UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re: Case No. 8:13-bk-01520-CED
Chapter 11

Universal Health Care Group, Inc.,

Jointly Administered with
Case No. 8:13-bk-05952-CED

American Managed Care, LLC,

Debtors.
_____/

Soneet Kapila, as Liquidating Agent of
Universal Health Care Group, Inc.,

Plaintiff,

vs. Adv. Pro. No. 8:15-ap-132-CED

Warburg Pincus, LLC,
Warburg Pincus Private Equity IX, L.P.,
and Allen Wise,

Defendants.
_____/

ORDER ON PLAINTIFF'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT
(Doc. Nos. 304, 306, 307, 308)

THIS PROCEEDING involves Plaintiff's claims to avoid and recover transfers to Defendants under 11 U.S.C. §§ 548 and 550 and Chapter 726 of the Florida Statutes, the Florida Uniform Fraudulent Transfer Act, and also claims for breach of fiduciary duty. The Proceeding came before the Court for hearing on February 26, 2021, and March 19, 2021, to consider Plaintiff's four separate motions for partial summary judgment on the issues of (1) agency and vicarious liability;[1] (2) whether two of the Defendants are initial transferees of the alleged transfers;[2] (3) the effect of a release on Plaintiff's claims;[3] and (4) whether Debtor received value in exchange for the subject transfers[4] (the "Motions"). The Motions are fully briefed.[5] Having carefully considered the Motions, the responses and replies, and the arguments presented at the hearings, the Court enters this Order.

A. Background

Universal Health Care Group, Inc. ("Debtor") was a Delaware corporation headquartered in St. Petersburg, Florida. Debtor provided health insurance and managed care products through several wholly owned subsidiaries.

On February 6, 2013, Debtor filed a Chapter 11 petition,[6] and on April 22, 2013, Plaintiff was appointed as the Chapter 11 Trustee of Debtor's bankruptcy estate.[7] On August 18, 2015, the Court entered a *Final Order Confirming Chapter 11 Trustee's Liquidating Plan*, and Plaintiff was appointed as the Liquidating Agent for Debtor's Liquidating Estate.[8]

On February 2, 2015, Plaintiff filed a *Complaint and Demand for Jury Trial* against Defendants (the "Original Complaint').[9] Defendants filed a motion to withdraw the reference under 28 U.S.C. § 157(d) and Fed. R. Bankr. P. 5011,[10] and Plaintiff filed a limited motion to withdraw the reference.[11]

On July 2, 2015, the District Court entered its order denying the motions to withdraw the reference, finding that "the significant benefits of permitting the Bankruptcy Court to preside over all pretrial matters outweigh any potential harms that may arise should [the District Court] ultimately be

[1] Doc. No. 304.
[2] Doc. No. 306.
[3] Doc. No. 307.
[4] Doc. No. 308.
[5] *See* Doc. Nos. 340 and 363; 345 and 361; 338 and 358; and 342 and 362.
[6] Main Case, Doc. No. 1.
[7] Main Case, Doc. No. 235.
[8] Main Case, Doc. No. 1646.
[9] Doc. No. 1.
[10] Doc. No. 6.
[11] Doc. No. 7.

called upon to preside over a jury trial in the same action."[12] The District Court's denial of the motions to withdraw the reference was without prejudice to the parties' right to reassert their positions upon the conclusion of all pretrial matters in the Bankruptcy Court.[13]

Meanwhile, Defendants timely filed motions to dismiss the Original Complaint.[14] On May 9, 2016, the Court entered an order denying Defendants' motions to dismiss (the "First 12(b) (6) Order").[15] Thereafter, Plaintiff sought and obtained leave of Court to file an amended complaint[16] and, later, a second amended complaint (referred to herein as the "Amended Complaint").[17]

In the Amended Complaint, Plaintiff alleges the following:

1. Warburg Pincus, LLC ("Warburg") is a Delaware limited liability company that established and controlled Warburg Pincus Private Equity IX, L.P. ("Warburg IX").[18]

2. In 2006, Warburg IX paid $29 million and Allen Wise ("Wise") paid $1 million to purchase preferred stock in Debtor on the terms set forth in a stock purchase agreement (the "Stock Purchase Agreement").[19] In addition, Debtor, Warburg IX, and Wise entered into a stockholders' agreement (the "Stockholders' Agreement")[20] that granted Warburg IX and Wise certain controls over Debtor.[21]

