ORDERED.

Dated: November 19, 2020

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:	Chapter 7
Able Body Temporary Services, Inc.,	Case No. 8:13-bk-06864-CED
Professional Staffing – A.B.T.S., Inc.,	Case No. 8:13-bk-06866-CED
Westward Ho II, LLC,	Case No. 8:13-bk-06867-CED
Westward Ho, LLC,	Case No. 8:13-bk-06868-CED
YJNK II, Inc.,	Case No. 8:13-bk-06869-CED
YJNK XI CA, LLC,	Case No. 8:13-bk-06875-CED
ABTS Holdings, LLC,	Case No. 8:13-bk-06879-CED
Able Body Gulf Coast, Inc.,	Case No. 8:13-bk-06881-CED
Cecil B. DeBoone, LLC,	Case No. 8:13-bk-06883-CED
Organized Confusion, LLP,	Case No. 8:13-bk-06888-CED
Preferable HQ, LLC,	Case No. 8:13-bk-06891-CED
Rotrpick, LLC,	Case No. 8:13-bk-06894-CED
Training U, LLC,	Case No. 8:13-bk-06896-CED
USL&H Staffing, LLC,	Case No. 8:13-bk-06897-CED
YJNK III, Inc.,	Case No. 8:13-bk-06899-CED
YJNK VIII, Inc.,	Case No. 8:13-bk-06902-CED
Debtors. _____/	
Christine L. Herendeen, as Chapter 7 Trustee of the above captioned Debtors,	Adv. Pro. No. 8:15-ap-118-CED Lead Case
Plaintiff,	Jointly administered with:
v.	Adv. Pro. No. 8:15-ap-111-CED Adv. Pro. No. 8:15-ap-112-CED

Regions Bank,

Defendant.

Adv. Pro. No. 8:15-ap-113-CED
Adv. Pro. No. 8:15-ap-114-CED
Adv. Pro. No. 8:15-ap-115-CED
Adv. Pro. No. 8:15-ap-116-CED
Adv. Pro. No. 8:15-ap-117-CED
Adv. Pro. No. 8:15-ap-119-CED
Adv. Pro. No. 8:15-ap-120-CED
Adv. Pro. No. 8:15-ap-121-CED
Adv. Pro. No. 8:15-ap-122-CED
Adv. Pro. No. 8:15-ap-123-CED
Adv. Pro. No. 8:15-ap-124-CED
Adv. Pro. No. 8:15-ap-125-CED
Adv. Pro. No. 8:15-ap-126-CED

_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT
TABLE OF CONTENTS

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

In these sixteen jointly administered adversary proceedings, the Court is asked to decide whether (1) deposits made into some of the Debtors' bank accounts, that were applied by the bank to overdrafts in those Debtors' accounts, and (2) transfers from the accounts of some of the Debtors, that were applied by the bank to loans on which those Debtors were not obligated, are avoidable as constructively and actually fraudulent transfers under the Florida Uniform Fraudulent Transfer Act. The Court is also asked to decide whether the bank is liable for unjust enrichment and aiding and abetting the alleged breach of fiduciary duty and fraud of the Debtors' principals.

Plaintiff, the trustee in the Debtors' Chapter 7 bankruptcy cases, has filed essentially similar motions for partial summary judgment in each of the sixteen adversary proceedings.[1] Defendant Regions Bank ("Regions") has filed seven issue-specific motions for partial summary judgment.[2] The motions have been fully briefed.[3]

For the reasons that follow, the Court finds that its rulings on four of Regions' motions dispose of all claims presented in Plaintiff's complaints and that Regions is entitled to summary judgment in its favor as a matter of law.

A. BACKGROUND

The parties are familiar with the background of this case.[4] Frank and Anne Mongelluzzi, husband and wife, owned, either individually or through a holding company, more than 100 corporations and limited liability companies (the "Mongelluzzi Entities").[5] The Mongelluzzi Entities

[1] Doc. Nos. 290, 291, 292, 293, 294, 295, 296, 298, 302, 303, 304, 305, 306, 307, 312, and 313. These adversary proceedings were previously jointly administered under Adv. Pro. No. 8:14-ap-653-CED; they are now jointly administered under Adv. Pro. No. 8:15-ap-118-CED. Unless otherwise stated, references to docket numbers are in Adv. Pro. No. 8:15-ap-118-CED.
[2] Doc. Nos. 297, 299, 301, 308, 310, 322, and 323.
[3] *See* Doc. No. 438.
[4] *See In re Mongelluzzi*, 587 B.R. 392 (Bankr. M.D. Fla. 2018).
[5] *See* Doc. No. 301, pp. 4-5, n. 3, for a list of the scheduled ownership interests of each Debtor.

separately owned diverse properties and businesses, including North Carolina real estate, airplanes, a movie theatre in North Carolina, an Italian restaurant in Pinellas County, Florida, two Kubota Tractor dealerships in North Carolina, two pawn shops, and a school.[6] A number of the Mongelluzzi Entities were engaged in the business of providing temporary staffing services, primarily in the construction industry (the "Able Body Entities").[7] Because of the nature of the Able Body Entities' temporary staffing businesses, they had hundreds of employees and issued thousands of payroll checks each year, many in relatively nominal amounts.[8]

Frank and Anne Mongelluzzi were the only owners, officers, and directors of the Mongelluzzi Entities.[9] They made all of the business decisions for the Mongelluzzi Entities,[10] and maintained exclusive control over the Mongelluzzi Entities' finances.[11]

1. The Mongelluzzi Entities' Banking Relationship with Regions

Many of the Mongelluzzi Entities, including the Able Body Entities, maintained bank accounts at Regions. Altogether, the Mongelluzzi Entities had approximately 61 bank accounts at Regions (the "Mongelluzzi Accounts").[12] Many of these accounts originated with AmSouth Bank, which merged with Regions in 2006.[13] Seven of the Debtors (the "Non-Account Debtors") did not maintain bank accounts at Regions.[14]

---

[6] *See, e.g., In re Mongelluzzi*, 591 B.R. 480, 484 (Bankr. M.D. Fla. 2018).
[7] The Able Body Entities include: (1) Able Body Temporary Services, Inc.; (2) Professional Staffing – A.B.T.S., Inc.; (3) Westward Ho, LLC; (4) Westward Ho II, LLC; (5) YJNK XI CA, LLC; (6) Able Body Gulf Coast, Inc.; (7) Preferable HQ, LLC; (8) Rotrpick, LLC; (9) USL&H Staffing, LLC; and (10) YJNK III, Inc. (Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, p. 66).
[8] *See* Doc. No. 386, p. 27; Doc. No. 308-10, pp. 4-6.
[9] Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 173-74.
[10] Doc. No. 311-1, Deposition transcript of Robert Pierce, pp. 53-54.
[11] Doc. No. 310-2, Deposition transcript of Peggy Sanders, pp. 34-42; Doc. No. 311-1, Deposition transcript of Robert Pierce, pp. 205-06.
[12] *In re Mongelluzzi*, 591 B.R. at 484.
[13] Doc. No. 423, pp. 13-14.
[14] Doc. No. 323, p. 8. The Non-Account Debtors are: (1) Westward Ho II, LLC; (2) Westward Ho, LLC; (3) YJNK II, Inc.; (4) ABTS Holdings, LLC; (5) Cecil B. DeBoone, LLC; (6) Preferable HQ, LLC; and (7) Organized Confusion, LLP.

Plaintiff alleges that between April 2, 2009, and July 27, 2010, deposits in the bank accounts of eight of the Debtors were applied by Regions to pay overdrafts in their accounts. These Debtors are referred to as the "Overdraft Debtors."[15]

Regions also extended credit to a number of the Mongelluzzi Entities, including some of the Able Body Entities (the "Regions Loans"). Mr. and Mrs. Mongelluzzi personally guaranteed each of the Regions Loans. The Mongelluzzi Entities that were obligated on the Regions Loans are referred to as the "Mongelluzzi Borrowers." Able Body Temporary Services, Inc. ("Able Body Temporary") was a Mongelluzzi Borrower. Together, Able Body Temporary and six of the Debtors that were not obligated on the Regions Loans are referred to herein as the "Loan Payment Debtors."[16]

The Mongelluzzi Entities' loans with Regions included a "revolving credit and term loan agreement" (the "Regions Revolver") with PreferAble People, LLC ("PreferAble People") and a letter of credit and credit card agreement with Able Body Temporary.[17] The collateral for the Regions Revolver included PreferAble People's accounts receivable; the terms of the Regions Revolver required PreferAble People to provide borrowing base certificates to Regions so that it could calculate the amount of PreferAble People's available credit.[18]

Funds drawn on the Regions Revolver were utilized by all of the Able Body Entities, including the Loan Payment Debtors, to pay their employees; the Able Body Entities were financially dependent

---

[15] Doc. No. 308, pp. 2-3.The Overdraft Debtors are: (1) Professional Staffing – A.B.T.S., Inc.; (2) Rotrpick, LLC; (3) USL&H Staffing, LLC; (4) YJNK VIII, Inc.; (5) Training U, LLC; (6) YJNK XI CA, LLC; (7) YJNK III, Inc.; (8) Able Body Gulf Coast, Inc. Throughout the litigation of these adversary proceedings, the Overdraft Debtors have sometimes been referred to as the "Overdraft Loan Repayment Debtors."

[16] Doc. No. 310, p. 2. The Loan Payment Debtors are: (1) Rotrpick, LLC; (2) Able Body Temporary Services, Inc.; (3) YJNK VIII, Inc.; (4) Training U, LLC; (5) YJNK XI CA, LLC; (6) YJNK III, Inc.; and (7) Able Body Gulf Coast, Inc. Throughout the litigation of these adversary proceedings, the Loan Payment Debtors have sometimes been referred as the "Other Loan Repayment Transfer Debtors."

[17] The Forbearance Agreement referenced below lists nine categories of obligations owed to Regions by Able Body Temporary Services, Inc., PreferAble People, LLC, Professional Staffing – A.B.T.S., Inc., YJNK II, Inc., Cecil B. DeBoone, LLC, the Mongelluzzis, and Organized Confusion, LLP (Doc. No. 310-3, pp. 2-4).

[18] *See* Doc. No. 155, Amended Complaint, ¶ 34.

upon the Regions Revolver.[19] The manager of the Able Body Entities' banking department considered the Regions Revolver to be critical to the Able Body Entities' operations and their ability to make payroll.[20]

The assets of those Able Body Entities that were obligated on the Regions Loans were pledged to Regions as collateral (the "Able Body Collateral").[21] Regions' security interests in the Able Body Collateral were junior to liens held by Synovus Bank ("Synovus"), which also had liens on the assets of some of the Able Body Entities as collateral for Synovus's own loans to those entities.

2. The Able Body Entities' Banking Relationship with Synovus

As alleged by Plaintiff in adversary proceedings she filed against Synovus, the Mongelluzzi Entities also maintained 77 bank accounts at Synovus.[22] In those adversary proceedings, Synovus established (and Plaintiff did not dispute) that Synovus had extended loans to Able Body Entities (the "Synovus Loans") that included: a 2008 Loan and Line of Credit Agreement and security agreement between Synovus as lender and six of the Able Body Entities, including three of the Loan Payment Debtors, as borrowers; a 2008 Revolving Line of Credit Note entered into by the same six Able Body Entities in connection with a $35 million asset-based revolving line of credit; and a 2010 Modification Agreement with the Mongelluzzis and eleven of the Able Body Entities, including five of the Loan Payment Debtors, as borrowers.[23]

[19] Doc. No. 388, pp. 40-48.
[20] Doc. No. 388, pp. 47-48.
[21] Doc. No. 310-3, Forbearance Agreement, ¶ 3.
[22] *See, e.g.*, Adv. Pro. No. 8:15-ap-102-CED, Doc. No. 1, ¶ 14.
[23] Adv. Pro. No. 8:15-ap-102-CED, Doc. No. 214-1, Amended Affidavit of Sandy Wright in Support of Synovus' Amended First Omnibus Motion for Partial Summary Judgment, ¶¶ 33a, 33b; Doc. No. 248, Trustee Herendeen's Response in Opposition to Synovus Bank's Amended First Omnibus Motion for Partial Summary Judgment, ¶¶ 4-6 and note 4. Only two of the Loan Payment Debtors were not Synovus obligors: Training U, LLC, and Rotrpick, LLC.

3. Regions uncovers check kiting and freezes the Mongelluzzi Accounts.

In 2009, Regions became concerned about the frequency and the amounts of overdrafts within the Mongelluzzi Accounts. On June 28, 2010, Regions' fraud prevention department flagged some of the Mongelluzzi Accounts as suspicious for a possible check kiting scheme and issued a check kiting report. Two days later, on June 30, 2010, Regions' monitoring and reporting operations department confirmed the check kiting activity.[24]

Plaintiff contends that Regions had actual knowledge of the check kiting scheme as early as the end of 2009, and that Regions permitted the check kiting scheme to continue in violation of its own policies and procedures so that it could continue to earn fees on the Mongelluzzi Accounts.[25] But, regardless of when Regions discovered the check kiting scheme, on June 30, 2010, Regions decided to terminate its banking relationship with the Mongelluzzi Entities. Over the next two days, Regions placed a freeze on all the Mongelluzzi Accounts, placing a hold on approximately $12.4 million.[26]

4. The Mongelluzzi Borrowers' Forbearance Agreement with Regions

On July 15, 2010, Regions entered into a Forbearance Agreement with the Mongelluzzi Borrowers (the "Forbearance Agreement").[27] In the Forbearance Agreement, the Mongelluzzi Borrowers agreed that the Regions Loans, in the total outstanding amount of approximately $16,458,558.99, were in default. They also agreed that (1) Regions would forbear from exercising its remedies through July 31, 2011; (2) overdrafts in the Mongelluzzi Accounts would be paid; (3) Able Body Temporary's credit card obligation would be paid; (4) the Regions Revolver with PreferAble

[24] Regions' investigation revealed that within the six days prior to June 30, 2010, suspect deposits totaling $6,065,702.30 had been made to the Mongelluzzi Accounts. *In re Mongelluzzi*, 587 B.R. at 398.
[25] *See* Doc. No. 155, Amended Complaint, Counts 5 and 6.
[26] *In re Mongelluzzi*, 587 B.R. at 398.
[27] Doc. No. 310-3. The parties to the Forbearance Agreement were Regions and (1) Able Body Temporary, (2) PreferAble People, (3) Professional Staffing – A.B.T.S., Inc., (4) YJNK II, Inc., (5) Cecil B. DeBoone, LLC, (6) the Mongelluzzis, and (7) Organized Confusion, LLP.

