improvement, including supply and installation of lath and
13 plaster, and to furnish and provide all of the labor and materials therefor, including tools,
14 implements and appliances to be used in said Subject Work of Improvement, in accordance with
15 certain plans and specifications, for Defendant G COMPANIES and, in exchange, Defendant G
16 COMPANIES agreed to pay Plaintiff \$1,780,000.00, plus approved extras. The contract price
17 was thereafter amended to \$1,865,397.00 per the latest Standard Change Order Agreement dated
18 December 21, 2007. True and correct copies of the Subject Subcontract and Standard Change
19 Order Agreements are collectively attached hereto as Exhibit "A" and "B", respectively, and are
20 incorporated herein by this reference as though fully set forth at length.

21 13. Plaintiff is informed and believes, and thereupon alleges, that Defendants JAMES
22 GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 20 through 30, Inclusive, are, and at
23 all relevant times were, the controlling shareholder(s) and/or owner(s) of Defendant G
24 COMPANIES, responsible for its business operations and decisions, including disbursement of
25 funds obtained via the construction loan for the Subject Work of Improvement and payment of
26 the subcontractors providing labor, materials and services to the Subject Work of Improvement.

27 14. Plaintiff is informed and believes, and thereupon alleges, that Defendant
28 MURRIETA and/or Defendants DOES 31 through DOE 40, Inclusive, are, and at all relevant

1 times were, the owner(s) or reputed owner(s) of the Subject Work of Improvement and/or of an
2 interest in the subject real properties on which the Subject Work of Improvement was
3 constructed.

4 15. Plaintiff is informed and believes, and thereupon alleges, that Defendant BANK
5 OF THE WEST was the construction lender on the Subject Work of Improvement and, on or
6 about January 31, 2008, was holding or controlling funds from which to pay costs due or to
7 become due to Defendant G COMPANIES and/or DOES 1 through 30 on the Subject Work of
8 Improvement in a sum unknown to Plaintiff but known to Defendants.

9 16. Beginning on or about May 23, 2006, pursuant to the Subject Subcontract and at
10 the instance and request of Defendants and/or their agents, and each of them, Plaintiff furnished
11 supervision, labor, materials, services, tools and equipment, or a combination thereof, that were
12 used at the Subject Work of Improvement and performed all work required of it under the
13 Subject Subcontract for which Plaintiff was subsequently paid a portion of those sums due it
14 under the Subcontract by Defendant G COMPANIES.

15 17. Plaintiff performed all things necessary and required of it under the Subject
16 Subcontract, except to the extent that Plaintiff was prevented or excused from such performance
17 by the breaches of Defendants, and each of them, as alleged below.

18 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant G
19 COMPANIES was defectively formed, improperly operated, and/or inadequately capitalized for
20 the business purpose for which it was created, including, without limitation, construction of the
21 Subject Work of Improvement and for the liabilities it expected to incur during construction of
22 the Subject Work of Improvement, including, without limitation, payment of its subcontractors
23 for work performed. Plaintiff is further informed and believes, and based thereon alleges, that
24 Defendants JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 40,
25 inclusive, failed to respect the separate nature and form of the corporation, failed to comply with
26 corporate formalities, failed to adequately capitalize the business, misappropriated and or
27 converted assets of the corporation, including funds from the construction loan for the Work of
28 Improvement, diverted construction funds to unauthorized and improper uses, and so dominated

1 and controlled the business, operations and affairs of Defendant G COMPANIES that the
2 separate identities between the entity and these Defendants ceased to exist and the company
3 became and was utilized as the alter ego and personal instrumentality of said Defendants.

4 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 40, inclusive,
6 managed and manipulated Defendant G COMPANIES for the sole purpose of raising capital to
7 convert to their personal use and benefit or to other unauthorized and improper uses other than
8 the Subject Work of Improvement. If this Court were to continue to respect the separate and
9 distinct identity Defendant G COMPANIES, it would result in a fraud as to Plaintiff and to the
10 other subcontractors to whom money is owed by Defendant G COMPANIES for work
11 performed at the Subject Work of Improvement, and a severe inequity and injustice would result.
12 Rather Defendants JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through
13 40, inclusive, should each, individually, be held liable and accountable for the debts, liabilities,
14 damages and obligations of Defendant G COMPANIES resulting from their continued
15 mismanagement and manipulation of the entity.

16 20. Specifically, Plaintiff entered into the Subject Subcontract to provide services,
17 labor, supervision, equipment, permits, licenses, insurance, transportation, supplies, and
18 materials at the Subject Work of Improvement in reliance upon and in exchange for payment by
19 Defendant G COMPANIES. Plaintiff is informed and believes, and based thereon alleges, that a
20 construction loan was issued to Defendant G COMPANIES for the purpose of financing the
21 construction of the Subject Work of Improvement, including, without limitation, payment of
22 subcontractors performing work on behalf of G COMPANIES at the Subject Work of
23 Improvement. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff was to
24 be paid out of the construction loan obtained by Defendants.

25 21. However, Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and
27 DOES 1 through 40, and each of them, diverted and used the construction funds for purposes
28 other than payment of the outstanding amount owed to Plaintiff for the services, labor,

1 supervision, equipment, permits, licenses, insurance, transportation, supplies, and materials
2 Plaintiff provided at the Subject Work of Improvement and to other unauthorized and improper
3 purposes.

4 22. The interference by Defendants G COMPANIES, JAMES GIANULIAS, DAVID
5 GIANULIAS, MAFFEI and DOES 1 through 40 of Plaintiff's right to possession of its portion of
6 the construction funds for payment for work performed by it was done knowingly, intentionally,
7 maliciously and/or oppressively, with the intent to cause harm and which did cause Plaintiff
8 harm in that Plaintiff has yet to be paid in full for the value of the services, labor, supervision,
9 equipment, permits, licenses, insurance, transportation, supplies, and materials furnished and
10 performed by Plaintiff at the Subject Work of Improvement.

11 **FIRST CAUSE OF ACTION**

12 **(For Damages for Breach of Contract Against Defendants G COMPANIES, JAMES**
13 **GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 40, Inclusive)**

14 23. Plaintiff realleges and incorporates herein by reference each and every allegation
15 contained in the above paragraphs as though fully set forth herein.

16 24. Plaintiff is informed and believes, and thereupon alleges, that Defendants, and
17 each of them, materially breached the terms of the Subject Subcontract by failing to pay Plaintiff
18 for its performance under the Subject Subcontract and any addenda thereto. As of the date of the
19 filing of the within Action, Plaintiff was owed an unpaid balance of \$632,148.30 for its
20 performance under the Subject Subcontract, which performance was at the request and on behalf
21 of Defendants, and each of them.

22 25. Plaintiff has performed all terms, covenants and conditions required by and on its
23 part to be performed under the terms of the Subject Subcontract, except to the extent that
24 Plaintiff was prevented or excused from such performance by the breach of Defendants, and each
25 of them, as alleged herein.

26 26. Plaintiff has made numerous demands upon Defendants, and each of them, for
27 payment of the sum due it but Defendants, and each of them, have refused to honor said
28 demands.