3. In connection with the Stock Purchase Agreement, Warburg IX and Wise received an optional right to elect a redemption obligation that would require Debtor to redeem their stock in August 2011 for the repurchase price of $50 million.[22]

4. In 2009, a principal of Warburg, Alok Sanghvi ("Sanghvi"), was named as Warburg's primary Director to Debtor's Board.[23]

5. In 2009, Warburg valued Warburg IX's investment in Debtor at $5 million based on what it believed to be a "downward financial performance" of Debtor and Debtor's subsidiaries.[24]

6. After Sanghvi's appointment to Debtor's Board, he continued earlier communications with Debtor regarding the early redemption of Warburg IX and Wise's preferred stock, but Debtor did not have sufficient capital to redeem the shares.[25]

7. In October 2010, Sandip Patel ("Patel"), Debtor's Secretary and General Counsel, advised Sanghvi that a group of banks led by Wells Fargo was considering Debtor's request for financing for the stock redemption.[26]

8. That "from October 2010 through mid-February 2011, Sanghvi, wearing two hats (one as a Principal of Warburg and the other as a director of [Debtor]), communicated with Patel and Wells Fargo concerning the redemption."[27]

9. Sanghvi and Patel eventually agreed that Debtor would redeem Warburg IX and Wise's preferred stock for $33.4 million. This represented most of the $37.5 million proceeds from the loan that Debtor obtained from Wells Fargo (the "Wells Fargo Loan").[28]

10. On February 7, 2011, Warburg IX and Wise entered into a stock redemption agreement with Debtor (the "Stock Redemption Agreement"),[29] and on February 14, 2011, Debtor authorized and directed wires of $32,286,667.00 to Warburg IX and $1,113,333.00 to Wise in

[12] U.S. District Court, Middle District of Florida, Case No. 8:15-cv-00636-CEH, Doc. No. 6, p. 5.
[13] *Id*.
[14] Doc. Nos. 8, 9, 10.
[15] Doc. No. 73; *In re Universal Health Care Group, Inc*., 560 B.R. 594 (Bankr. M.D. Fla. 2016).
[16] Doc. Nos. 103 and 107.
[17] Doc. Nos. 228, 237, and 241.
[18] Doc. No. 237, ¶¶ 3, 4.
[19] Doc. No. 237, ¶ 26; Doc. No. 307-3.
[20] Doc. No. 307-5.
[21] Doc. No. 237, ¶¶ 30, 31.
[22] Doc. No. 237, ¶¶ 42d, 44.
[23] Doc. No. 237, ¶ 67.
[24] Doc. No. 237, ¶¶ 77, 78.
[25] Doc. No. 237, ¶¶ 81, 83.
[26] Doc. No. 237, ¶¶ 81, 89.
[27] Doc. No. 237, ¶ 90.
[28] Doc. No. 237, ¶¶ 98, 99.
[29] Doc. No. 307-7.

satisfaction of the stock redemption (the "Stock Redemption Transfers").[30]

11. After the Stock Redemption Transfers, Debtor was saddled with the Wells Fargo Loan, was insolvent, and had unreasonably small capital.[31]

Based on these allegations, Plaintiff asserts 20 claims against Defendants in the Amended Complaint. In Counts I through XVII, Plaintiff states claims to avoid and recover the Stock Redemption Transfers as actual and constructive fraudulent transfers under 11 U.S.C. §§ 548 and 550 and Chapter 726 of the Florida Statutes, the Florida Uniform Fraudulent Transfer Act. In Counts XVIII through XX, Plaintiff states claim for breach of fiduciary duty against Warburg and Warburg IX.

On November 21, 2018, Defendants moved to dismiss the Amended Complaint, asserting that Plaintiff's fraudulent transfer claims "are defeated by his own allegations and exhibits."[32] On February 19, 2019, the Court entered an Order Denying Defendants' Motion to Dismiss (the "Second 12(b) (6) Order").[33] The Court found, first, that many of Defendants' arguments raised in their motion to dismiss involved disputed issues of law and fact that the Court could not resolve at the motion to dismiss stage of the case, and, second, that the Amended Complaint sufficiently alleges plausible claims for relief.