People would be paid; (5) Regions would release its liens on the collateral securing the Regions Revolver, including the Able Body Collateral, upon receipt of the payments; and (6) certain other obligations of the Mongelluzzi Borrowers would remain as active loans.[28]

The Loan Payment Debtors—except for Able Body Temporary—were not parties to the Forbearance Agreement. However, Mr. and Mrs. Mongelluzzi expressly authorized Regions to utilize the proceeds of the Mongelluzzi Accounts in their control (including, by reference, the Loan Payment Debtors' accounts) to cure the overdraft liability and to pay the Regions Revolver.[29] Further, Mr. and Mrs. Mongelluzzi represented and warranted to Regions "that among the business entities they own and/or control valid and legally sufficient consideration is being received by all Obligor-related entities" for the satisfaction of the debts under the Forbearance Agreement.[30]

Thereafter, as agreed in the Forbearance Agreement, Regions applied the funds on deposit in the Mongelluzzi Accounts, including funds on deposit in the accounts of the Loan Payment Debtors, to the Regions Loans. The payments from the Loan Payment Debtors' accounts are referred to as the "Loan Payment Transfers."[31]

After application of the payments from the Mongelluzzi Entities, including the Loan Payment Transfers, Regions released its liens.[32] And, in accordance with the Forbearance Agreement's provision that Regions return any funds remaining in the Mongelluzzi Accounts after the Mongelluzzi Entities' obligations under the Forbearance Agreement were satisfied, Regions returned more than $1.3 million to Mr. and Mrs. Mongelluzzi.[33]

---

[28] Doc. No. 310-3, pp. 7-10, ¶¶ 2, 5, 8, 9.
[29] Doc. No. 310-3, pp. 8-10, ¶¶ 5, 9.
[30] *Id.*
[31] The Loan Payment Transfers total approximately $8,973,638.65.
[32] Doc. No. 310, p. 11.
[33] Doc. No. 310, pp. 24-25; Doc. 320-4. Plaintiff does not dispute that the funds were returned to the Mongelluzzis (Doc. No. 388, pp. 76-77).

5. The Able Body Entities sell their assets to MDT.

In mid to late July 2010, Mr. Mongelluzzi called Michael Traina, the principal of MDT Personnel, LLC ("MDT"), and they began to negotiate MDT's purchase of the Able Body Entities' assets (the "Able Body Assets").[34] In September 2010, the Able Body Assets—including the assets of the Loan Payment Debtors—were sold to MDT for approximately $42 million (the "MDT Sale").[35]

To finance the MDT Sale, MDT obtained a loan from Synovus, the proceeds of which were applied to the Able Body Entities' obligations on the Synovus Loans, essentially exchanging the original borrowers—the Able Body Entities—for a new one, MDT.[36] In addition, Sterling Resource Funding Corporation ("Sterling") loaned MDT $7.5 million to finance the acquisition, with Sterling's loan to MDT being secured by PreferAble People's accounts receivable.[37] Mrs. Mongelluzzi testified that she did not believe that the MDT Sale would have occurred if Regions had not released its lien on PreferAble People's accounts receivable under the terms of the Forbearance Agreement.[38]

On February 4, 2013, MDT sold the assets it had acquired from the Able Body Entities to another party, TrueBlue, Inc., for over $48 million.[39]

6. The Bankruptcy Cases and Plaintiff's Complaints

On February 2, 2011, Frank Mongelluzzi filed a petition for relief under Chapter 11 of the Bankruptcy Code. Shortly thereafter, he converted the case to a Chapter 7 liquidation case and a

---

[34] Doc. No. 370-1, Deposition transcript of Michael Traina, p. 22.
[35] *In re Mongelluzzi*, 587 B.R. at 400.
[36] *See Welch v. Synovus*, Adv. Pro. No. 8:14-ap-645-CED (Doc. No. 158), and *In re Mongelluzzi*, 587 B.R. at 400.
[37] Doc. No. 310, ¶ 36.
[38] Doc. No. 310, pp. 11-12(citing Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 164-165).
[39] Adv. Pro. No. 8:14-ap-645-CED, Doc. No. 158, ¶ 70. The sale to MDT and the repayment of the debt to Synovus were the subject of separate adversary proceedings. *See, e.g.*, Adv. Pro. No. 8:14-ap-645-CED and Adv. Pro. No. 8:15-ap-102-CED, which were resolved in compromises approved by this Court. In a global settlement that included the claims of the Chapter 7 trustee in Mr. Mongelluzzi's individual Chapter 7 case, $4,770,000.00 of the $9 million paid by Synovus was allocated to Plaintiff's claims against Synovus. *See* Case No. 8:11-bk-01927-CED, Doc. No. 1778, pp. 10-12.

Chapter 7 Trustee, Angela Welch, was appointed. In May 2013, Angela Welch, in her capacity as trustee and thus in control of Mr. Mongelluzzi's assets, filed Chapter 7 cases for sixteen of the Mongelluzzi Entities—the Debtors herein. Plaintiff Christine Herendeen was appointed as the Chapter 7 trustee in the Debtors' bankruptcy cases.

In each of the Debtors' cases, Plaintiff has filed an amended complaint against Regions to avoid alleged transfers to Regions as constructively and actually fraudulent transfers under the Florida Uniform Fraudulent Transfer Act (the "Complaints").

The Complaints in the eight Overdraft Debtors' cases allege transfers consisting of deposits into the bank accounts at Regions that were applied to overdrafts in the accounts.[40] These alleged transfers, totaling over $17.6 million, are referred to as the "Covering Deposits."

The Complaints in the seven Loan Payment Debtors' cases allege transfers from their bank accounts that Regions applied to loans on which only one of the Loan Payment Debtors—Able Body Temporary— was obligated. These alleged transfers, totaling over $8.9 million, are referred to as the "Loan Payment Transfers."[41]

And in each of the sixteen Debtors' cases, including in the Complaints relating to the seven Non-Account Debtors who are neither Overdraft Debtors nor Loan Payment Debtors, Plaintiff seeks to recover damages against Regions for unjust enrichment, based upon Regions' receipt of the Covering Deposits and the Loan Payment Transfers, and for Regions' alleged aiding and abetting the Mongelluzzis' fraud and breach of fiduciary duty.

---

[40] (1) Professional Staffing – A.B.T.S., Inc., Adv. Pro. No. 8:15-ap-116-CED; (2) Rotrpick, LLC, Adv. Pro. No. 8:15-ap-117-CED; (3) USL&H Staffing, LLC, Adv. Pro. No. 8:15-ap-121-CED; (4) YJNK VIII, Inc., Adv. Pro. No. 8:15-ap-122-CED; (5) Training U, LLC, Adv. Pro. No. 8:15-ap-123-CED, operative document filed in Adv. Pro. No. 8:15-ap-118-CED, Doc. No. 201; (6) YJNK XI CA, LLC, Adv. Pro. No. 8:15-ap-124-CED; (7) YJNK III, Inc., Adv. Pro. No. 8:15-ap-125-CED; (8) Able Body Gulf Coast, Inc., Adv. Pro. No. 8:15-ap-126-CED.

[41] Throughout the litigation of these adversary proceedings, the Loan Payment Transfers have sometimes been referred to as the "Other Loan Repayment Transfers."

7. The Pending Motions for Partial Summary Judgment

Regions has filed motions for partial summary judgment on Plaintiff's claims and Regions' *in pari delicto* affirmative defense as follows: (1) fraudulent transfer claims in the Training U, LLC ("Training U") case;[42] (2) all claims filed in the Able Body Temporary case and all aiding and abetting claims in four of the Debtors' cases;[43] (3) the *in pari delicto* defense as a bar to the unjust enrichment and aiding and abetting claims;[44] (4) actual and constructive fraud regarding the Covering Deposits;[45] (5) actual and constructive fraud regarding the Loan Payment Transfers;[46] (6) all claims for aiding and abetting;[47] and (7) all unjust enrichment claims.[48]

Plaintiff has filed separate motions for partial summary judgment in each of the adversary proceedings.[49]

B. SUMMARY JUDGMENT STANDARD

Under Federal Rule of Civil Procedure 56(a), a party "may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought." Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.[50]

For issues on which the movant bears the burden of proof, the movant must come forward with credible evidence that, if not controverted at trial, would entitle the movant to a directed verdict. But for issues on which the nonmovant bears the burden at trial, the moving party may either show that

[42] Doc. No. 297. Regions asserts that there is no "triggering creditor" (a required element of Plaintiff's fraudulent transfer claims) as to Training U.
[43] Doc. No. 299.
[44] Doc. No. 301.
[45] Doc. No. 308.
[46] Doc. No. 310.
[47] Doc. No. 322.
[48] Doc. No. 323.
[49] Doc. Nos. 290, 291, 292, 293, 294, 295, 296, 298, 302, 303, 304, 305, 306, 307, 312, and 313.
[50] Fed. R. Civ. P. 56(a) made applicable to these adversary proceedings by Fed. R. Bankr. P. 7056.

there is an absence of evidence to support the non-moving party's claim or may come forward with affirmative evidence showing that the non-moving party will be unable to prove its claim or defense at trial. If the moving party carries its initial burden, the responsibility moves to the non-moving party to show the existence of a genuine issue of material fact.[51]

A trustee bears the burden of proof as to each required element of an actually or constructively fraudulent transfer claim, and the defendant/transferee bears the burden of proving its defenses.[52]

C. PLAINTIFF'S FRAUDULENT TRANSFER CLAIMS

The requirements for avoiding fraudulent transfers are set forth in Chapter 726 of the Florida Statutes, the Florida Uniform Fraudulent Transfer Act ("FUFTA"). Fraudulent transfer claims under FUFTA are analogous "in form and substance" to those under 11 U.S.C. § 548 and are frequently analyzed contemporaneously.[53]

Under Fla. Stat. § 726.105(1)(b), a transfer is constructively fraudulent as to present and future creditors if the debtor made the transfer "without receiving a reasonably equivalent value in exchange," and the debtor was engaged in a business for which its remaining assets were unreasonably small or reasonably believed that it would incur debts beyond its ability to pay.[54] Under § 726.106, a transfer is constructively fraudulent as to present creditors if the debtor made the transfer "without receiving a reasonably equivalent value in exchange" and the debtor was insolvent or became insolvent as a result of the transfer.[55]

---

[51] *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115-16 (11th Cir. 1993); *In re Fields*, 2018 WL 1616840, at *2 (Bankr. M.D. Fla. March 30, 2018).
[52] *See In re American Way Service Corporation*, 229 B.R. 496, 525-26 (Bankr. S.D. Fla. 1999).
[53] *In re Pearlman*, 515 B.R. 887, 894 (Bankr. M.D. Fla. 2014)(citing *In re Stewart*, 280 B.R. 268, 273 (Bankr. M.D. Fla. 2001)).
[54] Fla. Stat. § 726.105(1)(b).
[55] Fla. Stat. § 726.106(1).

Under Fla. Stat. § 726.105(1)(a), a transfer made by a debtor is actually fraudulent as to a creditor if the debtor made the transfer "with actual intent to hinder, delay, or defraud any creditor of the debtor."[56] To prevail on a fraudulent transfer claim under § 726.105(1)(a), a plaintiff must prove that (1) there was a creditor to be defrauded, (2) a debtor intending fraud, and (3) a conveyance or transfer of property which could have been applicable to the payment of the debt due.[57]

Plaintiff seeks to avoid the Loan Payment Transfers and the Covering Deposits as both constructively fraudulent transfers and actually fraudulent transfers. Because the Loan Payment Transfers and the Covering Deposits relate to two different types of transactions, the Court, first, will address them separately, and then will address the issue of the Loan Payment Debtors' and Overdraft Debtors' insolvency on the dates of the alleged transfers.

1. The Loan Payment Transfers

a. The Loan Payment Transfers are not avoidable as constructively fraudulent transfers.

In order to avoid and recover the Loan Payment Transfers as constructively fraudulent transfers, Plaintiff must establish that the Loan Payment Debtors made the transfers to Regions without receiving a reasonably equivalent value in exchange.

Regions contends that the Loan Payment Debtors received reasonably equivalent value in exchange for the Loan Payment Transfers in three ways: first, directly by virtue of the Mongelluzzis' warranty that the Loan Payment Debtors received sufficient consideration; second, indirectly by virtue of the sale of the Able Body Assets to MDT; and third, indirectly by virtue of the Mongelluzzi Entities' identity of interests.[58]

[56] Fla. Stat. § 726.105(1)(a).
[57] *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1302 (11th Cir. 2020)(citing *Wiand v. Lee*, 753 F.3d 1194, 1199-1200 (11th Cir. 2014)).
[58] Doc. No. 310, p. 13.

The Court previously addressed the issue of reasonably equivalent value in this case in its June 20, 2018 *Memorandum Opinion Granting in Part and Denying in Part Plaintiff's Motions for Partial Summary Judgment*[59] and its September 4, 2018 order on Regions' motion for reconsideration of that order[60] (together, the "First SJ Ruling"). In the First SJ Ruling, in analyzing the issue of reasonably equivalent value, the Court found the existence of material issues of fact regarding whether the Loan Payment Debtors received an economic benefit from the sale of the Able Body Assets and whether Regions' forbearance and release of its lien enabled that sale.[61]

Plaintiff contends that the First SJ Ruling precludes the Court from now ruling in Regions' favor on the issue of reasonably equivalent value. But the Court's findings in the First SJ Ruling do not now—over two years later and after the parties have engaged in extensive discovery—preclude the Court from evaluating the record evidence in connection with Regions' motions for partial summary judgment.

i. The Mongelluzzis' representations regarding consideration are not binding.

Regions contends that the Loan Payment Debtors directly received value from the Loan Payment Transfers for two reasons. First, because, in the Forbearance Agreement, the Mongelluzzis expressly agreed that funds in the Mongelluzzi Accounts (including the accounts of the Loan Payment Debtors) could be used to pay the Regions Loans; and second, because the Mongelluzzis warranted that the Loan Payment Debtors would receive sufficient consideration for the payments. For example, in connection with payment on the Regions Revolver, on which only PreferAble People was an obligor, the Forbearance Agreement provided for the Mongelluzzis (1) to utilize the proceeds of any Mongelluzzi Accounts for the purpose of satisfying the Regions Revolver, (2) to affirm that Regions'

[59] Doc. No. 577 entered in Adv. Pro. No. 8:14-ap-653-CED, and reported at *In re Mongelluzzi*, 587 B.R. 392 (Bankr. M.D. Fla. 2018).
[60] Doc. No. 177 entered in this Adv. Pro. No. 8:15-ap-118-CED.
[61] *In re Mongelluzzi*, 587 B.R. at 405.

deposit agreements authorized this utilization, and (3) to warrant that consideration was received "among the business entities they own and/or control."[62]

But the Forbearance Agreement's recitation that Regions' deposit agreements permitted the payment of debts of another from non-obligor accounts is contradicted by the language of the deposit agreements themselves. The deposit agreements state that Regions had the right to apply funds in a customer's account to satisfy "any and/or all indebtedness that *you* owe us."[63] The language of Regions' own deposit agreements did not authorize it to apply funds in an account holder's account to the debt of a person or entity *other than* the account holder. And the Mongelluzzis' warranty that consideration was received "among the business entities they own and/or control" is not binding on the issue of whether consideration was in fact received.[64]

ii. Able Body Temporary directly benefited from the Loan Payment Transfers.

Of the seven Loan Payment Debtors, only Able Body Temporary was obligated to Regions.[65] As of July 15, 2010, as set forth in the Forbearance Agreement, Able Body Temporary owed Regions $630,973.00 on its letter of credit and $306,926.58 on its credit card agreement, for total outstanding debt of $937,899.58.[66] On October 5, 2010, Able Body Temporary transferred $632,590.43—less than the amount of its outstanding indebtedness—as a Loan Payment to Regions. [67]

The Court concludes that Able Body Temporary received a direct benefit from the Loan Payment Transfers because Able Body Temporary satisfied its obligation to Regions. However, the

[62] Doc. No. 310-3, p. 10, ¶ 9.
[63] Doc. No. 314-2, p. 24, ¶ 36 (emphasis added).
[64] *In re Universal Health Care Group, Inc*., 560 B.R. 594, 602 (Bankr. M.D. Fla. 2016)(In evaluating reasonably equivalent value, courts consider "what the debtor *actually* received.")(emphasis added).
[65] The other Mongelluzzi Borrowers named in the Forbearance Agreement are PreferAble People, Professional Staffing, YJNK II, Inc., Cecil B. DeBoone, LLC, the Mongelluzzis, and Organized Confusion, LLP (Doc. No. 310-3).
[66] Doc. No. 310-3, pp. 4-5, ¶¶ 5, 10.
[67] Doc. No. 155, Amended Complaint, Ex. A.

other six Loan Payment Debtors—who were not obligated to Regions—did not receive a direct benefit from the Loan Payment Transfers they transferred to Regions.[68]

iii. Five of the Loan Payment Debtors received an indirect benefit from the Loan Payment Transfers because the sale of the Able Body Assets facilitated the satisfaction of their obligation to Synovus.