Thereafter, Defendants answered the Amended Complaint, denied its material allegations, and demanded a trial by jury.[34] In addition, Warburg asserted 26 affirmative defenses, Warburg IX asserted 18 affirmative defenses, and Wise asserted 16 affirmative defenses.

Pending before the Court are Plaintiff's four motions for partial summary judgment, which the Court addresses separately below.

[30] Doc. No. 237, ¶¶ 104, 107.
[31] Doc. No. 237, ¶ 110.
[32] Doc. Nos. 238, 239.
[33] Doc. No. 251.
[34] Doc. Nos. 260, 261, 262.

B. Jurisdiction

This adversary proceeding comes before the Court in a somewhat unusual procedural posture as both Plaintiff and Defendants have demanded trial by jury and, as set forth above, the District Court denied the parties' motions to withdraw the reference for all pretrial purposes.

The parties concur that Plaintiff's claims against Defendants are not "core proceedings" under 28 U.S.C. § 157(b) (2).[35] Because bankruptcy courts are not Article III courts, they lack jurisdiction to enter final orders or judgments in non-core proceedings and are required to submit proposed findings of fact and conclusions of law to the District Court.[36] However, because the Court's rulings on Plaintiff's motions for partial summary judgment are interlocutory orders that are neither case dispositive nor final in nature, the Court concludes that is not required to submit proposed findings of fact and conclusions of law to the District Court.

C. 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.[37]

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 non-movant bears the burden at trial, the moving party may either show that 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-

[35] *See* Doc. No. 6, pp. 7-8; Doc. No. 7, pp. 4-5.
[36] *Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). *See also* Local Rule 7001-1(k) (6).
[37] Fed. R. Civ. P. 56(a) made applicable to this proceeding by Fed. R. Bankr. P. 7056.

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.[38]

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.[39]

D. The Motions

1. The Agency and Vicarious Liability Motion (Doc. No. 304)

Plaintiff's Motion for Partial Summary Judgment (1) Determining that (A) Alok Sanghvi Was an Agent of Warburg Pincus, LLC and Warburg Pincus Private Equity IX, L.P. and (B) Warburg Pincus Private Equity IX, L.P. Was an Agent of Warburg Pincus, LLC, and (2) Establishing Vicarious Liability Against Principals (the "Agency and Vicarious Liability Motion") relates to Counts XVIII through XX of the Amended Complaint in which Plaintiff alleges Sanghvi's breaches of fiduciary duty. Plaintiff seeks a determination (1) that Sanghvi was an agent of Warburg and Warburg IX, and that Warburg IX was an agent of Warburg, and (2) that Warburg and Warburg IX are vicariously liable as principals and joint tortfeasors for the torts committed by their agents.

Generally, Plaintiff asserts that Sanghvi "wore two hats" when he participated in negotiations for the Stock Redemption Agreement (as Warburg's representative and as a member of Debtor's Board),[40] and that Sanghvi was an agent for both Warburg and Warburg IX.

Defendants contend, in part, that summary judgment on the issue of vicarious liability is inappropriate at this time because Plaintiff has not met his initial burden to prove that Sanghvi breached any fiduciary duty.[41] Defendants argue that a breach of fiduciary duty by Sanghvi must be established before the Court determines the issue of vicarious liability and that the issue of whether Sanghvi breached a fiduciary duty is a factual issue for determination by the jury.

Under Florida law, "the acts of an agent are imputable to the principal when the agent is acting on behalf of the principal rather than in furtherance of the agent's own interests."[42] In other words, a principal is responsible for a breach by its agent if the breach occurs (1) while the agent is performing services which he was engaged to perform or while the agent is acting at least in part out of a desire to serve the principal, and (2) while the agent is doing something that is reasonably incidental to the engagement or reasonably foreseeable for an agent so engaged.[43] And under Delaware law,[44] for a principal to be vicariously liable for the acts of its agent, the agent must have committed a tort that was within the scope of his employment and that was not unexpected in view of the agent's duties.[45]

Here, even if Plaintiff has established that Sanghvi is an agent of Warburg and Warburg IX, he has not established whether Sanghvi was acting on behalf of his principals or in furtherance of his own interests (as required by Florida law) and has not established that Sanghvi committed a tort that

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[38] *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. Mar. 30, 2018).