Next, Regions contends that each the Loan Payment Debtors received an indirect benefit from the Loan Payment Transfers because the Loan Payment Transfers facilitated the sale of the Able Body Assets to MDT and the payment of their obligations to Synovus. Specifically, Regions asserts that the Loan Payment Transfers were central to the Forbearance Agreement; that Regions' agreement to forbear from collecting the Regions Loans and to release its liens on the Able Body Collateral enabled the Able Body Entities, including the Loan Payment Debtors, to continue operating, to generate revenue, and to sell their assets as a going concern to MDT; and that the Loan Payment Debtors were thus able to satisfy their obligations to Synovus.[69]

Plaintiff responds, first, that the alleged benefit of Regions' forbearance is illusory because Regions had no incentive to enforce its collection remedies when it entered into the Forbearance Agreement because it would have suffered a substantial loss if it had attempted to collect the Regions Loans before the MDT Sale; second, that the Loan Payment Debtors did not indirectly benefit from the MDT Sale because they received no cash from the sale; and third, that in the First SJ Ruling, the Court found factual disputes on the issue of whether four Loan Payment Debtors had received an economic benefit from the sale to MDT and whether Regions' forbearance enabled the sale.[70]

[68] *See In re Mongelluzzi*, 587 B.R. at 404.
[69] Doc. No. 310, p. 14; Doc. No. 424, p. 5.
[70] Doc. No. 388, pp. 15-16, 57.

On the record evidence, the Court finds that the MDT Sale permitted the five Loan Payment Debtors that were obligors on the Synovus Loans[71] to satisfy their obligations to Synovus. Therefore, the Court finds that these five Loan Payment Debtors received an indirect value from the Loan Payment Transfers in the form of the satisfaction of their obligations to Synovus through the MDT Sale.

iv. Each of the Loan Payment Debtors received an indirect value from the Loan Payment Transfers because of their identity of interests.

In its answers to the Complaints, Regions pleaded the affirmative defense of "identity of interests." Regions contends that the Mongelluzzi Entities, including the Loan Payment Debtors, shared an identity of interests such that each of the Loan Payment Debtors received reasonably equivalent value in exchange for their payments to Regions.[72] Regions contends that the following record evidence establishes that the Mongelluzzi Entities were treated as a single company such that the result of the Loan Payment Transfers—the payoff of the Regions Loans—benefited not only the obligors on the Region Loans, but also the Loan Payment Debtors:[73]

(a) The Mongelluzzi Entities were each under the sole and complete control of Frank and Anne Mongelluzzi. Anne Mongelluzzi testified at her July 27,

[71] Able Body Temporary, YJNK XI CA, LLC, Able Body Gulf Coast, Inc., YJNK III, Inc., and YJNK VIII, Inc, were obligated to Synovus under the January 5, 2010 Modification Agreement, as described by Synovus and acknowledged by Plaintiff. (Adv. Pro. No. 8:15-ap-102-CED, Doc. No. 214-1, ¶ 33b, and Doc. No. 248, p. 5, n.4). Three Loan Payment Debtors – YJNK XI CA, LLC, Able Body Gulf Coast, Inc., and YJNK III, Inc., were also obligated to Synovus under the March 25, 2008 Loan and Line of Credit Agreement with Synovus. (Adv. Pro. No. 8:15-ap-102-CED, Doc. No. 214-1, ¶ 33a, and Doc. No. 248, ¶ 4).

[72] Doc. No. 310, p. 15. For example, in its Sixteenth Affirmative Defense in the Able Body Temporary case, Regions asserted that Plaintiff "failed to show that the Debtor did not receive reasonably equivalent value through indirect benefits received by the Debtor through the identity of interest shared between the Debtor [sic] and the other Businesses." (Adv. Pro. No. 8:15-ap-118-CED, Doc. No. 156, p. 39).

[73] Doc. No. 310, pp. 3-8, 15-16.

2017, deposition that the Mongelluzzi Entities were owned and controlled by her and Frank Mongelluzzi, and that the companies had no other officers or directors.[74]

(b) The Mongelluzzi Entities engaged in the temporary staffing business all provided their services under the "Able Body Labor" trade name. Anne Mongelluzzi testified that the staffing companies operated "as d/b/a Able Body" out of "Able Body Labor" storefronts.[75]

(c) A single accounting group, consisting of a chief executive officer, a chief financial officer, and a treasurer performed the accounting functions for all of the staffing companies.[76]

(d) The employees who conducted the administrative business of the staffing companies were all located at the Clearwater headquarters.[77]

(e) The Mongelluzzi Entities' internal employees were all paid from the payroll account of Professional Staffing and received employee benefits under the same benefit plans. Anne Mongelluzzi testified that all of the "internal headquarters people" were paid by Professional Staffing, and that "[w]e only had one health care plan, and all the companies were covered under it. . . . Same with the 401(k) program. We only had one of each."[78]

(f) The staffing companies maintained consolidated financial statements and balance sheets. Anne Mongelluzzi testified that profit and loss

[74] Doc. No. 310, p. 3; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 173-74.
[75] Doc. No. 310, p. 4; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 61-62, 65-66.
[76] Doc. No. 310, p. 5; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, p. 63; Doc. No. 311-1, Deposition transcript of Robert Pierce, p. 84.
[77] Doc. No. 310, p. 5; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, p. 63; Doc. No. 311-1, Deposition transcript of Robert Pierce, p. 84.
[78] Doc. No. 310, p. 5; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 114, 122-23.

information from the Able Body Labor store locations was compiled as a "corporate financial" in one report, which included the balance sheets describing each store location's assets.[79]

(g) Frank and Anne Mongelluzzi were the only signatories on the Mongelluzzi Entities' bank accounts. Robert Pierce testified that Frank and Anne Mongelluzzi owned and controlled the Mongelluzzi Entities and that they "were the only two people that were authorized signatories" on the deposit accounts maintained by the Mongelluzzi Entities.[80]

(h) Anne Mongelluzzi instructed a single employee, Peggy Sanders, to move money among the various Mongelluzzi Entities' bank accounts, including transactions to and from the staffing companies and the non-staffing companies. Peggy Sanders testified that she would present all of the bank account balances to Anne Mongelluzzi each morning, and Anne Mongelluzzi would tell her "what she would want to do for the day."[81]

In responding to Regions' contentions on the "identity of interests" issue, Plaintiff focuses primarily on this Court's First SJ Ruling. Specifically, Plaintiff argues that Regions' "identity of interests" theory fails because this Court already determined in the First SJ Ruling that Regions was precluded from raising the affirmative defense that the Mongelluzzi Entities operated as a "common enterprise."[82]

[79] Doc. No. 310, p. 6; Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, pp. 74-76.
[80] Doc. No. 310, p. 6; Doc. No. 311-1, Deposition transcript of Robert Pierce, pp. 205-206.
[81] Doc. No. 310, pp. 6-7; Doc. No. 310-4, Deposition transcript of Peggy Sanders, pp. 34-37, 40.
[82] Doc. No. 388, p. 58. Regions had raised "common enterprise" as a separate affirmative defense from its "identity of interests" affirmative defense. (*See* Adv. Pro. No. 8:15-ap-118-CED, Doc. No. 156, Fourteenth Affirmative Defense, p. 38.)

But in the First SJ Ruling, the Court analyzed the "identity of interests" doctrine and the "common enterprise" doctrine as two separate doctrines. As explained by the Court, the "common enterprise" doctrine invokes the equitable doctrines of substantive consolidation and alter ego, and a proponent must prove the required element of a "substantial identity between the entities to be consolidated."[83] After considering the Eleventh Circuit's analysis of substantive consolidation in *Eastgroup Properties v. Southern Motel Assoc., Ltd*., the Court concluded that "substantial identity," (i.e., "common enterprise") is a wholly different concept from "identity of interests."[84] For example, the "common enterprise" doctrine is predicated on the notion that the legal fiction of separate corporate entities should be disregarded where the entities are organized and controlled as a single operation.[85] But the "identity of interests" doctrine focuses on the *economic realities* of the entities, not their corporate separateness.

> The identity of interests rule recognizes that if the debtor and the third party are so related or situated that they share an identity of interests, then *what benefits one will, in such case, benefit the other to some degree*. . . . The identity of interest doctrine recognizes that the facts may suggest that a corporate group has purposely availed itself of the benefits of an enterprise and should be treated as one borrowing unit *even though each member of the enterprise is a separate entity*.[86]

In other words, a corporate group may have an identity of economic interests, without finding that the separate corporations are controlled as a single entity.

In the First SJ Ruling, the Court found that the evidence offered by Regions was insufficient to defeat Plaintiff's summary judgment motion on Regions' common enterprise defense. However, the Court found that Regions had provided sufficient evidence to raise an issue of fact on the separately

---

[83] *In re Mongelluzzi*, 587 B.R. at 407(quoting *Eastgroup Properties. v. Southern Motel Assoc., Ltd*., 935 F.2d 245, 249 (11th Cir. 1991)).
[84] *Id.* at 407.
[85] *Id.* at 406(quoting *Green v. Champion Insurance Company*, 577 So. 2d 249, 257 (La. Ct. App. 1991), *writ denied*, 580 So. 2d 668 (La. 1991)).
[86] *In re TOUSA, Inc*., 444 B.R. 613, 654, n. 43 (S.D. Fla. 2011)(quoted in *In re PSN USA, Inc*., 2011 WL 4031147, at *6 (Bankr. S.D. Fla. Sept. 9, 2011)(emphasis added)).

evaluated "identity of interests" doctrine, such that Plaintiff was not entitled to summary judgment on that issue.[87]

Having reviewed the record evidence offered by Regions in support of these motions, the Court finds that Regions has established, first, that the Mongelluzzi Entities, including the Loan Payment Debtors, availed themselves of the benefits of a single business network; second, that the Mongelluzzi Entities utilized common administrative services and financial resources in the normal course of their business operations; and third, that the Able Body Entities, including the Loan Payment Debtors, utilized the name recognition of the "Able Body" tradename.[88] Plaintiff has offered no evidence in rebuttal.

Regions bears the burden of proof on its affirmative defenses.[89] The Court finds that Regions has met its burden on summary judgment on the identity of interests doctrine, and Plaintiff has not met her burden to show the existence of a genuine dispute of material fact on this issue. The Court concludes that what benefited one of the Mongelluzzi Entities also benefited the others, including the Loan Payment Debtors, to some degree.

Accordingly, the Court finds that the Loan Payment Debtors indirectly benefited from the Loan Payment Transfers, and the indirect benefits constitute reasonably equivalent value under FUFTA.

b. The Loan Payment Transfers are not avoidable as actually fraudulent transfers.

In order for Plaintiff to prevail on her actually fraudulent transfer claims, Plaintiff has the burden of proof to establish that the Loan Payment Debtors made the Loan Payment Transfers with actual fraudulent intent.[90]

[87] *In re Mongelluzzi*, 587 B.R. at 406-07.
[88] *In re PSN USA, Inc*., 2011 WL 4031147, at *6.
[89] *See In re Pearlman*, 440 B.R. 900, 905-06 (Bankr. M.D. Fla. 2010).
[90] Doc. No. 310, pp. 23-24(quoting *In re Rollaguard Security, LLC*, 591 B.R. 895, 918 (Bankr. S.D. Fla. 2018)).

i. Plaintiff failed to establish actually fraudulent intent.

In actually fraudulent transfer actions, the court focuses its inquiry into fraudulent intent on the state of mind of the debtor/transferor; culpability on the part of the transferee is not essential.[91]

"Because actual intent to defraud is difficult to prove, courts look to the totality of the circumstances and badges of fraud surrounding the allegedly fraudulent transfers."[92] Fla. Stat. § 726.105(2) provides a non-exhaustive list of the badges of fraud that a court may consider in determining actual intent under § 726.105(1)(a).[93]

Plaintiff contends that at least five of the statutory badges of fraud are satisfied by the facts presented here.[94] However, other than the issue of insolvency—which the Court addresses below—these five badges of fraud do not support Plaintiff's position.

First, Plaintiff contends that the Loan Payment Transfers occurred around the time that the Loan Payment Debtors incurred substantial debt, by which she meant the Loan Payment Debtors' obligation and payment to Regions under the Forbearance Agreement. On this issue, the Court agrees with Regions that the "incurrence of substantial debt" badge ordinarily addresses circumstances in which the debtor incurs a new debt to a new creditor and shortly thereafter transfers assets to place

[91] *In re Pearlman*, 478 B.R. 448, 453 (M.D. Fla. 2012)(quoting *In re Cohen*, 199 B.R. 709, 716-17 (B.A.P. 9th Cir. 1996)).
[92] *In re D.I.T., Inc*., 561 B.R. 793, 802 (Bankr. S.D. Fla. 2016)(citing *In re Model Imperial, Inc*., 250 B.R. 776, 790-91 (Bankr. S.D. Fla. 2000)).
[93] The "badges of fraud" are (a) the transfer or obligation was to an insider; (b) the debtor retained possession or control of the property transferred after the transfer; (c) the transfer or obligation was disclosed or concealed; (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (e) the transfer was of substantially all the debtor's assets; (f) the debtor absconded; (g) the debtor removed or concealed assets; (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. Fla. Stat. § 726.105(2).
[94] Doc. No. 388, p. 76.

them beyond the new creditor's reach.[95] Here, the Loan Payment Transfers did not place assets beyond Regions' reach, but rather repaid the same "debts" to Regions to which the Loan Payment Debtors had become obligated under the Forbearance Agreement.[96]

Second, the Loan Payment Transfers were not transfers of substantially all of the assets of the Loan Payment Debtors, as demonstrated by (a) the sale of assets to MDT in September 2010, two months after the Loan Payment Transfers, for $42 million,[97] and (b) Regions' subsequent return of more than $1.3 million to the Mongelluzzis.[98] Third, Plaintiff asserts that Regions pressured the Mongelluzzis to enter the Forbearance Agreement,[99] but did not point to any evidence that Regions threatened litigation against the Loan Payment Debtors.[100] And fourth, Plaintiff asserts that Debtors (through the Mongelluzzis) concealed assets by transferring funds among the related entities,[101] but does not contend that the Loan Payment Transfers to Regions—the payments that Plaintiff seeks to avoid—were concealed from other creditors. In fact, the Loan Payment Transfers were documented in the Forbearance Agreement.[102]

In considering the other badges of fraud set forth in § 726.105(2), the Court finds, first, the Loan Payment Transfers were to Regions and not to an insider; second, the Loan Payment Debtors did not retain possession of the property transferred; third, the Loan Payment Debtors did not abscond;

---

[95] For example, in *In re Hill*, 342 B.R. 183, 202 (Bankr. D.N.J. 2006), the Court applied New Jersey's adoption of the Uniform Fraudulent Transfer Act and stated, "The tenth badge of fraud, a transfer occurring shortly after a substantial debt was incurred, is also present, proven by facts similar to those addressed with regards to the fourth badge of fraud. Synergy brought suit and received a judgment against [the debtor] before the divorce agreement was executed. . . . Four months later, . . . [the debtor] had submitted and executed a divorce settlement proposal with [debtor's spouse], abandoning her interest in a substantial amount of the marital property, *causing that money to be unavailable to her judgment creditor*." (emphasis added).
[96] Doc. No. 424, p. 22.
[97] *In re Mongelluzzi*, 587 B.R. at 400.
[98] Doc. No. 310, pp. 24-25; Doc. No. 320-4. Plaintiff does not dispute that the funds were returned (Doc. No. 388, pp. 76-77).
[99] Doc. No. 388, p. 76.
[100] Doc. No. 424, p. 22.
[101] Doc. No. 388, p. 76.
[102] Doc. No. 424, p. 23.

fourth, as demonstrated by the Court's analysis above, the Loan Payment Debtors received reasonably equivalent value in consideration of the transfers; and fifth, the Loan Payment Debtors did not transfer assets to a lienor who then transferred them to an insider.