[39] *See In re American Way Service Corporation*, 229 B.R. 496, 525-26 (Bankr. S.D. Fla. 1999).

[40] Doc. No. 304, ¶ 11.

[41] Doc. No. 340, p. 15.

[42] *In re Scott Acquisition Corp*., 364 B.R. 562, 568 (Bankr. D. Del. 2007) (citing *Seidman & Seidman v. Gee*, 625 So. 2d 1, 2 (Fla. 3d DCA 1992).

[43] *See* Florida Standard Jury Instruction 402.9 – civil.

[44] Debtor, Warburg, and Warburg IX are Delaware entities. Plaintiff contends that Delaware law applies to the vicarious liability issues because the Stock Purchase Agreement and Stock Redemption Agreement are governed by Delaware law, and because his breach of fiduciary claims implicate the internal affairs doctrine and the application of Delaware law (Doc. No. 304, p. 10, n. 2). Defendants do not expressly dispute the application the Delaware law to this issue (Doc. No. 340, p. 14).

[45] *In re Minardi*, 536 B.R. 171, 189-190 (Bankr. E.D. Tex. 2015) (quoting *Vichi v. Koninklijke Philips Electronics, N.V*., 85 A.3d 725, 778 (Del. Ch. 2014)).

was within the scope of his employment and that was not unexpected in view of his duties (as required by Delaware law).

The Court concludes that Plaintiff has not met his burden to show that Sanghvi's alleged breach of fiduciary duty should be imputed to Warburg or Warburg IX under the requirements of Florida or Delaware law.

Finally, Defendants also filed a *Motion to Strike Plaintiff's Reply* in support of the Agency and Vicarious Liability Motion.[46] In the motion to strike, Defendants contend that Plaintiff added a new legal theory in his reply, and now asserts that the Agency and Vicarious Liability Motion is based on Warburg and Warburg IX's status as controlling shareholders of Debtor—not on Sanghvi's status as agent. In light of the Court's denial of the Agency and Vicarious Liability Motion, the Court will deny Defendants' motion to strike Plaintiff's reply as moot.

2. The Initial Transferee Motion (Doc. No. 306)

Plaintiff's Motion for Partial Summary Judgment Determining that Warburg Pincus Private Equity IX, L.P. and Allen Wise Are Initial Transferees (the "Initial Transferee Motion") relates to Counts VI and XII of the Amended Complaint for the recovery of transfers under 11 U.S.C. § 550(a). Plaintiff seeks a determination that Warburg IX and Wise were the initial transferees of the Stock Redemption Transfers.

Plaintiff primarily asserts that Defendants admitted in their answers to the Amended Complaint that Warburg IX and Wise "received funds in the amount alleged [in the Amended Complaint] in satisfaction of the stock redemption."[47] Plaintiff contends that these answers establish that Warburg IX and Wise were the initial transferees of the Stock Redemption Transfers. In addition, Plaintiff asserted at the hearing on the Motions on February 26, 2021, that the Stock Redemption Agreement provided for the funds to be wired to the accounts of Warburg IX and Wise, and that although Warburg IX and Wise directed the funds to be sent to accounts in the names of other entities, they controlled the recipient accounts and the Stock Redemption Transfers were "explicitly for the Defendants."[48] Consequently, Plaintiff contends that the accounts were "mere conduits" under the Eleventh Circuit's holding in *In re Harwell*[49] and other decisions, and that Defendants remained the initial transferees.

In response, Defendants argue that the Initial Transferee Motion is premature because Plaintiff's claims under 11 U.S.C. § 550(a) are not invoked until the subject transfers have been avoided, which has not yet occurred in this proceeding.[50] And Defendants argue that even if the issue were ripe, Warburg IX and Wise were not the initial transferees under § 550 because the funds were first sent to two financial institutions before being delivered to them. Specifically, Defendants contend that "for the WP Stock Redemption Transfer, [Debtor] agreed to wire purchase funds to a JP Morgan Chase account in the name of WP IX Finance LP." and "[f]or the Wise Stock Redemption Transfer, [Debtor] agreed to wire purchase funds to a Wells Fargo Bank account for credit to First Clearing LLC."[51]