Finally, the Court finds that the Loan Payment Transfers and Regions' release of its liens on PreferAble People's accounts receivable enabled the Able Body Entities, including the Loan Payment Debtors, to continue operating while their assets were being marketed for sale.[103] The record evidence establishes that the Loan Payment Transfers were not made with the Loan Payment Debtors' intent to hinder, delay or defraud creditors. Rather, their intent was to obtain Regions' forbearance from its collection remedies, to obtain Regions' release of its liens on the Able Body Assets, to facilitate a sale of the Able Body Assets, and to obtain the satisfaction of the Synovus Loans.

ii. The check kiting scheme is unrelated to the Loan Payment Transfers.

Plaintiff contends that the Loan Payment Debtors' fraudulent intent is evidenced by their participation in the Mongelluzzi Entities' check kiting scheme, the transfer of funds among the Mongelluzzi Accounts, and the diversion of funds to support the Mongelluzzis' luxurious lifestyle.[104] But there is no evidence that the Loan Payment Transfers—which occurred *after* Regions terminated the check kiting scheme by placing a freeze on the Mongelluzzi Accounts—were related in any way to the check kiting scheme, the Mongelluzzis' lifestyle, or other alleged fraudulent activities.

The record evidence is not in dispute: Regions investigated the Mongelluzzi Entities' check kiting activity beginning in 2009 and, as a result of its investigation, terminated its banking relationship with the Mongelluzzi Entities on June 30, 2010. Plaintiff contends that the Mongelluzzi Entities were in financial distress as early as 2008 and engaged in fraudulent practices in 2009 and 2010,[105] *and* that

[103] Doc. No. 310, p. 24.
[104] Doc. No. 388, pp. 70-77.
[105] Doc. No. 388, pp. 72-75.

Regions was aware of the check kiting scheme long before June 2010. However, the record evidence is that the check kiting scheme ended on July 1 and 2, 2010, when Regions placed holds on all of the Mongelluzzi Accounts. The Loan Payment Transfers that Plaintiff seeks to avoid were all made between July 15 and October 5, 2010.[106] As Regions points out, the "check kiting scheme terminated at least two weeks *before* the [Loan Payment Transfers], and they could not have furthered that scheme."[107] Therefore, the Court's analysis is unaffected by the possibility that Regions was or should have been aware of the check kiting scheme for an extended period prior to June 30, 2010.

The court in *In re Rollaguard Security, LLC*, explained that it is incumbent upon the plaintiff to demonstrate that the alleged fraudulent intent "is related" to the transfers sought to be avoided:

> In prosecuting a fraudulent transfer claim based on actual intent, it is typically not sufficient to show that the debtor intended to defraud someone and the debtor also made a transfer. Just because a debtor is involved in a fraudulent scheme does not mean that every transfer made by that debtor is made with fraudulent intent. *In order to prosecute a claim based on actual intent to hinder, delay, or defraud a creditor, the plaintiff must show that the alleged fraudulent intent is related to the transfers sought to be avoided.*[108]

In other words, it is not enough for Plaintiff to show that the Loan Payment Debtors were involved in a check kiting scheme; Plaintiff must show the Loan Payment Debtors' fraudulent intent with respect to Loan Payment Transfers themselves.

Plaintiff contends that Regions mischaracterizes her case "in an attempt to paint a picture that check kiting was done in a vacuum."[109] But every event and circumstance that Plaintiff describes to

---

[106] Doc. No. 155, Ex. A; Doc. No. 310, p. 17; Adv. Pro. No. 8:15-ap-117-CED, Doc. No. 46, Exs. B, C; Adv. Pro. No. 8:15-ap-122-CED, Doc. No. 47, Exs. B, C; Adv. Pro. No. 8:15-ap-123-CED, Doc. No. 44, Exs. B, C; Adv. Pro. No. 8:15-ap-124-CED, Doc. No. 47, Exs. B, C; Adv. Pro. No. 8:15-ap-125-CED, Doc. No. 56, Ex. B; Adv. Pro. No. 8:15-ap-126-CED, Doc. No. 53, Ex. B.

[107] Doc. No. 310, p. 24(emphasis added).

[108] *In re Rollaguard Security, LLC*, 591 B.R. at 918(citing *In re D.I.T., Inc*., 561 B.R. at 803 and *In re Sharp International Corp*., 403 F.3d 43, 56-57 (2d Cir. 2005))(emphasis added).

[109] Doc. No. 388, p. 72.

establish fraudulent intent[110] took place *prior* to July 15, 2010—the date of the Forbearance Agreement and of the *first* Loan Payment. Plaintiff fails to describe a single event or transaction, such as an overdrawn account or transfer among the Loan Payment Debtors' accounts, that occurred after July 2, 2010. In fact, Plaintiff's own recitation of the Mongelluzzi Entities' past financial difficulties and check kiting scheme demonstrates that the Loan Payment Transfers did not promote the fraudulent activity.[111]

The facts presented here are very similar to those presented in *In re KZK Livestock*.[112] There, the debtor paid the defendant bank more than $100,000.00 in June and July 1991. Later, between August and December 1991, the debtor's principal used its account at the bank in a check kiting scheme. The trustee in the debtor's bankruptcy case sued the bank to recover the $100,000.00 payment as an actually fraudulent transfer under 11 U.S.C. § 548(a)(1).[113] The bankruptcy court stated:

> At the time of the payments in question, which are being attacked in Count I, [the bank] was not being used for the kiting scheme. Its status was the same as any non bank creditor who received a payment from the Debtor. It received payments on debts owed to it. As to those types of payments nothing has been submitted as to [the debtor's principal's] actual intent.[114]

In other words, the trustee in *KZK Livestock* was required, as Plaintiff is here, to show that the transfers sought to be avoided were made with actual fraudulent intent. But, as here, the debtor in *KZK Livestock* was not engaged in the check kiting scheme at the time that the challenged payments to the bank were made, and the trustee was unable to show the payments were made with actually fraudulent intent.

---

[110] Doc. No. 388, pp. 73-75.
[111] *See* Doc. No. 424, p. 19.
[112] 190 B.R. 626 (Bankr. C.D. Ill. 1996).
[113] *Id.* at 628.
[114] *Id*. at 629.

c. Summary of Court's Ruling on the Loan Payment Transfers

The Court finds that Regions, as the moving party on summary judgment, has met its burden of showing an absence of evidence to support Plaintiff's claims, and that Plaintiff has not met her burden to show the existence of a genuine dispute of material fact, on the following issues:

(1) On Plaintiff's claims to avoid the Loan Payment Transfers as constructively fraudulent transfers, the Court finds that the Loan Payment Debtors received reasonably equivalent value in exchange. First, although only Able Body Temporary received a direct benefit from the Loan Payment Transfers, all of the Loan Payment Debtors received indirect benefits from the Forbearance Agreement and the release of Regions' liens because they facilitated the sale of the Able Body Assets and also facilitated the satisfaction of five of seven Loan Payment Debtors' loan obligations to Synovus. And second, all of the Loan Payment Debtors received indirect benefits from the Loan Payment Transfers under the identity of interests doctrine.

(2) On Plaintiff's claims to avoid the Loan Payment Transfers as actually fraudulent transfers, the Court finds, first, that the Loan Payment Debtors did not make the Loan Payment Transfers with actual intent to hinder, delay, or defraud creditors and, second, that the check kiting scheme is not related to the Loan Payment Transfers.

Accordingly, the Court finds that the Loan Payment Transfers are not avoidable as constructively fraudulent transfers or actually fraudulent transfers.

2. The Covering Deposits

In order for Plaintiff to prevail on her claims to avoid the Covering Deposits, the Court must first determine whether the Covering Deposits are "transfers" subject to avoidance. If the Covering Deposits are determined to be transfers, then the Court must determine if they were constructively or actually fraudulent transfers and, if so, the damages to which Plaintiff is entitled.

a. The Covering Deposits are not "transfers" under FUFTA.

In *Isaiah v. JPMorgan Chase Bank, N.A.*[115] the Eleventh Circuit recently confirmed that routine bank deposits into or among an account holder's own accounts generally do not constitute "transfers" under FUFTA.[116] However, citing to its ruling in *In re Custom Contractors, LLC*, the court recognized that deposits may be transfers under FUFTA in "the analogous bankruptcy context" if an account holder deposits funds into a bank account in payment of an existing debt:

> In the analogous bankruptcy context, we have acknowledged that a bank can be held liable as the recipient, or "initial transferee," of a fraudulent transfer under the Bankruptcy Code—which provides for the avoidance of fraudulent transfers in substantially similar terms as the FUFTA—if it received the funds as payment of an existing debt, such as a mortgage payment, or as compensation for services rendered. *See Custom Contractors*, 745 F.3d at 1350 (explaining that, when the transferor transfers money to the bank in payment of a debt, he retains no rights to the funds and the bank receives the money with "no strings attached").[117]

This Court notes that the Eleventh Circuit's description of a bank's application of a payment to an existing debt "such as a mortgage payment, or as compensation for services rendered" is more likely to arise in the context of an action to avoid a preferential payment under 11 U.S.C. § 547 than in an action to avoid a fraudulent transfer under 11 U.S.C. § 548 or FUFTA. This is because, generally, a payment on account of an antecedent debt is for reasonably equivalent value and unlikely to be avoided as a fraudulent transfer.[118]

Under the Eleventh Circuit's analysis in *Isaiah*, the threshold question before the Court is whether the Covering Deposits were mere deposits into the Overdraft Debtors' accounts—over which the Overdraft Debtors retained control and thus not transfers—or whether they were payments on

---

[115] 960 F.3d 1296 (11th Cir. 2020).
[116] *Id.* at 1302-03. The Eleventh Circuit entered its order in *Isaiah* on June 1, 2020, after the briefing on the motions for summary judgment was concluded in these proceedings. At the Court's request, the parties filed brief statements of the impact of the Eleventh Circuit's analysis in *Isaiah* on the issues raised in the motions (Doc. Nos. 442, 444).
[117] *Id*. at n. 3 (citing *In re Custom Contractors, LLC*, 745 F.3d 1342, 1350 (11th Cir. 2014)).
[118] *See, e.g.*, 11 U.S.C. § 548(d)(2)(the term "value" means the satisfaction of a present or antecedent debt).

account of debts owed by the Overdraft Debtors to Regions, and thus transfers over which Regions obtained immediate rights and control.

The Covering Deposits relate to two types of overdrafts: "Ledger Balance Overdrafts" and "True Overdrafts." The parties concur that a Ledger Balance Overdraft in a depositor's account occurs when there are insufficient funds in the account to cover an item presented for payment on the day it is presented.[119] Under the Florida Uniform Commercial Code, the bank has a deadline for rejecting the presented item—midnight on the bank's next banking day following the banking day on which it received the item for payment (the "Day 2 Midnight Deadline").[120] If a "covering deposit" is not made to the account before the Day 2 Midnight Deadline, the bank may reject the item (i.e., dishonor the presented item) or honor it. If the bank honors the presented item, a True Overdraft in the account occurs. Generally—as Regions concedes—a True Overdraft constitutes an extension of credit from the bank to its account holder.[121]

i. The Covering Deposits applied to Ledger Balance Overdrafts before the Day 2 Midnight Deadline are not "transfers" under FUFTA.

Regions contends that the Covering Deposits that it applied to Ledger Balance Overdrafts were not transfers to repay alleged debts, because "Regions never reached the point of extending credit through a true overdraft;" Regions contends that the Ledger Balance Overdrafts only became True Overdrafts if Regions failed to dishonor the items presented for payment prior to its Day 2 Midnight Deadline.[122]

Plaintiff asserts three primary responses to Regions' position. First, Plaintiff contends that Regions' Commercial Loan Policies Manual, as modified on April 17, 2007, provided that daylight

[119] *See* Doc. No. 308, pp. 5-6, and Doc. No. 374, p. 49, both quoting *In re Sophisticated Communications, Inc.*, 369 B.R. 689, 696 (Bankr. S.D. Fla. 2007).
[120] *See* Fla. Stat. §§ 674.104(1)(j), 674.104(1)(k), 674.201(1), 674.215, 674.301, and 674.302(1)(a).
[121] Doc. No. 308, p. 7.
[122] Doc. No. 308, pp. 5, 9.

and overnight overdrafts and uncollected balance exposure are considered extensions of credit subject to approval by the appropriate bank officer.[123] But Regions points to other provisions of its Commercial Loan Policies Manual that distinguish between provisional settlements and final overdrafts by defining "daylight overdrafts" as occurring only when funds are irretrievably disbursed, and "overnight overdrafts" as occurring after the deliberate allowance of an overpayment as opposed to an automatic provisional payment.[124] In other words, according to Regions, its policy manual must be construed in its entirety to mean that Regions extends credit only after the overdrafts are final.

Second, Plaintiff points to this Court's ruling in Mr. Mongelluzzi's individual bankruptcy case (the "Mongelluzzi Case") that "Regions' own policies and procedures deem account overdrafts to be extensions of credit" and that deposits used to repay the extensions of credit were "transfers" under the avoidance statutes.[125] However, the Court notes that its decision in the Mongelluzzi Case was made without the benefit of Regions' current arguments that Ledger Balance Overdrafts are not extensions of credit and that Regions' policy manual distinguished between provisional settlements and final overdrafts.[126]

Third, Plaintiff relies on the analysis of *In re Sophisticated Communications, Inc.*[127] In *Sophisticated Communications*, the bankruptcy court, in the context of an action to avoid a preferential transfer under 11 U.S.C. § 547, held that the defendant bank had incurred a credit risk in connection

[123] Doc. No. 298, pp. 9-13; Doc. No. 337, pp. 60-71 (filed under seal); Doc. No. 374, p. 47; Doc. No. 375, pp. 92-100 (filed under seal).
[124] Doc. No. 423, pp. 6-7, citing Doc. No. 395, pp. 61, 64 (filed under seal).
[125] *In re Mongelluzzi*, 591 B.R. at 494.
[126] The Court did not address the issue of whether Ledger Balance Overdrafts were transfers in the Mongelluzzi Case because, in that case, Regions "assum[ed] *arguendo* that the overdrafts were 'loans,' as alleged by [the plaintiff trustee]," without addressing Florida law regarding bank deposits and collections (Adv. Pro. No. 8:14-ap-653-CED, Doc. No. 476, p. 7). The focus of Regions' argument in the Mongelluzzi Case was its position that the debtor received reasonably equivalent value in exchange for the transfers that repaid overdrafts (Adv. Pro. No. 8:14-ap-653-CED, Doc. No. 476).
[127] 369 B.R. 689 (Bankr. S.D. Fla. 2007).

with a Ledger Balance Overdraft and that the overdraft was therefore properly characterized as a debt.[128] The court addressed two types of transactions. In the first type of transaction, the bank had provided "provisional credit" to the account for uncollected deposits. The court held that "routine advances against uncollected deposits do not create a 'debt,'" and that the trustee's preference claims therefore failed as to any overdrafts arising from provisional credits "since these collected funds overdrafts were not antecedent debts."[129] In addition, the court held that because the bank had a security interest in the deposited funds that were provisionally credited to the account, the debtor's subsequent deposit into the account did not constitute a transfer for avoidance purposes.[130]

In the second type of transaction, more relevant to this Court's analysis, the bank had issued to the debtor a series of *cashier's checks* payable to third parties. Each of the cashier's checks exceeded the amount then on deposit in the debtor's account.[131] Although the debtor made a covering deposit on the next day, the court held that the bank had extended credit to the debtor on "the mere promise that the Debtor would make deposits the next day to cover the overdraft."[132] Although the court also held that a "ledger balance overdraft is a debt," its ruling was made in the context of the bank's having issued cashier's checks to the debtor (the equivalent of cash) when the debtor did not have available funds in its account. The court did not address a bank's ability to dishonor an item presented to it for payment before its Day 2 Midnight Deadline because it was not relevant to the facts before it.