First, under § 550(a), a trustee may recover transferred property for the benefit of the estate "to the extent that a transfer is avoided" under the Bankruptcy Code.[52] In other words, the remedy provided by § 550(a) may not be invoked until the challenged transfer has been successfully avoided under one of the provisions listed in the statute.[53]

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[46] Doc. No. 365. Plaintiff filed a response to the motion to strike (Doc. No. 375).
[47] Doc. No. 306, pp. 6-8(quoting Doc. Nos. 260, 261, and 262, ¶ 107).
[48] Doc. No. 378, February 26, 2021 Hearing Transcript, pp. 82-83.
[49] 628 F.3d 1312 (11th Cir. 2010).
[50] Doc. No. 345, pp. 2-3; Doc. No. 378, February 26, 2021 Hearing Transcript, p. 85.
[51] Doc. No. 345, p. 6.
[52] 11 U.S.C. § 550(a).
[53] *In re Direct Access Partners, LLC*, 602 B.R. 495, 518 (Bankr. S.D.N.Y. 2019) ("If the Trustee has not avoided the initial transfers and cannot avoid them, then the Trustee cannot use section 550(a) to recover property

Second, in evaluating the "mere conduit" exception to initial transferee liability, "courts are directed to look at all of the circumstances surrounding a transaction," including the extent of the transferee's control over the asset received, and whether the transferee "acted in good faith and as an innocent participant" in the transfer.[54]

The Court concludes, first, Defendants' admission that they ultimately received the funds is not an admission that they were the initial transferees, and, second, issues of fact exist regarding who controlled the recipient accounts and whether the account holders "acted in good faith and as innocent participants" in the transfers, among other matters.

3. The Release Motion (Doc. No. 307)

Plaintiff's Motion for Partial Summary Judgment Determining that the Putative Release UHCG Provided Alok Sanghvi Did Not Effectuate a Release in Favor of Warburg Pincus, LLC (the "Release Motion") relates to Warburg's Fourteenth Affirmative Defense that Plaintiff's vicarious liability claim against Warburg is barred by Debtor's having released all claims against Sanghvi in the Stock Redemption Agreement. Plaintiff seeks a determination that "the Release did not release any claims Plaintiff has against Warburg based on agency principles as claimed in Warburg's Fourteenth Affirmative Defense, specifically including the breach of fiduciary duty claim set forth in Count XVIII" of the Amended Complaint.[55]

The Stock Redemption Agreement includes the following provision (the "Release"):

> [Debtor] hereby releases, effective *as of the closing*, on behalf of itself and its subsidiaries, the resigning director [Sanghvi] of and from any and all claims and causes of action of any kind by reason of any matter, event, action, inaction or omission *arising prior to the closing* and shall, and shall cause its subsidiaries to, execute and deliver such other documents as necessary or advisable to effect the foregoing.[56]

Count XVIII of the Amended Complaint is Plaintiff's claim for breach of fiduciary duty against Warburg. Paragraph 206 of the Amended Complaint alleges:

> With the exception of a brief period in 2007, from August 17, 2006, through February 7, 2011, Warburg Equity IX had at least one representative on [Debtor's] Board. Those representatives, Ackerman, Wise, Tsai and Sanghvi (the "Representatives"), were each principals or paid consultants of Warburg and Warburg collected and retained the board fees paid to the Representatives by [Debtor]. At all times relevant, the Representatives were acting at the direction of their superiors and within the scope of their employment at Warburg in regard to their work as Representatives. Under the doctrines of respondeat superior and/or agency, Warburg is responsible for the torts committed by the Representatives.[57]

Plaintiff also alleges in Count XVIII that the Representatives owed fiduciary duties to Debtor, and that "Sanghvi, as an agent of Warburg IX, breached those duties" in his negotiations of the Stock Redemption.[58] Plaintiff therefore seeks judgment against Warburg for Sanghvi's breach of fiduciary duty under an agency theory.

In Warburg's Fourteenth Affirmative Defense, Warburg asserts that, "[b]ecause the release bars

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from the subsequent transferees."); *In re Resource, Recycling & Remediation, Inc*., 314 B.R. 62, 67 (Bankr. W.D. Pa. 2004) ("A transfer must be avoided before its value can be recovered in accordance with § 550(a) of the Bankruptcy Code.").

[54] *In re Taylor, Bean & Whitaker Mortgage Corp*., 593 B.R. 862, 865 (Bankr. M.D. Fla. 2018) (quoting *In re Harwell*, 628 F.3d at 1323).
[55] Doc. No. 307, pp. 13-14.
[56] Doc. No. 307-7, § 4.5 (emphasis supplied).
[57] Amended Complaint, ¶ 206.
[58] Amended Complaint, ¶¶ 207, 212.

any claim against Sanghvi, the Plaintiff's vicarious claim against Warburg is likewise barred."[59]

The parties agree that the issue regarding the effect of the Release is governed by Delaware law.[60] Under the Uniform Contribution Among Tort-Feasors Law, as codified in Delaware at 10 Del. C. § 6304(a), a "release by the injured person of 1 joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasor unless the release so provides."[61]

In the First 12(b) (6) Order, the Court found that Delaware law, like Florida law, abrogates the common law rule as to the release of joint tortfeasors, so that, under Delaware law, "the release of one party does not operate as a discharge of all,"[62] and cites *ING Bank, FSB v. American Reporting Company, LLC*.[63] In that case, the court applied the "plain language" of § 6304 to find that the plaintiff's release of one joint tortfeasor did not extinguish the liability of another joint tortfeasor, because the release did not specifically provide for the second tortfeasor's release.[64]

In response, Warburg cites *Christiana Care Health Services, Inc. v. Carter*[65] for the proposition that the release of an agent exhausts any damages that could be asserted against the principal.[66] But the release in *Christiana* is readily distinguishable from the Release here. There, the release expressly addressed the liability of tortfeasors other than the released party, and stated that the claims against those other tortfeasors would be reduced by the released party's pro rata share of the liability, which the court determined was the entire amount of the plaintiff's damages.

Here, the Release makes no mention of any tortfeasor other than the resigning director (Sanghvi) and does not seek to affect any such tortfeasor's liability. In other words, the Release does not "so provide" for Warburg's discharge as required by Delaware law to effect its release.

The Court concludes that the Release does not operate as a release of Plaintiff's claim against Defendants.

Plaintiff also asserts that the Release was not effective against Sanghvi because it only applied to acts occurring *before* the closing of the Stock Redemption Agreement, and Plaintiff's claim against Sanghvi did not arise until its damages were incurred—either *at* or *after* closing.[67] However, because the Court has determined that the Release does not extinguish any liability of Warburg, regardless whether it releases Sanghvi, the Court need not address this issue.

4. The Reasonably Equivalent Value Motion (Doc. No. 308)

In *Plaintiff's Motion for Partial Summary Judgment Determining that the Debtor Received No Value in Exchange for the Stock Redemption and Release* (the "Reasonably Equivalent Value Motion"), Plaintiff seeks a determination that Debtor received less than reasonably equivalent value in exchange for the Stock Redemption Transfers. Plaintiff primarily relies on the 1935 decision of the Fifth Circuit Court of Appeals in *Robinson v. Wangemann*[68] for the principle that a corporation does not receive any net increase in value when it acquires its own stock from a stockholder. To support his contention, Plaintiff emphasizes that the stock redeemed by Debtor in this case was permanently retired after it was redeemed, with the result that the stock was worthless to Debtor after the transaction.[69] As additional support, Plaintiff asserts that the Court here previously "got it right" when it cited *Robinson* in its First 12(b) (6) Order for the "long-recognized legal theory that a company receives no

[59] Doc. No. 261, p. 33.
[60] Doc. No. 378, February 26, 2021 Hearing Transcript, pp. 45, 49.
[61] 10 Del. C. § 6304(a).
[62] Doc. No. 73, p. 19, n. 44 (citations omitted).
[63] 859 F. Supp. 2d 700 (D. Del. 2012).
[64] *Id.* at 704-05, nn. 5-6.
[65] 223 A. 3d 428 (Del. 2019).
[66] Doc. No. 338, p. 16.
[67] Doc. No. 307, pp. 12-13.
[68] 75 F.2d 756, 757 (5th Cir. 1935).
[69] Doc. No. 378, February 26, 2021 Hearing Transcript, pp. 55-56.

net increase in value when it redeems its outstanding stock."[70]