The facts here are very different from those in *Sophisticated Communications*. The Court finds that because Regions had until its Day 2 Midnight Deadline to dishonor the checks presented to it, the Ledger Balance Overdrafts were not debts. And because the Ledger Balance Overdrafts were not

[128] *Id*. at 701.
[129] *Id*. at 697.
[130] *Id*. at 697-98.
[131] *Id*. at 695-96.
[132] *Id*. at 699-701.

debts, the Covering Deposits that related to the Ledger Balance Overdrafts were not transfers under FUFTA.

ii. The Covering Deposits applied to True Overdrafts are not "transfers" under FUFTA.

Regions acknowledges that Plaintiff has established True Overdrafts in the Overdraft Debtors' accounts—overdrafts that occurred when Regions failed to dishonor a check presented for payment prior to its Day 2 Midnight Deadline—in the total amount of $2,904,980.00.[133] For these True Overdrafts, Regions concedes that the Covering Deposits were used to repay "debts."

However, Regions maintains that although the Covering Deposits were used to pay debts, they are still not "transfers" for the purpose of avoidance because under FUFTA, a transfer is defined as "disposing of or parting with an asset." Further, "asset" is defined as property of a debtor, specifically excluding "property to the extent it is encumbered by a valid lien."[134] Regions asserts that because the Covering Deposits were encumbered by Regions' security interests, they were not assets of the Overdraft Debtors and thus were not assets that the Overdraft Debtors disposed of or parted with.

(a) Regions held a statutory security interest in the Covering Deposits to the extent of its provisional credits.

Regions and Plaintiff agree that, under Fla. Stat. § 674.2101(1), Regions held a security interest in deposits to the extent that Regions had provided provisional credit for deposited items.[135] In *Sophisticated Communications,* the bankruptcy court explained that the security interest under the statute "is only relevant to provisional credit extended on the deposited items,"[136] and that the term

[133] Doc. No. 308, pp. 9-10. Plaintiff does not dispute this calculation (Doc. No. 374, p. 48).
[134] Doc. No. 308, p. 10; Fla. Stat. §§ 726.102(2),(14); *In re Luna Developments Group, LLC*, 2020 WL 3969246, at *9 (Bankr. S.D. Fla. July 14, 2020).
[135] Doc. No. 308, pp. 10-11("[B]anks have security interests in deposited items that were provisionally credited."); Doc. No. 374, pp. 48-50("Regions is secured only to the extent it provided provisional credit for checks deposited in the Debtor's account(s)."); Doc. No. 423, p. 10.
[136] 369 B.R. at 699.

"provisional credit" generally refers to the credit that account holders are given on deposits before the deposited items clear.[137] As a result, the Covering Deposits that related to provisional credits are not avoidable under FUFTA.

The two Covering Deposits at issue here are $1,111,770.18 deposited to Able Body Gulf Coast, Inc.'s account, of which $1,094,340.00 related to Regions' extension of provisional credit, and $606,706.01 deposited to Professional Staffing's account, of which $582,502.00 related to Regions' extension of provisional credit.[138] Plaintiff does not dispute Regions' extension of provisional credit as to these two deposits.[139] Therefore, the Court finds that because Regions had a statutory security interest to the extent of the $1,094,340.00 and $582,502.00 described above, those amounts were not transfers.

(b) Regions' deposit agreements granted Regions a security interest in the Covering Deposits.

Next, Regions asserts that its deposit agreements with the Overdraft Debtors granted Regions a security interest and right of set off in the Overdraft Debtors' accounts such that deposits that cured overdrafts did not constitute transfers of the Overdraft Debtors' assets.[140]

Plaintiff responds that there are deficiencies in the deposit agreements, such as missing signature cards, references to AmSouth Bank's customer agreements rather than Regions' deposit agreements, and discrepancies in the dates on the signature cards.[141] Plaintiff also contends that the deposit agreements are legally insufficient to create a security interest in the accounts because "the language contained in the signature cards and form deposit agreement is boilerplate and does not

[137] *Id*. at 696.
[138] Doc. No. 308, p. 11; Doc. No. 423, pp. 10-11(citing Doc. No. 308-9; Doc. No. 384; Adv. Pro. No. 8:15-ap-126-CED, Doc. No. 53; and Adv. Pro. No. 8:15-ap-116-CED, Doc. No. 54).
[139] Doc. No. 374, pp. 49-50; Doc. No. 423, p. 12.
[140] Doc. No. 423, p. 12.
[141] Doc. No. 374, pp. 50-51. A summary of the alleged deficiencies is attached to Plaintiff's response to Regions' motion (Doc. No. 374-1, Ex. I).

contain the required 'granting' language to establish the alleged security interest."[142] Plaintiff does not cite any authority for this contention.

In reply, Regions cites Exhibit D to its *Motion for Partial Summary Judgment No. 7: All Unjust Enrichment Claims*,[143] a 159-page composite of the signature cards for the Overdraft Debtors' accounts that are the subject of the Covering Deposits.[144] Paragraph 36 of the deposit agreement reads:

> In addition to our right of setoff, you hereby grant to us a security interest in the account to cover any debt you owe us, of whatever type, whether you are borrower, guarantor or otherwise.[145]

Plaintiff does not dispute that many of the Debtors' accounts, including the Overdraft Debtors' accounts, originated with AmSouth Bank prior to its merger with Regions in 2006.[146]

It is well-settled that "[n]o particular words need to be used" to evidence a security interest. Instead, it is only necessary that the document's language leads to the logical conclusion that the parties intended to create a security interest.[147]

The Court finds that Regions held a security interest in the Overdraft Debtors' accounts and Covering Deposits by virtue of the Overdraft Debtors' deposit agreements and that the Covering Deposits were not transfers of the Overdraft Debtors' assets under FUFTA.

---

[142] Doc. No. 374, p. 51.
[143] Doc. No. 323.
[144] Doc. No. 323, p. 5. Exhibit A to Doc. No. 323 is "the Deposit Agreement in effect as of February 2010," Exhibit B is a listing of the "deposit agreements and signature cards for accounts alleged to involve Overdraft Loan Repayment Transfers" [the Covering Deposits], Exhibit C is a "composite of Deposit Agreements," and Exhibit D is a "composite of signature cards." Composite Exhibit D is found at Doc. Nos. 328-1, 328-2, and 328-3. For example, the first document in Composite Exhibit D is a signature card for Able Body Gulf Coast, Inc. account 9452 at AmSouth dated October 19, 2005, and signed by Frank Mongelluzzi and Anne Mongelluzzi (Doc. No. 328-1, p. 2).
[145] Doc. No. 308-1, ¶ 36.
[146] Doc. No. 374, pp. 50-51; Doc. No. 423, pp. 13-14.
[147] *Silver Creek Farms, LLC v. Fullington*, 2017 WL 8944641, at *12 (S.D. Fla. Nov. 9, 2017)(citations omitted).

b. Even if the Covering Deposits were "transfers" under FUFTA, the Overdraft Debtors received reasonably equivalent value in exchange.

If the Court were to find that the Covering Deposits are "transfers" under FUFTA, Plaintiff would bear the burden of proving her constructive fraud claims by establishing that the Overdraft Debtors made the Covering Deposits "without receiving a reasonably equivalent value in exchange."[148] Without conceding that the overdrafts in the accounts were debts, Regions contends that it provided reasonably equivalent value for the Covering Deposits because they repaid overdrafts in the same principal amount of the "credit" that Regions extended.[149]

The Court previously addressed this issue in the Mongelluzzi Case in connection with the Chapter 7 trustee's claims against Regions to avoid alleged overdraft loan repayments.[150] In granting Regions' motion for summary judgment, the Court concluded that under Fla. Stat. § 726.104, a transferee gives value for a transfer if the transferee applies the transfer to an antecedent debt.[151] In the Mongelluzzi Case, as here, the alleged overdraft loan repayments were in the exact amount of the overdrafts. Therefore, this Court concluded that "Debtor's repayment of the principal of the loans to Regions in amounts that are exactly equal to the amount of principal it received constitute reasonably equivalent value."[152]

The facts presented in the Mongelluzzi Case and in Regions' motion on this issue are materially the same as those addressed by the court in *In re Petters Company, Inc*.[153] In *Petters*, the bankruptcy trustee alleged that the debtor made transfers to cover prior overdrafts in the debtor's bank account, which the trustee alleged were payments on short-term loans. The trustee sued the bank to recover the

[148] Fla. Stat. §§ 726.105(1)(b), 726.106(1).
[149] Doc. No. 308, p. 12.
[150] *In re Mongelluzzi*, 591 B.R. at 480.
[151] *Id.* 496; Fla. Stat. § 726.104(1).
[152] *Id.* at 497(citing *In re Petters Company, Inc*., 548 B.R. 551, 565-69 (Bankr. D. Minn. 2016)).
[153] 548 B.R. 551 (Bankr. D. Minn. 2016).

transfers as actually and constructively fraudulent.[154] In considering the trustee's constructive fraud claim and whether the debtor made the transfers without receiving reasonably equivalent value, the court found that if the transfers only brought a checking account balance above a negative level, "nothing more happened than the repayment of an analog to principal indebtedness." And because the transfers did not include the payment of interest or fees or penalties, the court held that the repayment "did not lack reasonably equivalent value to [the debtor] as account-holder and transferor."[155] Therefore, the *Petters* court ruled that the transfers could not be avoided as constructively fraudulent.[156]

Plaintiff attempts to distinguish the *Petters* analysis by arguing that the debts satisfied by the Covering Deposits were not *valid* debts.[157] Plaintiff argues that for the payment of an existing debt to constitute value, the debt itself must be a valid obligation.[158] And Plaintiff contends that the overdrafts in the accounts were not valid debts for two reasons: first, because the Mongelluzzis and the Overdraft Debtors operated their check kiting scheme to keep the businesses alive and maintain the Mongelluzzis' expensive lifestyle; and second, because Regions aided and abetted this scheme when it failed to dishonor the Overdraft Debtors' checks, which resulted in the worsening of the Overdraft Debtors' financial condition.[159]

---

[154] *Id.* at 554. The debtor in *Petters* was involved in a Ponzi scheme.
[155] *Id*. at 568.
[156] *Id*. at 568-69.
[157] Doc. No. 374, pp. 61-71.
[158] Doc. No. 374, pp. 65-66(citing *American Pegasus SPC v. The Clear Skies Holding Company, LLC*, 2015 WL 10891937, at *21 (N.D. Ga. Sept. 22, 2015)).
[159] Doc. No. 374, pp. 64-65. "The kite is a type of fraud by which the malefactor uses at least two accounts at separate banks and covers overdrafts on one bank by writing overdrafts on the other bank. The malefactor takes advantage of the float period between the moment of deposit and the moment of payment by each drawee bank. . . . A constant flow of worthless checks between the two accounts keeps the kite alive as the numbers grow larger and larger." *In re Montgomery*, 123 B.R. 801, 807 (Bankr. M.D. Tenn. 1991)(quoted in *In re Mongelluzzi*, 591 B.R. at 490).

To support her arguments, Plaintiff relies on the testimony of Robert Pierce, the former CFO of the Mongelluzzi Entities, and Ron Cohn, a Regions "relationship manager" for one of the Mongelluzzi Entities. According to Plaintiff, Mr. Pierce testified at deposition that Regions knew about suspect activity in the Mongelluzzi Accounts by the second half of 2009, and Mr. Cohn testified at deposition that in September 2009, he formally recommended that Regions downgrade the Mongelluzzi Entities' risk rating to exit at least part of Regions' lending relationship with the Mongelluzzis.[160]

Regions acknowledges that courts may consider a transferee's participation in a debtor's fraudulent scheme under certain circumstances, such as where the transfers at issue were for dissimilar property, *e.g.*, an exchange of stock for cash.[161] But Regions argues that where "dollar-for-dollar" exchanges were made, "the essential examination is a comparison of 'what went out' with 'what was received.'"[162] For example, in *In re LeNeve*, the defendant in a fraudulent transfer action made "investments" of $700,000.00 to the direct benefit of the debtor, who had treated the funds as his own. When the trustee sued to avoid transfers to the defendant in the amount of $507,215.00, the court dismissed the complaint on the ground that "what went out" in the exchanges was less than "what was received."[163]

The Eleventh Circuit has also addressed this issue in *In re Caribbean Fuels America, Inc.*[164] In *Caribbean Fuels*, the debtor and its principals signed a lease for a house in Miami in which the principals resided. When the debtor filed a bankruptcy case, the bankruptcy trustee sued the landlord

[160] Doc. No. 374, pp. 64, 67. According to Plaintiff, Robert Pierce was the Mongelluzzi Entities' CFO for nine years through 2010, and Ron Cohn was the C&I relationship manager for PreferAble People.
[161] Doc. No. 423, pp. 22-23(citing *American Pegasus SPC v. The Clear Skies Holding Company, LLC*, 2015 WL 10891937, at *21).
[162] Doc. No. 423, pp. 21-23(quoting *In re LeNeve*, 341 B.R. 53, 57 (Bankr. S.D. Fla. 2006)).
[163] Doc. No. 423, p. 23(quoting *In re LeNeve*, 341 B.R. at 64).
[164] 688 F. App'x 890 (11th Cir. 2017).

to recover the rent paid by the debtor under the lease as a fraudulent transfer. Although the trustee did not dispute the reasonableness of the rent, he argued that the *debtor* had not received reasonably equivalent value for its lease payments—because the lease payments had benefited the debtor's principals and not the debtor. In ruling for the landlord, the Eleventh Circuit held that "the question is not whether the debtor subjectively benefitted from the property it received; the operative question is whether the property, goods, or services provided had objective value."[165]

And the *Caribbean Fuels* court went even further, rejecting the view that *all* services provided to a Ponzi operator were of no value solely because the Ponzi operator's insolvency increased.[166] Instead, the court adopted the reasoning of *In re Universal Clearing House Company* to conclude that in determining whether value is given in the context of a fraudulent transfer action under 11 U.S.C. § 548, the court should focus on the value of the goods and services provided.[167] In *Universal Clearing House*, the court stated that the fact that the services provided by the defendants increased the debtors' insolvency did not preclude a determination that the defendants gave value, and concluded that a determination of whether value was given under § 548 should focus on the value of the goods and services provided rather than on the impact that the goods and services had on the bankruptcy enterprise.[168]

Here, the Covering Deposits were made in the exact amount of the overdraft credit extended. Because the Overdraft Debtors received direct, dollar-for-dollar value in exchange for the payments, the Court concludes, consistent with the reasoning of *Petters*, *LeNeve*, *Caribbean Fuels*, and *Universal*

[165] *Id.* at 894-95.
[166] *Id*. at 894.
[167] *Id*. (quoting *In re Financial Federated Title & Trust, Inc*., 309 F.3d 1325, 1332 (11th Cir. 2002), quoting *In re Universal Clearing House Company*, 60 B.R. 985, 999 (D. Utah 1986)).
[168] 60 B.R. at 999-1000.

Clearing House, that the Overdraft Debtors received reasonably equivalent value in exchange for the Covering Deposits under Fla. Stat. §§ 726.105(1)(b) and 726.106(1).

c. Even if the Covering Deposits were "transfers" under FUFTA, the Overdraft Debtors did not make the Covering Deposits with actual intent to hinder, delay, or defraud any creditor.

Regions contends that Plaintiff's actual fraud claims are based solely on her allegations that the Overdraft Debtors participated in a check kiting scheme "at some point in time," but that Plaintiff lacks evidence that the Overdraft Debtors intended to defraud creditors *each time* they made a deposit into a bank account to cover an overdraft.[169]

In response, Plaintiff attempts to connect the Overdraft Debtors' alleged fraudulent intent to the specific Covering Deposits by pointing to the allegations in the Complaints that (1) the Mongelluzzis diverted money from the Mongelluzzi Entities for their own personal use, (2) the Mongelluzzis devised and implemented a check kiting scheme and recycled receivables to create loan availability, and (3) at least four "badges of fraud" are present in this case.[170]

Specifically, Plaintiff argues that she has established these four badges of fraud: first, the Overdraft Debtors were insolvent; second, the Covering Deposits were made shortly after substantial debts (the Ledger Balance Overdrafts) were incurred; third, the Overdraft Debtors were pressured by Regions to pay the Regions Loans, presumably representing the threat of litigation; and fourth, the Overdraft Debtors concealed assets by transferring them between related entities.[171] For the reasons

[169] Doc. No. 308, p. 21(emphasis in original).
[170] Doc. No. 374, pp. 82-83, 87. For example, in the proceeding involving Professional Staffing, Plaintiff alleged that "[t]o cover for their shortfalls, create additional loan availability, and to continue their looting of the healthy businesses, the Mongelluzzis devised and implemented a check kiting scheme through use of the Bank Accounts (including the Regions Bank Accounts) and recycled receivables as collateral on the Regions Revolver." (Adv. Pro. No. 8:15-ap-116-CED, Doc. No. 54, ¶ 44).
[171] Doc. No. 374, p. 87.

discussed above , the Court finds that the alleged "badges of fraud" do not establish that the Overdraft Debtors made the Covering Deposits with actual fraudulent intent.

In *In re Rollaguard Security, LLC,*[172] the bankruptcy court examined "what needs to be proven" to establish actual intent to defraud in cases where the debtor was involved in a fraudulent scheme. In *Rollaguard*, as here, the trustee sought to recover deposits covering overdrafts in the debtor's bank account as actually fraudulent transfers. The bankruptcy court, on the defendant bank's motion to dismiss, held that the trustee failed to allege a connection between the transfers at issue and the debtor's intent to fraudulently obtain investments that it did not intend to return. The court stated that "the plaintiff must show that the alleged fraudulent intent is related to the transfers sought to be avoided," and that the plaintiff must show that the debtor had fraudulent intent in taking the specific action of satisfying the overdrafts.[173] Here, Plaintiff has not shown that the Overdraft Debtors had any fraudulent intent when they made the Covering Deposits.

The record evidence is that the Overdraft Debtors made the Covering Deposits for the purpose of enabling the Overdraft Debtors to continue their business operations rather than to defraud their creditors. For example, Peggy Sanders, the banking manager who worked closely with Anne Mongelluzzi, testified that the main purpose of her employment was to make sure that the bank accounts from which checks were written had sufficient funds to cover the checks;[174] Anne Mongelluzzi testified that the purpose of moving money among accounts to cover checks was to "keep the business afloat until we found a buyer;"[175] and Debtors' CFO, Robert Pierce, confirmed in

[172] 591 B.R. 895 (Bankr. S.D. Fla. 2018).
[173] *Id*. at 918-919. The decision was entered after remand from the district court, and the bankruptcy court determined that it would be futile to permit the plaintiff to amend his complaint to allege that the debtor's payments to satisfy overdrafts were actually fraudulent transfers. *Id*. at 924.
[174] Doc. No. 308-2, Deposition transcript of Peggy Sanders, pp. 20-25, 141. Ms. Sanders testified that she was employed by Professional Staffing and that she worked with Anne Mongelluzzi on "staffing-related" or Able Body matters, and also on specific bank accounts (Doc. No. 308-2, pp. 27-29).
[175] Doc. No. 310-1, Deposition transcript of Anne Mongelluzzi, p. 140.

testimony that the Overdraft Debtors engaged in check kiting so they could continue in business.[176] In other words, the purpose behind the check kiting scheme was to ensure that Regions (and Synovus as well) would continue to honor the Overdraft Debtors' checks—checks that were used to pay the Overdraft Debtors' employees and creditors.

Although Plaintiff asserts that the Overdraft Debtors' larger scheme of check kiting and inflating their accounts receivables[177] was to maintain the Mongelluzzis' personal lifestyle, Plaintiff has failed to link this overall practice or intent to the Overdraft Debtors' payment of any specific Covering Deposit. Accordingly, the Court finds that the Covering Deposits are not avoidable as actually fraudulent transfers under Fla. Stat. § 726.105(1)(a) because the Overdraft Debtors did not make the payments with the actual intent to defraud any creditor.

d. If the Covering Deposits were avoidable transfers, factual disputes exist as to the amount of Plaintiff's damages.

Finally, if the Covering Deposits were avoidable as fraudulent transfers, Regions asserts that Plaintiff's recovery should be "limited to each Overdraft Debtor's single largest transfer" covering the largest negative ledger balance in the account.[178] For example, Regions asserts that its liability in the Professional Staffing case should be limited to $767,921.90 for the Covering Deposit paid on December 16, 2009,[179] rather than the liability alleged by Plaintiff of $6,176,598.50, representing 73 Covering Deposits made between June 10, 2009, and July 19, 2010.[180]

---

[176] Doc. No. 301-3, Deposition transcript of Robert Pierce, pp. 272, 316.
[177] *See* Doc. No. 369, p. 4(Plaintiff asserts that "many of the 'refreshed' accounts receivable supposedly 'securing' advances on the line of credit were actually aged and uncollectible."); and Doc. No. 414, pp. 71-72 (Regions contends that it "suspected, but did not know, that the Mongelluzzi Entities may have been inflating receivables to obtain greater availability" on the Regions Revolver.)
[178] Doc. No. 308, pp. 21-23.
[179] Doc. No. 308, p. 23.
[180] Adv. Pro. No. 8:15-ap-116-CED, Doc. No. 54, Ex. A.

On this issue, Regions relies in part on the court's analysis in *In re Sophisticated Communication*s, *Inc.*[181] There, the trustee sued to avoid covering deposits as preferential transfers. The court's initial ruling noted that the trustee sought to recover the total amount of the debtor's overdraft balances on multiple dates during the preference period, but that the total amount did not represent the amount of the overdraft at any particular point during that period.[182] On reconsideration, the court ruled that the trustee's recovery was limited to the amount of the covering deposits curing the largest negative ledger balance during the 90-day preference period.[183] As Regions points out, a court's rationale for limiting recovery to the single largest transfer is that the debtor never had access to the total amount of all of the consecutive overdrafts at one time.[184]

Plaintiff responds that she has already avoided "double counting" by using the "darkest day" concept, meaning that when a negative account lasted for consecutive days, she did not count each day within the group of days as a separate overdraft.[185] But in *Sophisticated Communications*, the trustee's recovery measured by the "darkest day" was the same as the recovery measured by the "deposits curing the largest ledger balance overdraft" during the preference period. The court noted that the highest ledger overdraft balance or "darkest day" in the preference period occurred on July 19, 2000, when the overdraft amount was $690,934.54, [186] the same amount of the judgment entered

[181] 369 B.R. 689 (Bankr. S.D. Fla. 2007).
[182] Doc. No. 308-8, (Adv. No. 02-1526-BKC-RAM-A, Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment and Setting Status Conference, June 22, 2006, p. 3, n.1).
[183] *In re Sophisticated Communications*, 369 B.R. at 695(citing *In re Brown*, 209 B.R. 874 (Bankr. W.D. Tenn. 1997)).
[184] Doc. No. 308, p. 22(quoting *In re Consolidated Pioneer Mortgage Entities*, 211 B.R. 704, 717 (S.D. Cal. 1997), *aff'd in part as to fraudulent transfer claims, rev'd in part as to negligence and conspiracy claims*, 166 F.3d 342 (9th Cir. 1999)).
[185] Doc. No. 374, p. 88.
[186] *In re Sophisticated Communications*, 369 B.R. at 695.

against the bank as the amount of "deposits curing the largest ledger balance overdraft" during the 90-day preference period.[187]

Here, Plaintiff alleges that the Able Body Entities were involved in a check kiting scheme by which funds were moved among a number of entities, and that the movement of funds created a series of "overdraft periods"—consecutive days when an account was overdrawn—between May 2009 and July 2010. Consequently, it appears that Plaintiff's methodology may have produced multiple "darkest days," or in other words, a separate "darkest day" for each overdraft period, rather than a single "darkest day" in the fourteen-month period for which Plaintiff seeks to avoid the Covering Deposits.

As a basic premise, the "purpose of avoiding fraudulent transfers is to prevent the debtor from diminishing funds that are generally available for distribution to creditors."[188] The parties appear to acknowledge the multiple overdraft periods in the Overdraft Debtors' accounts in 2009 and 2010, and the movement of funds among the accounts that both created and cured the overdrafts. On the record before it, the Court cannot determine the extent to which the Overdraft Debtors' overall funds were diminished by the transfers among the overdraft accounts, or whether Plaintiff's recovery should be measured by the "largest negative ledger balance" in the Overdraft Debtors' accounts during the time period that the Covering Deposits were made.

Accordingly, the Court finds that, if the Covering Deposits were avoidable as constructively or actually fraudulent transfers, factual disputes exist regarding the amount of recovery to which Plaintiff is entitled under 11 U.S.C. § 550.

---

[187] *Id*. at 693, 695, 704.

[188] *In re McMillin*, 2012 WL 2892355, at *2 (11th Cir. July 13, 2012)(citing *In re Chase & Sanborn Corporation*, 813 F.2d 1177, 1181 (11th Cir. 1987)).

e. Summary of Court's Ruling on the Covering Deposits

The Court finds that Regions, as the moving party on summary judgment, has met its burden of showing that there is an absence of evidence to support Plaintiff's claims on the following issues and that Plaintiff has not met her burden to show the existence of a genuine dispute of material fact on the following issues:

(1) The Ledger Balance Overdrafts before Regions' Day 2 Midnight Deadline were not debts; therefore, the Covering Deposits relating to Ledger Balance Overdrafts that occurred before Regions' Day 2 Midnight Deadline were not transfers for avoidance purposes under FUFTA;

(2) The Covering Deposits relating to Ledger Balance Overdrafts that occurred after Regions' Day 2 Midnight Deadline were not transfers under FUFTA because Regions had a statutory or contractual security interest in the Covering Deposits;[189]

(3) Even if the Ledger Balance Overdrafts were debts and the Covering Deposits were transfers, the Covering Deposits are not avoidable as constructively fraudulent transfers because the Overdraft Debtors received reasonably equivalent value in exchange for the payments; and

(4) Even if the Ledger Balance Overdrafts were debts and the Covering Deposits were transfers, they are not avoidable as actually fraudulent transfers because the Overdraft Debtors did not make the Covering Deposits with the actual intent to defraud any creditor.

[189] Regions also asserts that Ledger Balance Overdrafts after its Day 2 Midnight Deadline, or True Overdrafts totaling $917,129.00 between July 6 and July 20, 2010, in five Overdraft Debtors' accounts, arose from Regions' honoring payroll checks, and that Regions subsequently received previously agreed-upon deposits directly from Synovus for the specific purpose of funding payroll. (Doc. No. 423, p. 16). Regions' "earmarking" theory does not appear to apply to this type of transaction. (*See In re ATM Financial Services, LLC*, 2011 WL 2580763, at *7 (Bankr. M.D. Fla. June 24, 2011)). However, the Court need not address the Covering Deposits relating to payroll as a subsection of the Covering Deposits relating to True Overdrafts, in view of the Court's ruling that the Covering Deposits were not transfers, the Overdraft Debtors received reasonably equivalent value in exchange for the Covering Deposits, and the Covering Deposits were not made with actual fraudulent intent.

Accordingly, the Court finds that the Covering Deposits are not avoidable as either constructively or actually fraudulent transfers. However, if the Court were to find that the Covering Deposits are avoidable as actually or constructively fraudulent transfers, factual issues exist regarding the amount of the recovery to which Plaintiff would be entitled.[190]

3. Insolvency Analysis

In order to prevail on her constructively fraudulent transfer claims, Plaintiff must establish that the Overdraft Debtors and the Loan Payment Debtors were insolvent on the dates of the alleged transfers. The Court also considers the insolvency issue when analyzing "badges of fraud" in connection with Plaintiff's actually fraudulent transfer claims.[191] As set forth above, the Court has determined that the Loan Payment Transfers and the Covering Deposits are not avoidable as constructively or actually fraudulent transfers. However, for purposes of a complete record, the Court will briefly address the insolvency issue.

Plaintiff acknowledges that she lacks the financial information necessary to show Debtors' insolvency on the dates of the specific transfers that she seeks to avoid, and she therefore attempts to prove Debtors' insolvency by the retrojection theory.[192] Under the retrojection theory, when a debtor is shown to be insolvent on the first known date and also insolvent on a later date, in the absence of any substantial change in the debtor's assets or liabilities between the two dates, the debtor is "deemed to have been insolvent at all intermediate times."[193]

---

[190] With respect to damages, Plaintiff and Regions agree that Plaintiff seeks to avoid transfers in the amount of $1,927,609.12 as both Loan Payment Transfers and Covering Deposits, that the amount is duplicative, and that, if Plaintiff were to prevail under both theories, the total amount of damages awarded to Plaintiff should be reduced by the duplicate amount (Doc. No. 310, pp. 25-26; Doc. No. 388, p. 77).
[191] Fla. Stat. § 726.105.
[192] Doc. No. 374, pp. 73-78; Doc. No. 388, pp. 62-66.
[193] *In re Toy King Distributors, Inc.*, 256 B.R. 1, 99-100 (Bankr. M.D. Fla. 2000)(citations omitted).

But the evidence Plaintiff submitted in opposition to Regions' motions on the insolvency issue fails to show insolvency of six of the seven Loan Payment Debtors under the retrojection theory. For example, as to five of the Loan Payment Debtors,[194] Plaintiff was unable to determine insolvency after June 30, 2010, but each of the Loan Payment Transfers for these five Loan Payment Debtors occurred *after* June 30, 2010.[195] In other words, Plaintiff claims that because she has established insolvency on "day one" and then on "day two," the Court should presume insolvency on a later "day three," the date of each Loan Payment Transfer. The Court is not inclined to adopt this extension of the retrojection theory of insolvency. And as to a sixth Loan Payment Debtor,[196] Plaintiff provided no insolvency analysis at all as of the date of the Loan Payment Transfer.[197] The Court finds that Regions has met its burden of proof to show that Plaintiff is unable to prove the insolvency of these six Loan Payment Debtors on the dates of the Loan Payment Transfers.

However, the Court finds that factual disputes exist with respect to the insolvency of the seventh Loan Payment Debtor (Training U) on the date of the Loan Payment,[198] and the eight Overdraft Debtors on the specific date of each Covering Deposit. Although Plaintiff provided an analysis under the retrojection theory of these nine Debtors' insolvency on the dates of the

[194] YJNK XI CA, LLC; Able Body Gulf Coast, Inc.; Rotrpick, LLC; YJNK III, Inc.; and YJNK VIII, Inc.
[195] Doc. No. 388-1, Affidavit of Maria M. Yip, pp. 89-94. The Loan Payment Transfers for these five Loan Payment Debtors occurred in July 2010. (Adv. Pro. No. 8:15-ap-124-CED, Doc. No. 47, Exs. B, C; Adv. Pro. No. 8:15-ap-126-CED, Doc. No. 53, Ex. B; Adv. Pro. No. 8:15-ap-117-CED, Doc. No. 46, Exs. B, C; Adv. Pro. No. 8:15-ap-125-CED, Doc. No. 56, Ex. B; Adv. Pro. No. 8:15-ap-122-CED, Doc. No. 47, Exs. B, C).
[196] Able Body Temporary Services, Inc.
[197] Doc. No. 388-1, Affidavit of Maria M. Yip, pp. 89-94; Doc. No. 424, p. 13.
[198] For Training U, Plaintiff asserts a first month-end insolvency date of May 27, 2009, and a last month-end insolvency date of July 26, 2010 (Doc. No. 388-1, Affidavit of Maria M. Yip, pp. 89-94, ¶ 4). Training U's Loan Payment Transfers occurred on July 15 and 20, 2010, within the insolvency period under the retrojection approach. But Plaintiff has identified only two alleged creditors of Training U (CNA Insurance Companies and Angela Welch, the Chapter 7 trustee in Frank Mongelluzzi's case), and these two claims are the subject of *Regions' Motion for Partial Summary Judgment No. 1*, in which Regions claims that Training U has no creditors (Doc. No. 297). For example, Training U was not formed until May 25, 2006, after the historical events giving rise to the CNA claim.

payments,[199] factual disputes arise from Plaintiff's use of a balance sheet approach to determine insolvency. These disputes include, first, whether the value of these nine Debtors' goodwill should be included as an asset,[200] and, second, whether certain liabilities should be allocated to each of the Debtors in the full amount claimed.[201]

D. PLAINTIFF'S AIDING AND ABETTING CLAIMS

In each of the sixteen adversary proceedings, Plaintiff pleads aiding and abetting claims against Regions. Plaintiff alleges that Regions aided and abetted the Mongelluzzis in the breach of their fiduciary duties and their fraud in connection with the check kiting scheme.[202]

Plaintiff bears the burden of proof at trial to establish her aiding and abetting claims.[203] Therefore, as the moving party on summary judgment, Regions has the burden to show there is an absence of record evidence to support Plaintiff's case or to show affirmative evidence that Plaintiff will be unable to prove her aiding and abetting claims.

1. Plaintiff fails to state a claim against Regions in the Non-Account Debtors' cases.

Seven of the Debtors, the Non-Account Debtors,[204] did not maintain bank accounts at Regions. The Non-Account Debtors, having no accounts at Regions, did not make any Covering Deposits or Loan Payment Transfers. Nonetheless, each of the Complaints in these seven Non-Account Debtors' cases asserts that Regions aided and abetted the Mongelluzzis in connection with the check kiting

[199] Doc. No. 388-1, Affidavit of Maria M. Yip, pp. 89-94.
[200] Plaintiff acknowledges that she excluded the value of Debtors' intangible assets in her insolvency analysis (Doc. No. 388, p. 66).
[201] For example, Plaintiff included claims asserted by American Casualty Insurance Company of Reading, Pennsylvania and CNA Claims Plus, Inc., and also claims asserted by Regions, as liabilities of all eight Overdraft Debtors in the full amount claimed (Doc. No. 374, pp. 80-82).
[202] *See, e.g.,* Doc. No. 155, Amended Complaint, pp. 41-45.
[203] *In re NewStarcom Holdings, Inc.*, 547 B.R. 106, 120 (Bankr. D. Del. 2016).
[204] There are seven Non-Account Debtors: (1) Westward Ho II, LLC; (2) Westward Ho, LLC; (3) YJNK II, Inc.; (4) ABTS Holdings, LLC; (5) Cecil B. DeBoone, LLC; (6) Preferable HQ, LLC; and (7) Organized Confusion, LLP.

scheme. Because the Non-Account Debtors were not involved in the check kiting scheme, the Court finds that Regions is entitled to summary judgment as a matter of law on Plaintiff's aiding and abetting claims in their cases.

2. Plaintiff lacks standing to pursue the aiding and abetting claims.

A party's standing to pursue a claim is a threshold issue in federal litigation because it determines "the propriety of judicial intervention."[205]

> Although under Rule 56 of the Federal Rules of Civil Procedure, the Court may not, without adequate notice, grant summary judgment with respect to any claims beyond those claims for relief requested by the parties on motion for summary judgment, . . . the Court may, nevertheless, raise and dismiss a claim *sua sponte* if the plaintiff lacks standing to assert the claim. . . . Lack of standing to pursue a claim affects the Court's subject matter jurisdiction and should be raised by the Court *sua sponte* if not otherwise addressed by the parties.[206]

In other words, because lack of standing is a jurisdictional bar, a court may consider questions of standing *sua sponte* at any time, even on appeal and even if not raised as an issue in the original proceedings.[207]

This issue was also discussed by the Eleventh Circuit in *Isaiah v. JPMorgan Chase Bank, N.A.*[208] In *Isaiah*, the Florida state court appointed a receiver for two entities (the "Receivership Entities") that engaged in a Ponzi scheme executed by their principals.[209] The receiver sued the Receivership Entities' bank to recover alleged fraudulent transfers to the bank under FUFTA, and to recover damages for the bank's alleged aiding and abetting the principals' torts of breach of fiduciary duty, conversion, and fraud.[210] The receiver claimed that the bank had facilitated the Ponzi scheme by

---

[205] *In re Stanworth*, 543 B.R. 760, 769 (Bankr. E.D. Va. 2016)(quoting *Warth v. Seldin*, 422 U.S. 490, 518, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)).
[206] *In re Causey*, 519 B.R. 144, 149-50 (Bankr. M.D.N.C. 2014)(citations omitted).
[207] *In re Harman*, 2005 WL 1634454, at *3 (B.A.P. 6th Cir. July 12, 2005)(quoting *In re Bittel*, 1995 WL 699672, at *1 (6th Cir. Nov. 27, 1995)).
[208] 960 F.3d 1296 (11th Cir. 2020).
[209] *Id.* at 1300.
[210] *Id*. at 1301. The suit was original filed in state court and later removed to district court.

transferring funds "into, out of, and among" the Receivership Entities' bank accounts, even though the bank was aware of suspicious activity in the bank accounts.[211] The district court dismissed with prejudice the receiver's claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).[212]

On appeal, the Eleventh Circuit addressed whether the receiver, standing in the shoes of the Receivership Entities, had standing to assert aiding and abetting claims against the bank if the Receivership Entities were tainted by the fraudulent acts of their principals.[213] The court's inquiry arose from the well-established rule that a receiver only acquires the causes of action owned by the person or entity in receivership.[214]

To answer this question, the court looked to Florida law. Under Florida law, if the fraud and intentional torts of a corporation's insiders cannot be separated from the corporation itself, both the corporation and any receiver for the corporation lack standing to pursue the tort claims against third parties because the corporation "cannot be said to have suffered injury from the scheme it perpetrated."[215] For example, in *Freeman v. Dean Witter Reynolds, Inc.*,[216] the court found that a receiver lacked standing to bring aiding and abetting claims against an investment company and other defendants because the entity in receivership could not have brought the claims:

> [The entity in receivership] was *controlled exclusively by persons engaging in its fraudulent scheme* and benefitting from it. [The entity] was not a large corporation with an honest board of directors and multiple shareholders, suffering from the criminal acts of a few rogue employees in a regional office. It is clear from the allegations of the amended complaint that it was created by the [principals] to dupe

---

[211] *Id*. at 1300.
[212] *Id*. at 1301.
[213] *Id*. at 1305.
[214] *Id*. at 1306(citing *Freeman v. Dean Witter Reynolds, Inc*., 865 So. 2d 543, 550 (Fla. 2d DCA 2003)).
[215] *Id*. at 1306(quoting *O'Halloran v. First Union National Bank of Florida*, 350 F.3d 1197, 1203 (11th Cir. 2003)).
[216] 865 So. 2d. 543 (Fla. 2d DCA 2003).

> the customers. This corporation was entirely the robot or the evil zombie of the corporate insiders.[217]

Therefore, in *Freeman*, the torts of the individual insiders could not be separated from the entity in receivership, the tort claims did not belong to the entity in receivership, and the receiver did not acquire any such claims from the entity.[218]

In *Isaiah*, the Eleventh Circuit found the receiver's allegations to be indistinguishable from the facts presented in *Freeman*. Specifically, the receiver's complaint demonstrated, first, that the Receivership Entities' principals maintained complete control over and wholly dominated the Receivership Entities in the operation of their fraudulent scheme; second, that the Receivership Entities did not have at least one innocent officer or director; and third, that the principals' torts therefore could not be separated from the Receivership Entities.[219] Accordingly, the court concluded that "the Receivership Entities cannot be said to have suffered any injury from the Ponzi scheme," and that both the Receivership Entities and the receiver lacked standing to pursue claims against the bank for aiding and abetting the Ponzi scheme.[220]

3. Debtors received the benefit of the Mongelluzzis' fraudulent scheme.

Plaintiff contends that Regions' alleged knowledge of the Debtors' participation in check kiting and fraudulent borrowing schemes renders Regions liable for aiding and abetting the Mongelluzzis' breach of fiduciary duty and fraud.[221]

The nature and execution of the check kiting scheme raise the issue of the identity of the beneficiary of a check kiting scheme and its actual victim. Check kiting is a scheme in which a bank's

---

[217] *Id.* at 551(quoted in *Isaiah v. JPMorgan Chase Bank,* 960 F.3d at 1307)(emphasis added).
[218] *Id.* at 551-53.
[219] *Isaiah v. JPMorgan Chase Bank,* 960 F.3d at 1307.
[220] *Id*. at 1307-08.
[221] Doc. No. 155, Amended Complaint, Counts 5 and 6; Doc. No. 372.

account holder—the check kiter—defrauds the bank by creating unauthorized loans from the bank.[222] The victim in a check kiting scheme is the check kiter's bank that honored checks for which the check kiter did not make covering deposits, not the check kiter and not the check kiter's creditors.[223]

The record evidence here is that the long-term purpose of the Mongelluzzis' check kiting scheme was to permit the Debtors to continue their business operations long enough to find a purchaser for the businesses. Anne Mongelluzzi expressly testified that the reason for moving money around among the Mongelluzzi Entities' bank accounts to cover checks was to "keep the business afloat until we found a buyer."[224] This stated purpose of keeping the companies "afloat" was affirmed by both Mr. Pierce[225] and Ms. Sanders.[226]

To the extent that Plaintiff contends that the Mongelluzzis participated in fraudulent activity such as "recycling receivables,"[227] the record evidence is that the Mongelluzzis' and the Debtors' intent was not to defraud their creditors but to improve Debtors' short-term cash flow at Regions' expense. For example, Mr. Pierce confirmed the obvious in his testimony—that the purpose of "refreshing" or recycling (i.e., overstating) the Able Body Entities' accounts receivable was so that Debtors could obtain additional loan proceeds on the Regions Revolver.[228] And Ms. Sanders testified that Debtors were "short money everywhere" and did not have the money to make payroll, so they borrowed on receivables that "weren't there."[229] In other words, as explained by Ms. Sanders, the

[222] *In re Montgomery,* 123 B.R. 801, 807-08 (Bankr. M.D. Tenn. 1991)(quoted in *In re Mongelluzzi*, 591 B.R. at 491).
[223] *In re Mongelluzzi*, 591 B.R. at 491(citing *United States v. Asher*, 59 F.3d 622 (7th Cir. 1995) and *United States v. Rackley*, 986 F.2d 1357, 1361 (10th Cir. 1993)).
[224] Doc. No. 301-1, Deposition transcript of Anne Mongelluzzi, p. 140.
[225] Doc. No. 301-3, Deposition transcript of Robert Pierce, pp. 272, 316.
[226] Doc. No. 301-4, Deposition transcript of Peggy Sanders, pp. 41-42.
[227] *See, e.g.,* Doc. No. 155, Amended Complaint, p. 2 and ¶ 159.
[228] Doc. No. 311-2, Deposition transcript of Robert Pierce, pp. 72-73.
[229] Doc. No. 366-7, Deposition transcript of Peggy Sanders, p. 180.

funds obtained from the Mongelluzzis' fraudulent practices were used for Debtors' short-term operating expenses, such as payroll.

The Able Body Entities benefited from the check kiting and receivables recycling schemes; they succeeded in maintaining their business operations through the first half of 2010, until, in mid to late July 2010, Mr. Mongelluzzi began negotiating the sale of the Able Body Assets to MDT.[230] The MDT Sale for approximately $42 million closed in September 2010, with Synovus Loans in excess of $34 million being satisfied in the transaction.[231]

The Court concludes that the record evidence shows that the Debtors received the benefit of the check kiting and fraudulent borrowing schemes committed by the Mongelluzzis.

4. The Mongelluzzis exercised exclusive control over Debtors.

The unrebutted evidence is that the Mongelluzzi Entities, including the Debtors, were solely owned, directly or indirectly, by Frank and Anne Mongelluzzi;[232] the Mongelluzzis maintained exclusive control over the Mongelluzzi Entities' business operations;[233] the Mongelluzzis ran the companies and had oversight or control over all of the Mongelluzzi Entities "in the way of making decisions in terms of operational daily activities;"[234] the Mongelluzzis maintained exclusive control over the Mongelluzzi Entities' finances;[235] and there were no other owners, officers or directors who were not participants in the fraud.[236]

Accordingly, as in *Isaiah*, the principals who engaged in the fraudulent schemes—Frank and Anne Mongelluzzi—exclusively controlled and wholly dominated the Debtors that were involved in

---

[230] Doc. No. 370-1, Deposition transcript of Michael Traina, p. 22.
[231] *In re Mongelluzzi*, 587 B.R. at 400; Adv. Pro. No. 8:15-ap-102-CED, Doc. No. 248, ¶ 19, and Doc. No. 248-3, pp. 22-23(Master Loan Closing Statement).
[232] *See* Doc. No. 301, pp. 4-5, n. 3, for a complete list of the scheduled ownership interests of each Debtor.
[233] Doc. No. 301-1, Deposition transcript of Anne Mongelluzzi, pp. 173-74.
[234] Doc. No. 301-2, Deposition transcript of Robert Pierce, pp. 53-54, 206.
[235] Doc. No. 301-2, Deposition transcript of Robert Pierce, p. 206.
[236] Doc. No. 301-1, Deposition transcript of Anne Mongelluzzi, p. 174.

the check kiting scheme. Because the Mongelluzzis' torts cannot be separated from those of the Debtors, they are imputed to Plaintiff.

5. Summary of Court's Ruling on Aiding and Abetting Claims

The Court concludes, first, that the Non-Account Debtors did not participate in a check kiting scheme and Regions is entitled to summary judgment as to them. Second, with respect to all of the Debtors, the Court finds (a) that Debtors received the benefit of the fraudulent activity, both through the short-term availability of funds to operate their businesses and through the long-term ability to sustain the businesses until a buyer was found; (b) that Debtors were not injured by the check kiting or fraudulent borrowing practices; (c) that the Mongelluzzis exercised exclusive control over and wholly dominated Debtors' business operations and financial transactions, such that the Mongelluzzis' fraudulent activities cannot be separated from Debtors; (d) that the Mongelluzzis' fraudulent activities are imputed to Debtors; (e) Debtors could not have asserted any tort claims arising from the fraud; and (f) Plaintiff did not acquire any such tort claims from Debtors.

Accordingly, the Court finds that Plaintiff lacks standing to bring the aiding and abetting claims against Regions.

E. PLAINTIFF'S UNJUST ENRICHMENT CLAIMS

To establish a claim for unjust enrichment under Florida law, a plaintiff must prove three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained the benefit; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof.[237] The purpose of the equitable remedy of unjust enrichment is to prevent the defendant's wrongful retention of a benefit or the

[237] *Wilding v. DNC Services Corporation*, 941 F.3d 1116, 1129 (11th Cir. 2019)(quoting *Florida Power Corporation v. City of Winter Park*, 887 So. 2d 1237, 1241, n.4 (Fla. 2004)).

property of another; the remedy is not available where adequate legal remedies exist, such as a claim for breach of contract.[238]

In each of her sixteen Complaints,[239] Plaintiff includes a claim for unjust enrichment, generally alleging Debtors' fraud and check kiting schemes and Regions' knowledge of the schemes. In the Complaints in the Overdraft Debtors' cases, Plaintiff identifies the Covering Deposits, and in the Complaints in the Loan Payment Debtors' cases, Plaintiff identifies the Loan Payment Transfers. Plaintiff then incorporates the Complaints' general allegations and, without more, alleges the following:

> The Debtor conferred a substantial benefit upon the Defendant in causing the [Covering Deposits and Loan Payment Transfers], together with fees and expenses, to be made to the Defendant.
>
> The Defendant knowingly and voluntarily accepted and retained the substantial benefit conferred by the Debtor in the form of the [Covering Deposits and Loan Payment Transfers], together with all fees and expenses in an amount to be calculated earned by the Defendant on account of its relationship.[240]

In each of her Complaints, Plaintiff seeks judgment against Regions for its alleged unjust enrichment in the amount of the Covering Deposits and the Loan Payment Transfers, plus the unliquidated amount of the fees and expenses received by Regions on account of its relationship with the Debtors.

---

[238] *In re Herrera-Edwards*, 578 B.R. 853, 864-65 (Bankr. M.D. Fla. 2017).

[239] (1) Adv. Pro. No. 8:15-ap-111-CED, Doc. No. 34, Count 1; (2) Adv. Pro. No. 8:15-ap-112-CED, Doc. No. 34, Count 1; (3) Adv. Pro. No. 8:15-ap-113-CED, Doc. No. 35, Count 1; (4) Adv. Pro. No. 8:15-ap-114-CED, Doc. No. 34, Count 1; (5) Adv. Pro. No. 8:15-ap-115-CED, Doc. No. 34, Count 1; (6) Adv. Pro. No. 8:15-ap-116-CED, Doc. No. 54, Count 4; (7) Adv. Pro. No. 8:15-ap-117-CED, Doc. No. 46, Count 7; (8) Adv. Pro. No. 8:15-ap-118-CED, Doc. No. 155, Count 4; (9) Adv. Pro. No. 8:15-ap-119-CED, Doc. No. 36, Count 1; (10) Adv. Pro. No. 8:15-ap-120-CED, Doc. No. 34, Count 1; (11) Adv. Pro. No. 8:15-ap-121-CED, Doc. No. 54, Count 4; (12) Adv. Pro. No. 8:15-ap-122-CED, Doc. No. 47, Count 7; (13) Adv. Pro. No. 8:15-ap-123-CED (operative pleading filed in 8:15-ap-118-CED, Doc. No. 201, Ex. A, Count 7); (14) Adv. Pro. No. 8:15-ap-124-CED, Doc. No. 47, Count 7; (15) Adv. Pro. No. 8:15-ap-125-CED, Doc. No. 56, Count 6; (16) Adv. Pro. No. 8:15-ap-126-CED, Doc. No. 53, Count 6.

[240] *See, e.g.*, Adv. Pro. No. 8:15-ap-116-CED, Doc. No. 54, ¶¶ 145, 146, and Adv. Pro. No. 8:15-ap-118-CED, Doc. No. 155, ¶¶ 139, 140.

Regions asserts that it is entitled to summary judgment on the unjust enrichment claims because (1) the seven Non-Account Debtors did not maintain deposit accounts with Regions and therefore conferred no benefit on Regions, (2) the Overdraft Debtors and Loan Payment Debtors received adequate consideration in exchange for the Covering Deposits, Loan Payment Transfers, and fees, and (3) the Covering Deposits and the Loan Payment Transfers were governed by express contracts, such as the deposit agreements or Forbearance Agreement, which preclude Plaintiff's entitlement to the equitable remedy of unjust enrichment.[241]

In her response, Plaintiff fails to address either the required elements of an unjust enrichment claim or Regions' specific assertions. Instead, Plaintiff argues that Regions has mischaracterized her unjust enrichment claims, which Plaintiff contends stem from Regions' manipulation of the Mongelluzzi relationship in order to ensure that Regions would receive full repayment of the Regions Loans "at the expense and detriment of all of the Debtors and their creditors, *whether or not those Debtors had accounts at or loans with Regions*."[242] Plaintiff also contends that her claims "address Regions' bad faith," stemming from a "culture at the bank" to carry out a "loss averse mandate."[243] In other words, Plaintiff merely reverts back to her general allegations regarding Regions' relationship with Debtors without specifying *how* Regions was unjustly enriched.

As set forth above, the Court has found, first, that the Overdraft Debtors received direct dollar-for-dollar value in exchange for the Covering Deposits because the transfers were made in the exact amount of the overdrafts in the Overdraft Debtors' accounts, and, second, that the Loan Payment Debtors received reasonably equivalent value in exchange for the Loan Payment Transfers either by

[241] Doc. No. 323.
[242] Doc. No. 390, p. 20 (emphasis supplied).
[243] Doc. No. 390, p. 23.

direct value in the case of Able Body Temporary, or by indirect value from the sale of the Able Body Assets or from their identity of interests.

Because Debtors received reasonably equivalent value, the circumstances of the transfers are not such that it would be inequitable for Regions to retain the benefits. And with respect to the seven Non-Account Debtors, Regions could not have unjustly retained a benefit from the Loan Payment Transfers, the Covering Deposits, or fees or expenses relating to bank accounts of the seven Non-Account Debtors because there were no such accounts.

The Court finds that Regions has met its burden on summary judgment to show that there is an absence of evidence that Regions unjustly retained a benefit from Debtors, and that Plaintiff has not shown the existence of a material factual dispute as to her unjust enrichment claims.

F. CONCLUSION

Plaintiff's Complaints contain claims against Regions (1) to avoid and recover the Loan Payment Transfers and the Covering Deposits as constructively and actually fraudulent transfers, (2) to recover damages for aiding and abetting fraud and aiding and abetting breaches of fiduciary duty, and (3) to recover damages for unjust enrichment. Plaintiff filed a motion for partial summary judgment in each of the sixteen adversary proceedings, and Regions filed seven motions for partial summary judgment on specific issues found in one or more proceedings.

For issues on which Plaintiff bears the burden of proof at trial, Regions, as the moving party in its motions, must show either that there is an absence of evidence to support Plaintiff's claims or that Plaintiff will be unable to prove her claims at trial. For the reasons explained in this Order, the Court concludes that Regions met its burden in the following four motions:

(1) Motion for Partial Summary Judgment 4: Actual and Constructive Fraud – Overdraft Loan Repayment Transfer Claims;

(2) Motion for Partial Summary Judgment 5: Actual and Constructive Fraud – Other Loan Repayment Transfer Claims;

(3) Motion for Partial Summary Judgment No. 6: All Claims for Aiding and Abetting; and

(4) Motion for Partial Summary Judgment No. 7: All Unjust Enrichment Claims.

The burden shifted to Plaintiff to demonstrate the existence of a material factual dispute on the issues raised in the motions, and she failed to meet that burden. Therefore, the Court will grant Regions' motions for partial summary judgment on those claims.

The Court's rulings on these four motions dispose of all of Plaintiff's claims against Regions. Accordingly, the Court finds that Regions is entitled to judgment as a matter of law on the Complaints in each of the sixteen adversary proceedings and will deny Plaintiff's motions for partial summary judgment. In addition, because all of the claims in the Complaints are resolved, the Court determines that it is unnecessary to address Regions' three remaining motions for summary judgment[244] and will deny them as moot. Accordingly, it is

ORDERED:

1. The following Motions for Partial Summary Judgment filed by Regions Bank are **GRANTED:**

(a) Motion for Partial Summary Judgment 4: Actual and Constructive Fraud – Overdraft Loan Repayment Transfer Claims (Doc. No. 308);

(b) Motion for Partial Summary Judgment 5: Actual and Constructive Fraud – Other Loan Repayment Transfer Claims (Doc. No. 310);

[244] (1) In *Regions' Motion for Partial Summary Judgment No. 1* (Doc. No. 297), Regions asserts that Plaintiff cannot establish an essential element of her fraudulent transfer claims (the existence of an unsecured creditor) in the case of Training U, LLC; (2) in *Regions' Motion for Partial Summary Judgment No. 2* (Doc. No. 299), Regions asserts that the Other Loan Payment made by Able Body Temporary was in payment of its debt to Regions and is not a voidable transfer, that Plaintiff's tort claims in the Able Body Temporary case are barred by express contracts, and that Professional Staffing, YJNK II, Inc., Cecil B. DeBoone, LLC, and Organized Confusion, LLP released their claims against Regions in the Forbearance Agreement; and (3) in *Regions' Motion for Partial Summary Judgment No. 3* (Doc. No. 301), Regions asserts that its *in pari delicto* defense bars all of Plaintiff's claims against Regions because the Mongelluzzis dominated the Debtors and orchestrated the Debtors' fraudulent schemes.

(c) Motion for Partial Summary Judgment No. 6: All Claims for Aiding and Abetting (Doc. No. 322); and

(d) Motion for Partial Summary Judgment No. 7: All Unjust Enrichment Claims (Doc. No. 323).

2. The following Motions for Partial Summary Judgment filed by Regions Bank are **DENIED AS MOOT:**

(a) Motion for Partial Summary Judgment No. 1: Fraudulent Transfer Claims Brought on Behalf of Training U, LLC (Doc. No. 297);

(b) Motion for Partial Summary Judgment No. 2: All Claims Brought on Behalf of Able Body Temporary Services, Inc., and All Aiding and Abetting Claims Brought on Behalf of Professional Staffing – A.B.T.S., Inc., YJNK II, Inc., Cecil B. DeBoone, LLC, and Organized Confusion, LLP (Doc. No. 299); and

(c) Motion for Partial Summary Judgment No. 3: *In Pari Delicto* Defense Bars All Common Law Claims (Doc. No. 301).

3. The following Motions for Partial Summary Judgment filed by Plaintiff are **DENIED:**

(a) Motion for Partial Summary Judgment [As to ABTS Holdings, LLC – Adv. Pro. No. 8:15-ap-00115-CED] (Doc. No. 290);

(b) Motion for Partial Summary Judgment [As to Preferable HQ, LLC – Adv. Pro. No. 8:15-ap-00113-CED] (Doc. No. 291);

(c) Motion for Partial Summary Judgment [As to Westward Ho, LLC – Adv. Pro. No. 8:15-ap-00111-CED] (Doc. No. 292);

(d) Motion for Partial Summary Judgment [As to YJNK II, Inc. – Adv. Pro. No. 8:15-ap-00119-CED] (Doc. No. 293);

(e) Motion for Partial Summary Judgment [As to Cecil B. DeBoone, LLC – Adv. Pro. No. 8:15-ap-00114-CED] (Doc. No. 294);

(f) Motion for Partial Summary Judgment [As to Organized Confusion, LLP – Adv. Pro. No. 8:15-ap-00120-CED] (Doc. No. 295);

(g) Motion for Partial Summary Judgment [As to Westward Ho II, LLC – Adv. Pro. No. 8:15-ap-00112-CED] (Doc. No. 296);

(h) Motion for Partial Summary Judgment [As to Able Body Temporary Services, Inc. – Adv. Pro. No. 8:15-ap-00118-CED] (Doc. No. 298);

(i) Motion for Partial Summary Judgment [As to Professional Staffing – A.B.T.S., Inc. – Adv. Pro. No. 8:15-ap-00116-CED] (Doc. No. 302);

(j) Motion for Partial Summary Judgment [As to USL&H Staffing, LLC – Adv. Pro. No. 8:15-ap-00121-CED] (Doc. No. 303);

(k) Motion for Partial Summary Judgment [As to Able Body Gulf Coast, Inc. – Adv. Pro. No. 8:15-ap-00126-CED] (Doc. No. 304);

(l) Motion for Partial Summary Judgment [As to Training U, LLC – Adv. Pro. No. 8:15-ap-00123-CED] (Doc. No. 305);

(m) Motion for Partial Summary Judgment [As to YJNK XI CA, LLC – Adv. Pro. No. 8:15-ap-00124-CED] (Doc. No. 306);

(n) Motion for Partial Summary Judgment [As to Rotrpick, Inc. – Adv. Pro. No. 8:15-ap-00117-CED] (Doc. No. 307);

(o) Motion for Partial Summary Judgment [As to YJNK, III, Inc. – Adv. Pro. No. 8:15-ap-00125-CED] (Doc. No. 312); and

(p) Motion for Partial Summary Judgment [As to YJNK VIII, Inc. – Adv. Pro. 8:15-ap-00122-CED] (Doc. No. 313).

4. The following pending motions are **DENIED AS MOOT:**

(a) Trustee Herendeen's Motion to Exclude the Opinions and Trial Testimony of Defendant's Expert, Stephen Coates (Doc. No. 287);

(b) Trustee Herendeen's Amended Motion to Exclude the Opinions and Trial Testimony of Defendant's Expert, Barkley Clark (Doc. No. 300);

(c) Trustee Herendeen's Request to Take Mandatory Judicial Notice (Doc. No. 350);

(d) Regions Bank's Motion to Exclude Expert Opinions of Catherine Ghiglieri (Doc. No. 331); and

(e) Regions Bank's Motion to Exclude Expert Maria Yip's Opinions on Overdrafts and Insolvency (Doc. No. 339).

5. In each adversary proceeding, the Court will enter a separate final summary judgment in favor of Defendant, Regions Bank, and against Plaintiff, Christine L Herendeen, as Chapter 7 Trustee, reserving jurisdiction to address Plaintiff's request for monetary sanctions for Regions' alleged discovery abuses.[245] Counsel for Regions is directed to submit to the Court proposed final summary judgments.

The Clerk's office is directed to serve a copy of this order on interested parties via CM/ECF.

[245] The Court is entering a separate order on *Trustee Herendeen's Motion for Adverse Inference or, Alternatively, to Preclude Regions from Offering Evidence in Support of Certain Defenses and Affirmative Defenses* (Doc. No. 429).