But the stockholder in *Robinson* did not receive cash for his stock at the time that he relinquished it,[71] as did Defendants in this case, and the debtor in *Robinson* had been "adjudicated bankrupt" by the time that the payment for the redemption of its stock would have become due. And in the First 12(b) (6) Order, the Court noted the relevance of the debtor's solvency or insolvency at the time of the redemption.[72] Here, Plaintiff readily acknowledges that "whether [Debtor] was insolvent or rendered insolvent are questions of fact for trial."[73]

In addition, Defendants contend that Debtor received at least four identifiable benefits, or categories of indirect value, from the Stock Redemption Transfers. First, the Stock Purchase Agreement provided for a redemption date of August 2011 and a redemption price of $52.8 million, but the negotiated redemption price in February of 2011 was $32 million. Consequently, Defendants contend that the transaction represented the early redemption of the stock at a discounted price that amounted to a $20 million savings to Debtor. Second, Defendants contend that if the Debtor had not redeemed the preferred stock, it would have been required to pay Defendants a 12% dividend yield (when compounded, and effective rate of 16%), whereas interest on the Wells Fargo Loan was only 4% per annum.[74] Defendants therefore assert that the Stock Redemption Transfers resulted in a lower cost of capital for Debtor in the approximate amount of $3 million. Third, Defendants contend that Warburg IX was entitled to exercise considerable control over Debtor under the Stockholder Agreement, and the Stock Redemption Transfers resulted in the removal of the restrictive covenants tied to the shares. Finally, Defendants contend that when Debtor obtained the Wells Fargo Loan to finance the Stock Redemption Transfers, Debtor acquired additional capital of $2.5 million.[75]

"It has long been established that whether fair consideration [or reasonably equivalent value] has been given for a transfer is largely a question of fact."[76] Here, the Court finds that issues of fact exist regarding whether Debtor received reasonably equivalent value in exchange for the Stock Redemption Transfers. The issues of fact include whether Debtor was insolvent at the time of the stock redemption and whether Debtor received indirect value as a result of the transfers.

Accordingly, it is

ORDERED:

1. *Plaintiff's Motion for Partial Summary Judgment (1) Determining that (A) Alok Sanghvi Was an Agent of Warburg Pincus, LLC and Warburg Pincus Private Equity IX, L.P. and (B) Warburg Pincus Private Equity IX, L.P. Was an Agent of Warburg Pincus LLC, and (2) Establishing Vicarious Liability against Principals* (Doc. No. 304) is **DENIED.**

2. *Plaintiff's Motion for Partial Summary Judgment Determining that Warburg Pincus Private Equity IX, L.P. and Allen Wise Are Initial Transferees* (Doc. No. 306) is **DENIED.**

3. *Plaintiff's Motion for Partial Summary Judgment Determining that the Putative Release UHCG Provided Alok Sanghvi Did Not Effectuate a Release in Favor of Warburg Pincus, LLC* (Doc. No. 307) is **GRANTED.**

4. *Plaintiff's Motion for Partial Summary Judgment Determining that the Debtor Received No Value in Exchange for the Stock Redemption and Release* (Doc. No. 308) is **DENIED.**

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[70] Doc. No. 378, February 26, 2021 Hearing Transcript, p. 81; Doc. No. 73, p. 13, n. 23.
[71] *Robinson v. Wangemann*, 75 F.2d at 757.
[72] Doc. No. 73, p. 14.
[73] Doc. No. 378, February 26, 2021 Hearing Transcript, p. 56.
[74] Doc. No. 342, p. 6.
[75] Doc. No. 342, ¶¶ 24-29 (citing Doc. No. 289, Ex. A, ¶¶ 29-36).
[76] *In re Aiello*, 2020 WL 1068145, at *2 (Bankr. M.D. Fla. March 4, 2020) (quoting *In re TOUSA, Inc*., 680 F.3d 1298, 1311 (11th Cir. 2012), and citing *In re Chase & Sanborn Corporation*, 904 F.2d 588, 593, n. 11 (11th Cir. 1990)).

5. *Defendants' Motion to Strike Plaintiff's Reply in Support of Motion for Partial Summary Judgment Regarding Vicarious Liability* (Doc. No. 365) is **DENIED** as moot.

DATED: April 1, 2021.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge