

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

POST-CONFIRMATION :
COMMITTEE FOR SMALL LOANS, :
INC., *et al.*, :

Plaintiff, :

v. :

CASE NO.: 1:13-CV-195 (WLS)

W. DEREK MARTIN, as Executor :
of the Estate of Vance R. Martin, *et al.*, :

Defendants. :

ORDER

On October 25, 2016 and October 26, 2016, the jury in the above-captioned action returned verdicts in favor of and against Plaintiff Post-Confirmation Committee for Small Loans, Inc., *et al.* The jury instructions and verdict form presented to the jury were based, drafted, and structured around the Committee’s Amended Complaint. (Doc. 113.) This Amended Complaint began as a twenty-five (25) claims that was ultimately whittled down to twenty-two (22) claims before the jury at the close of trial. Throughout the Complaint were a myriad of different legal theories, under state and federal law, seeking relief for the same or related conduct. Also included within some claims were creatures of bankruptcy law that permitted recovery from third-parties based on alleged immediate or mediate transferee liability. Some claims overlapped in time. Because of the complexity of the Complaint and related defenses, the Court, with the necessary assistance of counsel, devised a verdict form that departed substantially from the now-historical norm of “Do you find for or against the Plaintiff?” Instead, this 67-page verdict form (*see* Doc. 324) was more of the interrogatory kind, which included meticulous steps that guided the jury in expressing their findings as to each Defendant. The purpose of the verdict form was to ensure clarity of the jury’s determinations that might otherwise be impossible to discern in view of the complexity of the Complaint, relevant defenses and individual defendant liability.

After a plethora of summary judgment motions, a sundry of motions in limine, several weeks of trial, and numerous hours of deliberation, this case is still before this Court based on the Parties' disagreement regarding the jury's verdict. However, we are not at this juncture because the jury was confused; we are here because of how this matter was pleaded and defended. Notwithstanding the overall complexity and multi-layered allegations of wrongdoing in this case and the defenses asserted, the jury took this case (and the Committee's Amended Complaint as given in the Court's instructions) as it was presented and rendered their detailed decision. A summary of the jury's verdict is outlined in the chart below:

Counts	Amount(s) and Liable Parties
Count I: Breach of Fiduciary Duties – Care	\$915,350.88 (Rudy Martin, Bradley Bellville, W. Derek Martin, Jefferey Martin)
Count II: Breach of Fiduciary Duties - Loyalty	\$915,350.88 (Rudy Martin, Bradley Bellville, W. Derek Martin, Jefferey Martin)
Count III: Breach of Trust	\$915,350.88 (Bradley Bellville, W. Derek Martin, Jefferey Martin)
Count IV: Conspiracy to Breach Fiduciary Duties	\$248,000.00 (Derek Martin Trust)
Count V: Aiding and Abetting Breach of Fiduciary Duties	\$0.00 (All Defendants)
Count VI: Actual Fraud for the Compensation	\$248,000.00 (Brad Bellville) \$100,000.00 (W. Derek Martin)
Count VII: Constructive Fraud for the Compensation	\$248,000.00 (Brad Bellville) \$70,000.00 (W. Derek Martin) \$30,000.00 (Shana Shockley Martin as the immediate or mediate transferee of the W. Derek Martin Compensation)
Count VIII: Preference – Compensation Amounts	\$0.00 (All Defendants)
Count IX: Actual and Constructive Fraud – Best Buy Portion of Bellville Compensation	\$248,000.00 (Brad Bellville) \$248,000.00 (Derek Martin Trust) \$161,000.00 (W. Derek Martin as the immediate or mediate transferee of the Bellville Compensation from the Derek Martin Trust) \$87,000.00 (Shana Shockley Martin as the immediate or mediate transferee of the Bellville Compensation from the Derek

	Martin Trust)
Count X: Actual and Constructive Fraud for Stock Purchase Agreement Secondary Benefits	\$248,000.00 (Derek Martin Trust)
Count XI: Actual and Constructive Fraud – Motor Club Transfers	\$0.00 (All Defendants)
Count XII: Avoidance and Recovery of Preferential Transfers – Motor Club Year and Motor Club 90 Day Transfers	\$0.00 (All Defendants)
Count XIII: Fraudulent Transfer – Actual Fraud for the Withdrawals – Debentures/Demand Notes	\$0.00 (All Defendants)
Count XIV: Fraudulent Transfer – Constructive Fraud for the Withdrawals – Debentures/Demand Notes	\$18,000.00 (Jeff Martin) \$88,500.00 (W. Derek Martin)
Count XV: Fraudulent Transfer – Insider Preference Claim – Debenture/Demand Note	\$0.00 (All Defendants)
Count XVI: Avoidance and Recovery of Preferential Transfers (January 2011 Transfer)	\$0.00 (W. Derek Martin) \$60,000.00 (Martin Family Group LLLP (“MFG”)) \$20,000.00 (Derek Martin Trust as the immediate or mediate transferee of MFG) \$20,000.00 (Jeff Martin Trust as the immediate or mediate transferee of MFG) \$20,000.00 (Elizabeth (“Liz”) Johnston Trust as the immediate or mediate transferee of MFG)

	<p>\$0.00 (Shana Shockley Martin as immediate or mediate transferee of the Derek Martin Trust)</p> <p>\$0.00 (Kim Martin as immediate or mediate transferee of the Jeff Martin Trust)</p> <p>\$0.00 (Patrick Johnston as immediate or mediate transferee of the Liz Johnston Trust)</p>
Count XVII: Fraudulent Transfer – Actual Fraud for 2 Years of Lease Payments	<p>\$0.00 (MFG)</p> <p>\$457,675.44 (Martin Sublease, LLC) (“MSL”)</p> <p>\$152,558.48 (Derek Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$152,558.48 (Jeff Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$152,558.48 (Liz Johnston Trust as the immediate or mediate transferee of MSL)</p>
Count XVIII: Fraudulent Transfer – Constructive Fraud for 2 Years of Lease Payments	<p>\$0.00 (MFG)</p> <p>\$457,675.44 (MSL)</p> <p>\$152,558.48 (Derek Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$152,558.48 (Jeff Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$152,558.48 (Liz Johnston Trust as the immediate or mediate transferee of MSL)</p>
Count XIX: Actual and Constructive Fraud for 4 Plus Years of Lease Payments	<p>\$0.00 (Rudy Martin)</p> <p>\$0.00 (MFG)</p> <p>\$915,350.88 (MSL)</p> <p>\$305,116.96 (Derek Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$305,116.96 (Jeff Martin Trust as the immediate or mediate transferee of MSL)</p> <p>\$305,116.96 (Liz Johnston Trust as the immediate or mediate transferee of MSL)</p> <p>\$0.00 (Shana Shockley Martin as the immediate or mediate transferee of Derek Martin Trust)</p> <p>\$0.00 (Kim Martin as the immediate or mediate transferee of Jeff Martin Trust)</p> <p>\$0.00 (Patrick Johnston as the immediate or mediate transferee of Liz Johnston Trust)</p>

Count XX: Avoidance and Recovery of Preferential Transfer – Preference for 1 Year of Lease Payments	\$0.00 (MFG) \$228,834.72 (MSL) \$76,279.24 (Derek Martin Trust as the immediate or mediate transferee of MSL) \$76,279.24 (Jeff Martin Trust as the immediate or mediate transferee of MSL) \$76,279.24 (Liz Johnston Trust as the immediate or mediate transferee of MSL) \$0.00 (Shana Shockley Martin as the immediate or mediate transferee of Derek Martin Trust) \$0.00 (Kim Martin as the immediate or mediate transferee of Jeff Martin Trust) \$0.00 (Patrick Johnston as the immediate or mediate transferee of Liz Johnston Trust)
Count XXIII: Receipt and/or Payment of Illegal Dividends	\$0.00 (All Defendants)
Count XXV: Punitive Damages	\$75,000.00 (W. Derek Martin) \$25,000.00 (Brad Bellville)

(See Docs. 324, 326, 329.)

On October 27, 2016, the Court set forth a schedule for the Parties to file briefing on their interpretation of the jury's verdict. (Doc. 331.) Plaintiff filed its initial briefing on November 2, 2016. (Doc. 336.) Defendants W. Derek Martin, as Executor of the Estate of Vance R. Martin, W. Derek Martin, Martin Family Group, LLLP, Martin Sublease, LLC, Martin Investments, Inc., W. Derek Martin, as Trustee for the Vance R. Martin GST Exempt Family Trust f/b/o W. Derek Martin, Shana Shockley Martin, Kimala Martin, and Jefferey Martin (hereinafter "the Martin Defendants") filed their response on November 9, 2016. (Doc. 342.) On November 22, 2016, Defendant Bradley Bellville and Defendants Grace Elizabeth Martin Johnston, Grace Elizabeth Martin Johnston, as Trustee for the Vance R. Martin GST Exempt Family Trust F/B/O Grace Elizabeth Martin Johnston and James Patrick Johnston (hereinafter "the Johnston Defendants") separately filed their responses to Plaintiff's brief. (Docs. 343, 344.) On November 23, 2016, Plaintiff's filed its reply (Doc. 346) making this matter ripe for review.

STANDARD OF REVIEW¹

The Court's duty in reviewing the jury's verdict is to both carry out the will of the jury and to ensure that the jury's verdict comports with the law. "The sufficiency of a verdict, reasonably interpreted as to its language, depends upon it being capable of definiteness when referred to the pleadings and papers in the case, the pertinent entries, and under the interpretation of the law given by the court to the jury." *Auto Owners Ins. Co. v. Bass*, 684 F.2d 764, 765 (11th Cir. 1982) (alteration omitted). Moreover, "[t]he Seventh Amendment requires that if there is a view of the case which makes the jury's answers consistent, the court must adopt that view and enter judgment accordingly." *Griffin v. Matherne*, 471 F.2d 911, 915 (5th Cir. 1973) (citing *Atl. & Gulf Stevedores v. Ellerman Lines*, 369 U.S. 355, 364 (1962)).²

"The law of this State does not allow double recovery on separate claims arising out of the same factual situation." *Salsbury Labs., Inc. v. Merieux Labs., Inc.*, 735 F. Supp. 1555, 1575 (M.D. Ga. 1989) (citing *Beltz v. Atlanta Coach Works Corp.*, 323 S.E.2d 901, 903 (Ga. Ct. App. 1984); *UIV Corp. v. Oswald*, 229 S.E.2d 512, 514 (Ga. Ct. App. 1976)). "Georgia, as part of its common law and public policy, has always prohibited a plaintiff from a double recovery of damages; the plaintiff is entitled to only one recovery and satisfaction of damages, because such recovery and satisfaction is deemed to make the plaintiff whole." *Candler Hosp., Inc. v. Dent*, 491 S.E.2d 868, 869 (Ga. Ct. App. 1997). *See also Dopp v. HTP Corp.*, 947 F.2d 506, 517 (1st Cir. 1991) ("[T]he law abhors duplicative recoveries. That is to

¹ As a preliminary matter, the Court wants to make clear that the issue before the Court ultimately is not a matter of inconsistency, but one of discernment of the jury's verdict. (See Doc. 331.) Thus, the Court will not initially approach this matter as one of the jury's decision making under the guise of inconsistency. The Court further notes that neither Party made any objection to the form of the Verdict as entered. The Eleventh Circuit has consistently held that all challenges to an inconsistent verdict form must be raised before the jury is discharged. *See Reider v. Philip Morris USA, Inc.*, 793 F.3d 1254, 1259 (11th Cir. 2015); *Coralluzzo v. Edu. Mgmt. Corp.*, 86 F.3d 185, 186 (11th Cir. 1996); *Golub v. J.W. Gant & Assocs.*, 863 F.2d 1516, 1521 n.4 (11th Cir. 1989); *Stancill v. McKenzie Tank Lines, Inc.*, 497 F.2d 529, 534-35 (11th Cir. 1974). Since no Party made any objection to the form of the verdict as to inconsistency, that argument for purposes of appeal is waived. *See id.*

² The Eleventh Circuit has adopted as binding precedent all decisions issued by the former Fifth Circuit prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F. 2d 1206, 1209 (11th Cir. 1981) (en banc).

say, a plaintiff who is injured by reason of a defendant's behavior is, for the most part, entitled to be made whole—not to be enriched.”³

“[D]efendants do not demonstrate that a jury's award is duplicative merely by noting that it allocated the damages under two different causes of action.” *Gentile v. Cty. of Suffolk*, 926 F.2d 142, 154 (2d Cir. 1991). Rather, “[a] double recovery occurs when the damages awarded on two or more claims stemming from the same conduct *exceeds* the actual damages proven by the plaintiff at trial.” *Hicks v. City of Tuscaloosa*, No. 7:13-CV-02063-TMP, 2016 WL 1180119, at *3 (N.D. Ala. Mar. 28, 2016). When the award exceeds the bounds of the evidence, the “district court [must] reduce the award to the maximum amount established by the evidence.” *Rodriguez v. Farm Stores Grocery, Inc.*, 518 F.3d 1259, 1268 (11th Cir. 2008).

DISCUSSION

The Court must render the judgment consistently with the jury's determination, the evidence presented at trial, and the relevant and applicable law. Although the Parties raised technical issues regarding the jury's verdict as to certain specific Counts, the Court will first determine the judgment in this matter consistent with the jury's verdict. The Court will rely on the claims made and as alleged in the Committee's Amended Complaint (Doc. 113), the jury instructions (Doc. 316), and the jury's findings and conclusions made as shown by the jury's verdict. (Docs. 324, 329.) After conducting its assessment of the jury verdict, the Court will then address the Parties' arguments.

I. Determination of the Judgment

The jury found various Defendants liable in Counts I, II, III, IV, VI, VII, IX, X, XIV, XVI, XVII, XVIII, XIX, XX, and XXV. (*See* Docs. 324 & 329.) Although the Committee chose to raise different legal theories to support their case, the conduct alleged in their Amended Complaint on multiple grounds can result in only one legal recovery for the same conduct. *See Turnage v. Kasper*, 704 S.E.2d 842, 855 (Ga. Ct. App. 2010) (“[I]f two separate causes of action provide a legal theory for compensating one injury, only one recovery may be obtained by the plaintiff.”). For example, the Committee alleged that the

³ In keeping with this principle of law, the Court instructed the jury as follows: “The Plaintiff is not permitted to recover doubly under separate legal claims if they relate to the same conduct, even if you should so find that Plaintiff is entitled to recover under more than one legal claim based on the same or related conduct.” (Doc. 316 at 19.)

same conduct was an “actual” fraudulent transfer and a “constructive” fraudulent transfer. If each theory relates to identical conduct, then the Committee is only entitled to one recovery even if the jury determined that the conduct was both actual and constructive fraudulent transfers. In order to determine the judgment, the Court will address each Count on which the jury found Defendants liable in turn.

Under Count I (“Breach of Fiduciary Duty of Care”), the Committee alleged Defendants Rudy Martin, Derek Martin, Jeff Martin and Brad Bellville breached their duty to exercise due care by failing to act in the best interests of The Money Tree, Inc. (*See* Doc. 113 at ¶¶ 113-114.) Specifically, it was alleged that when The Money Tree, Inc. became insolvent or in the zone of insolvency, the named Defendants “disregarded and ignored the risks and consequences (or did not consider the risks and consequences)” of the following: (1) elevating Brad Bellville to President; (2) Derek Martin and the Derek Martin Trust’s sale of stock to Bellville; (3) the execution and performance of the subleases with Martin Sublease; (4) the execution and performance of the leases with Martin Family Group; (5) the execution and performance of the Stock Purchase Agreement; (6) the execution and performance of the Motor Club Agreement; (7) the approval and payment of executive compensation; (8) the prolonged operation of insolvent The Money Tree, Inc. in order to benefit insiders; (9) the failure to purchase and maintain insurance coverage; and (10) the failure to take alternative courses of action to lessen the risk of The Money Tree, Inc.’s creditors or its own financial viability. (*See id.* at ¶ 114.)

Under Count II (“Breach of Fiduciary Duty of Loyalty”), the Committee alleged Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville breached their duty to act honestly, avoid conflicts of interests between themselves and the creditors, and act in the best interests of The Money Tree, Inc. and its creditors, as the beneficiaries of the company. The Committee raised generally the exact same underlying conduct in Count II as was raised in Count I with respect to what the named Defendants allegedly disregarded and ignored as risk and consequences. (*Compare id.* at ¶ 114 with ¶ 117.) Although Count II alleged general incidents of dishonesty, conflicts of interests in the performance of duties, and lack of loyalty to company, its generality encompassed the specific allegations raised in Count I. Because the allegations raised by the Committee relate to the same conduct, they

are only entitled to one recovery for “Breach of Fiduciary Duty,” regardless of whether it was a breach of the duty of care or loyalty or both. The jury found Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville each liable under Counts I and II in the identical total amount of \$915,350.88 each count. (*See* Doc. 324 at 5.) Not only did the verdict form include those separate counts together, but the jury instructions included them together as well. (Doc. 316 at 9-12.) Specifically, the Court instructed the jury on the elements of breach of fiduciary duty, possible defenses, and the measure of damages together in relation to the allegations raised in Counts I and II. (*See id.*)

Furthermore, the verdict is supported by the evidence and the jury’s findings in other Counts, such as a finding against Defendants Brad Bellville and Derek Martin for excessive executive compensation under Counts VI, VII, and IX, a finding against the Defendants Brad Bellville and the Derek Martin Trust under Count XI for the Stock Purchase Agreement Secondary Benefits, and a finding against Martin Sublease, LLC for the subleasing arrangements under Counts XVII, XVIII, XIX, and XX. Moreover, the conduct of each Defendant is not separate and distinct, as the very purpose of these allegations was to hold each Defendant liable for their actions as officers and directors of The Money Tree, Inc. Therefore, Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville are jointly and severally liable under Counts I and II in the single amount of \$915,830.88 and judgment shall be entered accordingly.

In Count III (“Breach of Trust”), the Committee alleged that Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville owed a duty to its creditors to “conserve and manage the remaining assets” of The Money Tree, Inc. and its affiliates in trust for the creditors. (Doc. 113 at ¶ 119.) This duty was allegedly breached when the named Defendants preferred their debts and the debts of their entities over the debts owed to non-insider creditors. (*Id.* at ¶¶ 120-121.) The jury awarded the Committee \$915,350.88 against Defendants Derek Martin, Jeff Martin, and Brad Bellville. (Doc. 324 at 9.) The jury indicated on the verdict form that it intended to include the damages awarded in Count III within the damages awarded in Counts I and II. (*See id.* at 9-10.) The Parties argue in their briefing whether or not the jury intended to include some, all, or none of the Count III damages within the Counts I and II damages, which the Court addresses below. *See* Section

II.A, pp. 21-25. Without reiterating its findings here, the Court concludes that the damages awarded in Count III shall be subsumed within the damages awarded in Counts I and II. This is the reasonable and consistent interpretation of the jury's findings as indicated on the verdict form. Therefore, Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville are jointly and severally liable under Counts I, II, and III in the total amount of \$915,350.88. Judgment shall be entered accordingly.

The Committee alleged under Count IV ("Conspiracy to Breach Fiduciary Duties") that Defendants Brad Bellville, Derek Martin, Jeff Martin, Grace Johnston, Martin Family Group, LLLP, Martin Sublease, LLC, Martin Investments, Inc., the Derek Martin Trust, the Jeff Martin Trust, and the Johnston Trust "intentionally conspired to breach the fiduciary duties" and knowingly participated in the breach of fiduciary duties owed by Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville, as directors and officers of The Money Tree, Inc. (*See* Doc. 113 at ¶¶ 123-124.) The jury found Defendants Brad Bellville, Best Buy Autos of Bainbridge, Inc. ("Best Buy Autos"),⁴ Derek Martin, and the Derek Martin Trust liable under Count IV. (Doc. 324 at 3.) However, the jury only attributed \$248,000.00 in damages to the Derek Martin Trust. (*See id.* at 7.) Although a claim of civil conspiracy cannot stand by itself without an underlying tort, *see Sewell v. Cancel*, 771 S.E.2d 388, 391 (Ga. Ct. App. 2015), the underlying claim and finding of breach of fiduciary duties, among other testimonial and record evidence presented at trial, supports a finding of liability. Furthermore, to allow the Committee to recover for both breach of fiduciary duties and conspiracy to breach fiduciary duties would be to allow impermissible double recovery for the same conduct. Even though the Derek Martin Trust is the only liable party under Count IV, the focus for double recovery is whether "one avenue of recovery represents a full satisfaction for a particular injury." *Bloom v. Camp*, 785 S.E.2d 573, 580 (Ga. Ct. App. 2016). The Parties also appear to be in agreement that Count IV's award should be subsumed into the damages awarded under Counts I & II. (*See* Doc. 336-2 at 1 & n.2. (Count IV "[o]verlaps with the amounts awarded [in] Counts I & II.")) Thus, the award

⁴ Even though the jury found Defendant Best Buy Autos to be a liable party under Count IV, it was neither alleged as a Defendant under Count IV in the Amended Complaint (*See* Doc. 113 at ¶¶ 123-124) nor was it included in the Court's jury instruction as a Defendant. (*See* Doc. 316 at 13.) Therefore, the Court finds that Defendant Best Buy Autos cannot be liable under Count IV and the Committee shall recover nothing from it in connection with Count IV.

must be subsumed into the damages awarded under Counts I and II. This recovery is supported by the evidence presented at trial with respect to the Stock Purchase Agreement Secondary Benefits, which was an alleged breach of fiduciary duty in Counts I and II. The jury similarly found the transfers related to the Stock Purchase Agreement Secondary Benefits to be a fraudulent transfer under Count X. (*See* Doc. 324 at 21-22.) Accordingly, judgment shall be entered against the Derek Martin Trust in the amount of \$248,000.00, which shall be subsumed into the damages awarded under Counts I and II.

Under Count VI (“Actual Fraud for the Compensation”), the Committee alleged that The Money Tree, Inc. made certain transfers or incurred obligations, namely executive compensation, for the benefit of Defendants Rudy Martin, Derek Martin, Jeff Martin, and Brad Bellville. (*See* Doc. 113 at ¶ 129.) The Committee alleged that these were actual fraudulent transfers made with intent to hinder, delay, or defraud creditors. (*Id.* at ¶ 130.) The Committee alleged that the following specific transfers occurred within six (6) years of December 16, 2011 (the “Petition Date”): (1) \$1,663,112.00 transferred from The Money Tree to Rudy Martin (“Rudy Martin Compensation”); (2) \$467,679.15 transferred from The Money Tree to Derek Martin (“Derek Martin Compensation”); (3) \$418,813.67 transferred from The Money Tree to Jeff Martin (“Jeff Martin Compensation”); and (4) \$1,585,557.89 transferred from The Money Tree to Brad Bellville (“Bellville Compensation”). (*Id.* at ¶ 129.) It was further alleged that Defendants Shana Shockley Martin and Kim Martin were the mediate or immediate transferees of their spouses’ compensation. (*Id.* at ¶¶ 133-134.)

Under Count VII (“Constructive Fraud for Compensation”), the Committee similarly alleged that The Money Tree, Inc. made constructive fraudulent transfers to Defendants Derek Martin, Jeff Martin, and Brad Bellville with respect to their compensation. Specifically, it was alleged that The Money Tree, Inc. did not receive reasonably equivalent value in exchange of the named Defendants’ respective compensations. The Committee alleged these Defendants received the following amounts within (4) years of the filing of the original Complaint on December 14, 2013: (1) \$467,679.15 transferred from The Money Tree to Derek Martin (“Derek Martin Compensation”); (2) \$418,813.67 transferred from The Money Tree to Jeff Martin (“Jeff Martin Compensation”); and (3) \$1,585,557.89 transferred from The Money Tree to Brad Bellville (“Bellville Compensation”). (Doc. 113 at

¶ 136.) The Court notes that these amounts are identical to the amounts alleged in Count VI with respect to Defendants Derek Martin, Jeff Martin, and Brad Bellville. The Committee also alleged that Defendants Shana Shockley Martin and Kim Martin were the mediate or immediate transferees of their spouses' compensation. (*Id.* at ¶¶ 138-139.)

The jury found Defendant Brad Bellville liable under Count VI in the amount of \$248,000.00 and liable under Count VII in the amount of \$248,000.00. The jury also found Defendant Derek Martin liable under Count VI in the amount of \$100,000.00 and liable under Count VII in the amount of \$70,000.00 with his spouse, Defendant Shana Shockley Martin, liable as an immediate or mediate transferee in the amount of \$30,000.00. These verdicts are supported by the evidence presented at trial, which included testimony from the Defendants and an exhibit relating to executive compensation over the relevant time period. (*See* Doc. 317-111.) In review of the allegations in both Counts VI and VII, the Court finds that the Committee is only entitled to receive one recovery as both Counts relate to the same subject, *i.e.*, excessive compensation, despite the chosen separate theories of recovery. However, the Court notes that the jury specifically included the damages awarded in Counts VI and VII within the amount awarded under Counts I, II, and/or IV. (*See* Doc. 324 at 8.) With respect to Derek Martin, the Court notes the difference in amounts awarded in Counts VI and VII. Although the jury concluded that each award of \$100,000.00 against Derek Martin shall be included within the damages awarded in Counts I, II, and/or IV, the jury only awarded \$70,000.00 in Count VII. However, in order to carry out the intent of the jury, the Court finds that Derek Martin's portion of damages, as well as Shana Shockley Martin's⁵ portion of \$30,000.00, shall be included within the Counts I, II, and/or IV damages. Therefore, the Count VI and VII damages shall be subsumed within the \$915,830.88 awarded in Counts I, II, and/or IV.

In Count IX ("Actual and Constructive Fraud – Best Buy Portion of Bellville Compensation"), the Committee alleged Best Buy Autos paid Defendant Brad Bellville

⁵ With respect to Defendant Shana Shockley Martin, the jury did not indicate whether her portion of the damages should be included within the damages awarded in Counts I, II, and/or IV because she was not a named Defendant in any of the breach of fiduciary duties counts. Shana Martin was an alleged immediate or mediate transferee under 11 U.S.C. § 550. However, the jury very clearly indicated that it intended to include the "[§]100,000" attributed to Derek Martin under Count "VII" within the damages awarded under Counts I, II, and/or IV. Therefore, in strict adherence to the jury's findings, Shana Martin's portion of the immediate or mediate transfer shall be included within the damages awarded in Counts I, II, and/or IV.

compensation with actual intent to hinder, delay, or defraud its creditors. (Doc. 113 at ¶ 145.) It was also alleged in the alternative that Best Buy Autos did not receive reasonably equivalent value in exchange for the compensation. (*Id.* at ¶ 147.) The compensation was paid allegedly with the encouragement of Derek Martin. (*Id.* at ¶ 145.) The Bellville compensation was then purportedly paid to the Derek Martin Trust and later transferred to Derek Martin and Shana Martin. (*Id.* at ¶¶ 145, 149-150.) The jury found Brad Bellville liable under Count IX in the amount of \$248,000.00, along with the Derek Martin Trust liable in the amount of \$248,000.00. (Doc. 324 at 19.) The jury also determined that Derek Martin and Shana Martin received a portion of the compensation from the Derek Martin Trust in the amount of \$161,000.00 and \$87,000.00 respectively and for a total of \$248,000.00. (*Id.* at 20.) This verdict is supported by the evidence of Brad Bellville's testimony relating to his receipt of additional compensation from Best Buy Autos for the purpose of the Stock Purchase Agreement and without performing any additional duties. (*See also* Docs. 317-111 (executive compensation chart), 317-112 (email confirming purpose for additional salary), 317-113 (Stock Purchase Agreement).) Similarly to Counts VI and VII, the jury also determined that the damages awarded in Count IX should be part of and included in the damages awarded under Counts I, II, and/or IV. (*See* Doc. 324 at 8.) Thus, the damages granted under Count IX shall all be included into the damages awarded under Counts I, II, and/or IV.

The Committee alleged in Count X ("Actual and Constructive Fraud for Stock Purchase Agreement Secondary Benefits") that The Money Tree, Inc. paid or incurred obligations to Defendants Brad Bellville, Derek Martin, and the Derek Martin Trust with respect to the Stock Purchase Agreement Secondary Benefits with actual intent to hinder, delay, or defraud its creditors. (Doc. 113 at ¶ 152.) The Committee additionally alleged that The Money Tree, Inc. did not receive reasonably equivalent value in exchange for the Stock Purchase Agreement Secondary Benefits. (*Id.* at ¶ 154.) The Secondary Benefits of the Stock Purchase Agreement allegedly included the following: (1) the requirement that The Money Tree, Inc. extend their leases with Martin Family Group; (2) lifetime employment for Jeff Martin and Jennifer Ard; (3) a right for Jeff Martin to remain on The Money Tree, Inc.'s board of directors as long as he remained a shareholder; and (4) the agreement that The

Money Tree, Inc. pay Derek Martin's attorneys' fees. (*Id.* at ¶ 95.) While the allegations in both Count IX and X both relate to the Stock Purchase Agreement, Count X is distinct as it specifically relates to the Secondary Benefits of the Stock Purchase Agreement while Count IX concerned whether the Best Buy portion of Brad Bellville's compensation amounted to a fraudulent transfer. (*Compare id.* at ¶¶ 144-150 *with* ¶¶ 152-156.) The jury found Brad Bellville, Derek Martin, and the Derek Martin Trust all liable under Count X. (Doc. 324 at 21-22.) The jury, however, only attributed \$248,000.00 in damages against the Derek Martin Trust. (*See id.* at 22.) The verdict under Count X is supported by the testimony of the Defendants and evidence of the Stock Purchase Agreement itself. (Doc. 317-113.) However, and as noted on the verdict form, the jury explicitly included the damages awarded in Count X with the damages awarded in Counts I, II, and/or IV. (*Id.* at 8.) The damages awarded under Count X are therefore subsumed within the damages awarded in Counts I, II, and/or IV.

Under Count XIV ("Fraudulent Transfer – Constructive Fraud for the Withdrawals – Debentures/Demand Notes"), the Committee alleged The Money Tree, Inc. did not receive reasonably equivalent value in exchange for the withdrawals made by Defendants Martin Family Group, LLLP, Derek Martin, Jeff Martin, and Brad Bellville. (Doc. 113 at ¶¶ 107-111, 179.) The jury found Derek Martin and Jeff Martin liable under Count XIV in the amount of \$88,500.00 and \$18,000.00, respectively. (Doc. 324 at 34-35.) This award is supported by the evidence, including the exhibits tracking the withdrawals from The Money Tree, Inc. to Derek Martin and Jeff Martin. (*See* Docs. 317-198 (deposits and withdrawals by Derek Martin) & 317-400 (deposits and withdrawals by Jeff Martin).) The jury specifically excluded this award from the amounts awarded in Counts I, II, and/or IV. (*See* Doc. 324 at 8.) Thus, the damages awarded under Count XIV shall serve as a separate recovery for the Committee and against Derek Martin and Jeff Martin and judgment shall be entered accordingly.

The Committee alleged in Count XVI ("Avoidance and Recovery of Preferential Transfers") that The Money Tree, Inc., while insolvent, made preferential transfers to or for the benefit of insiders and Defendants Derek Martin and Martin Family Group, LLLP within one (1) year prior to the Petition Date. (Doc. 113 at ¶ 185.) One of the transfers was

specifically noted as the “January 2011 Transfer.” (*Id.*) The Committee also sought to recover any immediate or mediate transfers. (*Id.* at ¶ 192.) The jury held Martin Family Group, LLLP liable under Count XVI and awarded the Committee \$60,000.00. (Doc. 324 at 39.) The Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust were also determined to be immediate or mediate transferees of the preferential transfers and the jury attributed \$20,000.00 of damages to each of the Trusts, for a total of \$60,000.00 between the Trusts. (*Id.* at 40.) The verdict is supported by the evidence presented at trial. (*See* Doc. 317-343 (showing Martin Family Group, LLLP’s distributions to the Martin Trusts).) As with Count XIV, the jury declined to include the damages awarded in Count XVI within the damages awarded under Counts I, II, and/or IV. (*See id.* at 8.) Therefore, the damages awarded under Count XVI shall be \$60,000.00 against Martin Family Group, LLLP and \$20,000.00 against the Derek Martin Trust, \$20,000.00 against the Jeff Martin Trust, and \$20,000.00 against the Grace Johnston Trust as immediate or mediate transferees. However, it must be noted that the Committee is “entitled to only a single satisfaction under [11 U.S.C. § 550(a)].” 11 U.S.C. § 550(d). This means that the Committee “cannot obtain twice the full value of a [preference or] fraudulent transfer by recovering the value from both the initial transferee and a subsequent transferee. The [Committee] is limited to a single recovery for each transfer.” *Dzikowski v. N. Trust Bank of Fla., N.A. (In re Prudential of Fla. Leasing, Inc.)*, 478 F.3d 1291, 1297 (11th Cir. 2007). Thus, judgment shall be entered to reflect that Defendants Martin Family Group, LLLP, the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust are jointly and severally liable under Count XVI in the total amount of \$60,000.00. However, the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust’s liabilities are not to exceed \$20,000.00 per Trust.

With respect to Count XVII (“Fraudulent Transfer – Actual Fraud for 2 Years of Lease Payments”), the Committee alleged that The Money Tree, Inc. fraudulently transferred or incurred obligations for the benefit of Martin Family Group, LLLP and Martin Sublease, LLC on or within two (2) years of the Petition Date. (Doc. 113 at ¶ 193.) The Committee asserted that these transfers were made with actual intent to hinder, delay, or defraud some or all of The Money Tree, Inc.’s existing or future creditors. (*Id.* at ¶ 194.) Specifically, the transfers allegedly included the following:

(1) not less than \$1,105,650.00 transferred from [The Money Tree, Inc.] to Martin Family Group for the payment of amounts purportedly owing under leases with Martin Family Group; (2) obligations under the leases were undertaken by [The Money Tree, Inc.] for Martin Family Group's benefit; (3) not less than \$1,990,112.28 transferred from [The Money Tree, Inc.] to Martin Sublease for the payment of amounts purportedly owing under leases with Martin Sublease; (4) obligations under the leases were undertaken by [The Money Tree, Inc.] for Martin Sublease's benefit; and/or (5) alternatively, the amounts of [sic] transferred to Martin Family Group and Martin Sublease which exceeded the fair market value of the rental properties.

(*Id.* at ¶ 193.)

The Committee additionally sought to recover from additional parties as immediate or mediate transferees. (*Id.* at ¶ 196.) The jury found Martin Sublease, LLC liable under Count XVII and awarded the Committee \$457,675.44 in damages. (Doc. 324 at 44.) The jury further found that the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust were immediate or mediate transferees of the Martin Sublease transfers and determined that the Trusts were each liable in the amount of \$152,558.48, which amounted to a total of \$457,675.44. The jury's verdict is supported by the record, including expert testimony and exhibits reflecting how much profit Martin Sublease, LLC received from its subleasees within the two-year time period. (*See* Docs. 317-120 & 317-317.)

The Committee raised a similar cause of action under Count XVIII ("Constructive Fraud for 2 Years of Lease Payments"). There, it was simply alleged The Money Tree, Inc. received less than reasonably equivalent value in exchange for the leasing and subleasing transfers from Martin Family Group, LLLP and Martin Sublease, LLC respectively. (Doc. 113 at ¶ 199.) The Committee sought recovery of the same transfers in the same amounts as were sought in Count XVII. (*Compared id.* at ¶ 193 *with* ¶ 198.) The Committee also sought to recover from any immediate or mediate transferees. (*Id.* at ¶ 202.) The jury awarded the Committee \$457,675.44 against Martin Sublease, LLC and \$152,558.48 each against the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust. (Doc. 324 at 49-50.) The verdict is supported for the same reasons noted above as to Count XVII.

Without considering whether the jury included the identical damage awards under Counts XVII and XVIII, the Court must assess whether an award under both Counts would result in double recovery. Although one claim was for actual fraudulent transfer and the

other was for constructive fraudulent transfer, each claim relates to the same factual dispute: the leasing and subleasing arrangement between The Money Tree, Inc., Martin Family Group, LLLP, and Martin Sublease, LLC. Moreover, the allegations in Counts XVII and XVIII both pertain to the same applicable time period, which is within two (2) years of the Petition Date. (*See* Doc. 113 at ¶¶ 193, 198.) The Court finds that it would be impermissible for the Committee to be awarded damages under both Counts XVII and XVIII for the same time period. Thus, the Committee may not recover doubly under Count XVIII because the conduct alleged in Count XVII is identical to the conduct alleged in Count XVII. Furthermore, the jury explicitly included the damages awarded in Count XVII within the damages awarded under Counts I, II, and/or IV. (*See* Doc. 324 at 8.) Next to “Martin Sublease,” the jury indicated that it intended to include Count “XVII” and noted the damage award of “457,675.44.” With respect to the Trusts, the jury indicated that it intended to include the damages awarded in Counts “XVII” and “XVIII” in the amount of “152,558.48” for each of the Trusts. Thus, the awards under Counts XVII and XVIII are to be included within the damages awarded under Counts I, II, and/or IV. Moreover, the Committee made specific allegations that the officer and director Defendants disregarded and ignored the risks and consequences with respect to the “execution and performance of the subleases with Martin Sublease,” which additionally supports the jury’s determination to include these damages within the damages awarded under Counts I, II, and/or IV. (*See* Doc. 113 at ¶¶ 114, 117.)

In Count XIX (“Actual and Constructive Fraud for 4 Plus Years of Lease Payments”), the Committee alleged The Money Tree, Inc. transferred or incurred obligations for the benefit of Rudy Martin, Martin Family Group, LLLP, and Martin Sublease, LLC on or within four (4) or more years of the Petition Date. (Doc. 113 at ¶ 204.) The Money Tree, Inc. purportedly did not receive reasonably equivalent value in exchange for the transfers due to apparent inflated leasing and subleasing rates. (*Id.* at ¶ 205.) The specific transfers include the following:

- (1) the Rudy Martin Transfers; (2) not less than \$4,135,375 transferred from [The Money Tree, Inc.] to Martin Family Group for the payment of amounts purportedly owing under leases with Martin Family Group; (3) obligations under the leases were undertaken by [The Money Tree, Inc.] for Martin Family

Group's benefit; (4) \$8,323,129.91 transferred from [The Money Tree, Inc.] to Martin Sublease for the payment of amounts purportedly owing under leases with Martin Sublease; and (5) obligations under the leases were undertaken by [The Money Tree, Inc.'s] for Martin Sublease's benefit.

(*Id.* at ¶ 204.)

The Committee additionally sought to recover from additional parties as immediate or mediate transferees. (*Id.* at ¶ 207.) The jury found Martin Sublease, LLC to be liable and awarded the Committee \$915,350.88 in damages under Count XIX. (Doc. 324 at 57.) The jury also determined that the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust functioned as immediate or mediate transferees of Martin Sublease and awarded the Committee \$305,116.96 in damages against each Trust, for a total of \$915,350.88. The verdict is likewise supported by the evidence for the same reasons noted in Count XVII.

The Court specifically notes that the allegations raised in Count XIX rest on the same conduct alleged in Counts XVII and XVIII. Each Count relates to whether or not the transfers between The Money Tree, Inc. and Martin Family Group, LLLP and the transfers between The Money Tree, Inc. and Martin Sublease, LLC were fraudulent transfers. More specifically, the transfers in each of the Counts relate directly to the same leasing and subleasing arrangements between The Money Tree, Inc. and Martin Family Group, LLLP and The Money Tree, Inc. and Martin Sublease, LLC as alleged in Count XVII. As noted above, the jury included the damages awarded in Count XVII within the damages awarded in Counts I and II. (*See* Doc. 324 at 8.) Because the jury intended to include the earlier time period of the transfers (*i.e.*, the two (2) years of transfers alleged under Count XVII) within Counts I and II, the Court is required to deduct the damages awarded in Count XVII from the damages that were later awarded in Count XIX to prevent impermissible double recovery and consistent with the jury's finding. Accordingly, the Court finds the identical conduct alleged in Count XIX includes any lesser period alleged in Count XVII. Therefore, under Count XIX, the Committee is only entitled to recover \$457,675.44 from Martin Sublease, LLC, \$152,558.48 from the Derek Martin Trust, \$152,558.48 from the Jeff Martin Trust, and \$152,558.48 from the Grace Johnston Trust. As noted above, the Committee cannot recover \$457,675.44 from Martin Sublease and the Martin Trusts, as separate

congregated amounts. Instead, the Committee may recover the \$457,675.44 from Martin Sublease or no more than \$152,558.48 each from the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust under Count XIX. These Defendants are jointly and severally liable for the total amount of \$457,675.44. Because the jury did not specifically include the damages awarded in Count XIX with the damages awarded in Counts I, II, and/or IV, this award is a separate recovery for the Committee.

The Committee alleged in Count XX (“Avoidance and Recovery of Preferential Transfer – Preference for 1 Year of Lease Payments”) that The Money Tree, Inc., while insolvent, made certain preferential transfers to or for the benefit of Martin Family Group, LLLP and Martin Sublease, LLC within the year prior to the Petition Date. The transfers alleged included: “(1) \$483,276.30 transferred from the Debtors to Martin Family Group for the various lease payments and (2) \$639,111.88 transferred from the Debtors to Martin Sublease for various sublease payments.” (Doc. 113 at ¶ 209.) The Committee sought to further recover from any immediate or mediate transferees of the leasing and subleasing transfers. (*Id.* at ¶ 216.) The jury found for the Committee and against Martin Sublease, LLC in the amount of \$228,837.72. (Doc. 324 at 62.) The jury further concluded that the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust were immediate or mediate transferees and awarded the Committee \$76,279.24 in damages against each Trust, which equates to a total of \$228,837.72. (*Id.* at 63.) The record evidence presented at trial supports the verdict for the same reasons discussed in Count XVII because Count XX relates to the same conduct as alleged in Counts XVII, XVIII, and XIX. The only difference is that Count XX only seeks to capture conduct within one (1) year of the Petition Date. As noted by the Court with respect to Count XIX, the Committee is not entitled to recover doubly under claims that allege identical conduct. Therefore, the damages awarded under Count XX against Martin Sublease, LLC and the Trusts must be included within the recovery of other claims with periods of longer duration, namely Counts XVII, XVIII, and XIX. Moreover, the jury included the damages awarded under Count XX against Martin Sublease, LLC and the Trusts within the damages awarded under Counts I, II, and/or IV. (*See id.* at 8.) Thus, the damages under Count XX shall accordingly be subsumed into the damages awarded under Counts I, II, and/or IV.

Lastly, under Count XXV, the Committee alleged that the actions of Rudy Martin, Derek Martin, Martin Family Group, LLLP, Martin Sublease, LLC, Brad Bellville, Grace Johnston, and Jeff Martin “showed willful misconduct, malice, fraud, wantonness, or that entire want of care which would raise the presumption of conscious indifference to consequences” and sought punitive damages for the alleged conduct. (Doc. 113 at ¶¶ 236-237.) The jury agreed that punitive damages should be considered against one or more of the Defendants and awarded the Committee a total of \$100,000.00 in punitive damages. (*See* Docs. 324, 326, 329.) The jury attributed \$75,000 in punitive damages against Derek Martin and \$25,000.00 in punitive damages against Brad Bellville. The evidence supports such a verdict based on the oral testimonies of each defendant and the record evidence presented by the Committee regarding Derek Martin and Brad Bellville’s conduct and apparent financial ability to pay punitive damages. This Count only made a claim for punitive damages for the Defendants’ conduct, and thus, shall be treated separately from the damages awarded in other Counts.

II. Assessment of the Arguments

The Committee contends that the Verdict contains three separate awards of \$915,350.88 in Counts I and II, Count III, and Count XIX. With respect to Count III, the Committee argues that because the jury did not specifically delineate which amounts awarded in Count III were also awarded in Counts I and II, the \$915,350.88 award represents a distinct award for separate injuries. Moreover, because breach of fiduciary duties and breach of trust are separate legal theories, the Committee reasons that this too supports a finding of separate and distinct award of damages under Count III. The Committee similarly argues that the \$248,000.00 award relating to the Stock Purchase Agreement Secondary Benefits under Count X is separate and distinct from the \$248,000.00 award relating to the Bellville Compensation under Count IX. The Committee further asserts that the damages awarded in Count XIX cannot be interpreted to include damages from other Counts when the jury did not specifically express that intention on the Verdict Form.

The Martin Defendants respond that the damages awarded in Count III are duplicative of the damages awarded in Counts I and II because the jury specifically indicated

that Count III's damages be included in the damages for Counts I and II. In the alternative, the Martin Defendants argue that the damages under Count III are also duplicative of the damages under Count XIX because the amount awarded, \$915,350.88, equates to an aggregate profit on four (4) years of lease payments from The Money Tree, Inc. to Martin Sublease, LLC. They assert that, based on this interpretation, the damages awarded in both Count III and Count XIX represent identical damages based on the same transactions. With respect to Count X, the Martin Defendants urge this Court to eliminate the award of \$248,000.00 as duplicative of award under Count IX. They assert that the jury rejected the Committee's argument regarding Jeff Martin's compensation and inflated lease payments made to Martin Family Group, LLLP. Furthermore, because the jury found Bellville's additional compensation from Best Buy Autos to be a fraudulent transfer under Count IX and because the additional compensation was used to satisfy the Stock Purchase Agreement, the Martin Defendants argue that the damages awarded in Count X is a duplication of the damages awarded in Count IX.

Bradley Bellville separately argues that the maximum judgment against him is \$273,000.00. The Committee disagrees with this argument and states that Bellville is also jointly and severally liable under Counts I and II for \$915,830.88 in damages.

A. Damages under Count III

The jury found in favor of the Committee and against Defendants Brad Bellville, Derek Martin, and Jeff Martin and awarded the Committee \$915,350.88 in damages under Count III. (Doc. 324 at 9.) The Verdict Form additionally stated the following:

If you provide for damages to Plaintiff as to Count III and also provide damages to Plaintiff against any Defendant or Defendants as to Counts I and II, the amounts of which you have included in damages for Plaintiff under Count III, please indicate against which Defendant or Defendants and the amount(s). Check the name of each Defendant to whom this applies, if any, and the amount(s).

(Id.)

On the next page of the Verdict Form, the jury checked the names of Brad Bellville, Derek Martin, and Jeff Martin, just as they did on previous page. (*Compare id.* at 9 & 10.) However, the jury did not delineate any specific amounts next to the names of the defendants. The Parties differ on what this omission means or is intended to mean. The

Committee suggests that the jury's decision to not delineate any dollar amounts next to the selected defendants only could mean that Count III was intended as a separate and distinct award from the damages awarded in Counts I, II, and IV. With respect to Jeff Martin, the Committee finds it particularly telling that the jury did not also include Count III damages as duplicative in the damages awarded in Counts I, II, and IV on page 8 of the Verdict Form. Furthermore, since breach of trust is a separate legal theory from breach of fiduciary duties, this provides another reason, according to the Committee, why Count III damages should be treated separately and distinctly from the damages awarded in Counts I, II, and IV.

The Martin Defendants, on the other hand, submit that the damages awarded under Count III are duplicative of the damages awarded in Counts I and II, as expressly determined by the jury. While breach of fiduciary duties and breach of trust are different legal theories, the Martin Defendants state that damages for breach of fiduciary duties included, but was not limited to, breach of trust damages. They posit that the omission of specific dollar amounts next to the names of the Defendants is negated by the jury's deliberate identification by check mark of each liable Defendant on page 10 of the Verdict Form. The Martin Defendants argue that it would be only necessary to include a specific dollar amount if the jury intended to include some amount less than the full damages awarded in Counts I and II. If the verdict is read otherwise, the Martin Defendants assert that this would result in an impermissible double recovery.

Additionally, the Martin Defendants argue that Count III's damages are further duplicative of the damages awarded in Count XIX, because the breach of trust damages derive from the same lease payments determined to be fraudulent transfers under Count XIX. The jury awarded the Committee identical damages in the amount of \$915,350.88 under Counts III and XIX. It is the Martin Defendants' contention that "profits" paid by The Money Tree, Inc. to Martin Sublease, LLC through lease payments were the "sole breaches of trust found by the jury . . . [.]" (Doc. 342 at 7.) They rely on the allegations raised in the Amended Complaint,⁶ the Verdict Form, and a calculation of the "profits" paid to Martin Sublease, LLC over a four (4) year period. (*See id.* at 8 n.6.) Therefore, the Martin

⁶ Specifically, the Martin Defendants point to the following allegation: "[T]he Director and Officer Defendants instead paid themselves and their entities including, without limitation, the Motor Club, Martin Family Group, Martin Sublease, and the Martin Trusts[.]" (Doc. 113 at ¶ 121.)

Defendants assert that the damages awarded under Count III were based on the same exact conduct alleged as the basis of recovery under Count XIX, and thus subject to the rule against double recovery.

The Court rejects the Martin Defendant's argument with respect to Count III and XIX damages as speculative. The Committee's breach of trust claim was not exclusively limited to lease payments to Martin Family Group, LLLP and/or Martin Sublease, LLC. (*See* Doc. 113 at ¶¶ 118-121.) Rather, the Committee alleged that the Director and Officer Defendants, namely Rudy Martin, Bradley Bellville, Derek Martin, and Jeff Martin, preferred themselves over non-insider creditors and paid themselves and their entities while The Money Tree, Inc. was insolvent. (*Id.* at ¶ 121.) Furthermore, the Court will not assume the jury based its award only on the lease payments, even if the jury awards are otherwise identical. *See State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, No. 97-7014-CIV, 2002 WL 34365826, at *2 (S.D. Fla. June 4, 2002) ("In this Court's years of experience with jury verdicts, it is difficult if not impossible to decipher what calculations the jury made to arrive at its verdict."). The Court can only reasonably interpret the verdict as stated by the jury and supported by the evidence, not speculate as to how they arrived at their specific verdict.

However, upon thorough review, the Court finds that the most reasonable interpretation of the verdict, as reflected on the Verdict Form, is that the jury specifically intended to include Count III damages within the damages awarded in Counts I and II. Upon determining Bellville, Derek Martin, and Jeff Martin's liability as to Count III, the jury awarded the Committee \$915,830.88. (Doc. 324 at 9.) The very next prompt, which is essentially the same prompt with regard to all other Counts on Page 7, the jury indicated affirmatively their intention to include damages awarded in Count III within the damages awarded in Counts I and II. (*See id.* (" . . . the amounts of which you have included in damages for Plaintiff under Count III . . .").) Even though the jury did not write out any specific lesser amounts, they did check the name of each Defendant to whom the prompt applied to directly. (*See id.* at 10.) The fact that the jury did not delineate a certain amount(s) strongly supports the finding that the jury intended to include the full amount, rather than none of the amount or a different amount. The Court agrees with the Martin Defendants in that if the jury intended to include an amount less than the full amount, then they would

have indicated that amount accordingly. As previously stated in greater detail above, notwithstanding the Committee's different theories of recovery, the same conduct underlying within each claim supports only one recovery as the jury was instructed.

The fact that the jury awarded \$915,350.88 under Count III and specifically determined that the award in Count III should be included in the damages awarded in Counts I and II warrants only one result, that is, the award in Count III is to be subsumed in the award in Counts I and II. To allow two awards of \$915,350.88 would be impermissible double recovery and contrary to the intent of the jury and impermissible under the applicable law.

Moreover, the evidentiary record supports such a finding. The Court instructed the jury to find in favor of the Committee if they found, by a preponderance of the evidence, that Derek Martin, Jeff Martin, and/or Brad Bellville breached their duty to conserve and manage assets in trust for creditors of the Debtors upon The Money Tree, Inc.'s insolvency. (*See* Doc. 316 at 17-18.) While breach of trust is a different legal theory from breach of fiduciary duty, the Court also specifically instructed the jury that it may consider "any transaction from which the director or officer with discretionary authority received an improper personal benefit" in its breach of fiduciary duty inquiry under Counts I and II. (Doc. 316 at 12.) The record in this case, as determined by the jury verdict, shows that Brad Bellville improperly took an additional salary, as determined under Counts VI and VII, and Jeff Martin and Derek Martin improperly received transfers by and through their Withdrawals from The Money Tree, Inc., as determined under Count XIV. (*See* Doc. 324.) Additionally, as the trustees of their respective trusts, Derek and Jeff Martin were also alleged to have benefited from this improper conduct. All this conduct was alleged to have taken place while The Money Tree, Inc. and its affiliates were insolvent. (*See* Doc. 113.) All this conduct by the officers and directors of The Money Tree, Inc. support finding that each liable Defendant received an improper benefit, and also supports including the damages awarded in Count III for breach of trust in the award for breach of fiduciary duties in Counts I and II. This record evidence, as accepted and determined by the jury, is sufficient to support its findings and verdict.

Thus, the Court will not alter the jury's decision and the judgment shall be entered accordingly as to Count III damages. The award of \$915,830.88 under Count III shall be included in the award for Counts I and II. Accordingly, the total damages awarded as to Counts I, II, and III amounts to a total of \$915,350.88.

B. Damages under Count X

The jury determined that the Stock Purchase Agreement Secondary Benefits was a constructive fraudulent transfer and awarded the Committee \$248,000.00 against the Derek Martin Trust under Count X. (*See* Doc. 324 at 21-22.) It is the Committee's contention that the damages awarded in Count X are separate and distinct from the damages awarded in Count IX. In Count IX, the jury found that the Best Buy portion of Brad Bellville's compensation was an actual fraudulent transfer and awarded the Committee \$248,000.00 against Brad Bellville and \$248,000.00 against the Derek Martin Trust. (*See id.* at 19.) Derek Martin and Shana Shockley Martin were determined to be immediate or mediate transferees of the Bellville Compensation from the Derek Martin Trust in the amount of \$161,000.00 and \$87,000.00, respectively.

In contrast, the Martin Defendants advance that the award under Count X is a duplication of the award under Count IX, and thus, warrants the elimination of Count X's award in its entirety. To support this position, the Martin Defendants refer back to the Amended Complaint. The Committee alleged that The Money Tree, Inc. paid or incurred obligations to Brad Bellville, Derek Martin, and the Derek Martin Trust under the Stock Purchase Agreement Secondary Benefits, "with actual intent to hinder, delay, or defraud its creditors." (Doc. 113 at ¶ 152.) Specifically, the Committee alleged that Brad Bellville took an additional salary from Best Buy Autos (without taking on additional responsibilities, providing additional services, or giving additional consideration) for the sole purpose of satisfying the amounts owed under the Stock Purchase Agreement. (*Id.* at ¶ 93.) The "Secondary Benefits" of the Stock Purchase Agreement comprised the following terms:

- i. The Money Tree, Inc. and its subsidiaries (collectively, "Debtors") were required to extend their leases with Martin Family Group, LLLP;
- ii. Promised lifetime employment for Jeff Martin and Jennifer Ard;

- iii. Jeff Martin's right to remain on The Money Tree, Inc.'s Board of Directors, so long as he maintained his shareholder status; and
- iv. An agreement that The Money Tree, Inc. pay all Derek Martin's attorneys' fees related to Money Tree business.

(Doc. 113 at ¶ 95.)

Because the jury did not find Jeff Martin's compensation to be excessive and found in favor of the Martin Family Group, LLLP with regard to the fraudulent transfer claims, the Martin Defendants contend that the jury rejected all of the Committee's allegations. They further argue that the Committee failed to put on any evidence regarding Derek Martin's purported attorney's fees and could not show that Jeff Martin was paid for serving as a director of The Money Tree, Inc. What remains, according to the Martin Defendants, is the value of Bellville's additional compensation, which was shown to be the only payment under the Stock Purchase Agreement. Thus, the Martin Defendants offer that the only reasonable inference that can be drawn from the jury's award is that Count X's award of \$248,000.00 is a duplication of Bellville's excessive compensation under Count IX. The Committee disagrees and argues that this portion of the award represents the "non-Best Buy salary components" of the Secondary Benefits of the Stock Purchase Agreement, noted above.

While each side's position is well-taken, what the Committee did not consider was the jury's specific inclusion of the damages awarded under Count X into the damages awarded under Counts I, II and/or IV. (*See* Doc. 324 at 8.) When asked whether the jury included damages as to any other Count into the damages provided for in Counts I, II and/or IV, the jury affirmatively indicated that the damages awarded under Counts X, XVII, XVIII, and XX against the "Derek Martin Trust" were to be included under Counts I, II, and/or IV. Notably, above Count "X," the jury wrote "248,000." (*See id.*) The Court will not disturb the jury's clear finding and declines to interpret their decision to be an additional and separate award of \$248,000.00 under Count X as contended by the Committee. Thus, the award of \$248,000.00 under Count X and against the Derek Martin Trust is subsumed in the awards granted under Counts I, II and/or IV.

C. Damages under Count XIX

Under Count XIX, the jury found for the Committee and against Martin Sublease, LLC in the amount of \$915,830.88 for “Actual and Constructive Fraud for 4 Plus Years of Lease Payments.” (*See* Doc. 324 at 52, 57.) The jury further found that the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust were liable as immediate or mediate transferees of the lease payments made to Martin Sublease, LLC in the amount of \$305,116.96 each. (*See id.* at 57-58.) The Committee contends that the damages awarded under Count XIX are distinct from the damages awarded under Counts I and II, despite their identical amounts. They rely on the jury’s lack of specific indication of whether or not damages from Count XIX were included in the damages awarded under Counts I and II. (*See* Doc. 324 at 8.)

While the Martin Defendants do not dispute whether Count XIX damages are separate and distinct from the damages awarded in Counts I and II, they do argue that the \$915,830.88 award must be reduced by one-half to account for the amount of damages awarded under Count XVII. In Count XVII, the jury awarded the Committee damages in the amount of \$457,675.44 against Martin Sublease, LLC for “Actual Fraud for 2 Years of Lease Payments.” (*See* Doc. 324 at 42, 44.) The Derek Martin Trust, Jeff Martin Trust, and the Grace Johnston Trust were all deemed immediate or mediate transferees of the lease payments in the amount of \$152,558.48 each, which amounted to a total amount of \$457,675.44. All amounts awarded under Count XVII were deemed “included in damages for Plaintiff under Counts I [and] II[.]” (*See* Doc. 324 at 7-8.) Notably, the damages awarded in Count XVII are exactly one-half of the damages awarded in Count XIX. The Committee, in its reply, states that the Court cannot read an inference of duplicative damages when the jury declined the opportunity to include Count XIX’s damages within the damages awarded in Counts I and II.

The Court gave the following jury instruction for Counts XVII and XIX, respectively:

In Count[] XVII . . . , the Plaintiff alleges under United States law that the Debtors made transfers or incurred both actual and constructive fraudulent transfers or obligations for the benefit of Defendants Martin Family Group, LLLP and Martin Sublease, LLC namely certain alleged purported lease payments, within two (2) years immediately prior to December 16, 2011, the date the Debtors filed for bankruptcy. The Plaintiff alleges that these alleged

transfers or obligations were made with the actual intent to hinder, delay, and defraud some or all of the Debtors' creditors. The Plaintiff also asserts that the Debtors received less than reasonably equivalent value in exchange for the transfers, and at the time the transfers were made, the Debtors were insolvent or became insolvent as a result of such transfers.

Lastly, under Count XIX, the Plaintiff alleges under Georgia and United States law that the Debtors made actual and constructive fraudulent transfers or incurred obligations for the benefit of Rudy Martin, Martin Family Group, LLLP, and Martin Sublease, LLC namely certain alleged purported lease payments, within four (4) or more years immediately prior to December 16, 2011, the date the Debtors filed for bankruptcy. Specifically, the Plaintiff alleges that these lease payments were made with the actual intent to hinder, delay, or defraud creditors of the Debtors. The Plaintiff additionally alleges that the Debtors, while insolvent, did not receive reasonable equivalent value in exchange for the transfers as, without limitation, the property was leased or subleased to the Debtors at allegedly inflated rates.

(Doc. 316 at 23-24.)

Counts XVII and XIX relate to the same conduct: the alleged voidability of the lease payments between The Money Tree, Inc. and Martin Sublease, LLC, among others. The Amended Complaint sought to recover transfers made or incurred prior to the same date: the Petition Date, December 16, 2011. (Doc. 113 at ¶¶ 196, 207.) When instructing the jury on the applicable Georgia law and the applicable U.S. Bankruptcy law, the Court emphasized to the jury that “The Plaintiff is not permitted to recover doubly under separate legal claims if they relate to the same conduct, even if [the jury] should so find that Plaintiff is entitled to recover under more than one legal claim based on the same or related conduct.” (Doc. 316 at 19.) The jury determined that the lease payments were fraudulent transfers and found Martin Sublease, LLC, the Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust liable under both Counts XVII and XIX. Therefore, the Committee is not entitled to recover doubly for the same conduct.

Because the jury included Count XVII damages with the damages awarded in Counts I and II, the Committee is only entitled to recover one-half of the award in Count XIX because the conduct alleged under each Count are precisely the same. The only difference is that Count XVII sought to recover for two (2) years of lease payments from the Petition Date, while Count XIX sought to recover for beyond four (4) of lease payments from the

Petition Date. (*Compare* Doc. 113 at ¶¶ 193-196 *with* ¶¶ 203-207.) The record additionally supports a finding, as The Money Tree, Inc. was receiving profits from their leasing arrangements in the amount of \$19,069.81 per month. (*See* Doc. 317-120 (assessing monthly profits from Martin Sublease, LLC’s various leases); *see also* Docs. 317-152, 317-153, 317-154 (spreadsheets of Martin Sublease, LLC’s rent income and expenses from January 1, 2000 through September 30, 2011).) Accordingly, under Count XIX, Martin Sublease, LLC, Derek Martin Trust, the Jeff Martin Trust, and the Grace Johnston Trust shall be jointly and severally liable in the amount of \$457,675.44. *See Hicks*, 2016 WL 1180119, at *6 (noting that reducing a duplicative award is not an improper remitter because “[w]here the amount of damages awarded by the jury includes amounts for which there is no *legal* basis, the court may simply reduce the judgment to the correct amount legally supported by the evidence.”). Crediting the jury’s finding as to Count XIX against the amount awarded in Count XVII results in the total award of \$457,675.44 under Count XIX. In sum, this amount is the excess of the amount found by the jury as to Count XVII, which is subsumed into Counts I and II.

D. Damages Awarded Against Brad Bellville

The jury found Brad Bellville liable under Counts I, II, III, VI, VII, IX, and XXV. (*See* Doc. 324.) Under Counts I and II, the jury determined that Brad Bellville was liable to the Committee for \$915,350.88 along with the Estate of Vance R. Martin, Derek Martin, and Jeff Martin. (*See id.* at 1-2, 5.) The jury included within those damages a judgment of \$248,000.00 as to Counts VI, VII, and IX⁷ against Brad Bellville. (*See id.* at 8.) Additionally, the jury determined that the Committee is entitled to a punitive damages award of \$25,000 against Brad Bellville in Count XXV. (*See* Doc. 329.)

Brad Bellville asserts that the maximum judgment against him is \$273,000.00, while the Committee contends that Brad Bellville is jointly and severally liable under Counts I and II for the judgment of \$915,350.88 with the other defendants. The Verdict plainly states Brad Bellville’s liability, and among others, as to Counts I and II in the amount of \$915,355.88. Included within those damages is \$248,000.00 as to Counts VI, VII, and IX,

⁷ The Court notes for the record that the jury wrote next to Bellville’s checked name “VI, VII, IX \$248,000 (all counts)”. (Doc. 324 at 8.)

but excluded from this amount is the award for punitive damages against Brad Bellville in the amount of \$25,000.00. Thus, the Court finds that the jury clearly intended to hold Brad Bellville jointly and severally liable for \$915,350.88 under Counts I and II and individually liable for \$25,000.00 under Count XXV. Judgment as to Brad Bellville shall be entered accordingly.

CONCLUSION

Having carefully reviewed the verdict upon the record and in full consideration of the Parties' briefing, as well as for the above stated reasons, the Clerk of Court is **DIRECTED** to enter judgment as follows:

As to Counts I and II, judgment shall be entered in the amount of \$915,350.88 against Defendants W. Derek Martin, as Executor of the Estate of Vance R. Martin, W. Derek Martin, Jeffrey V. Martin, and Bradley D. Bellville. These named Defendants shall be joint and severally liable.

As to Count XIV, judgment shall be entered in the amount of \$88,500.00 against W. Derek Martin and in the amount of \$18,000.00 against Jefferey V. Martin, for a total of \$106,500.00.

As to Count XVI, judgment shall be entered in the amount of \$60,000.00 against Defendants Martin Family Group, LLLP, W. Derek Martin, as Trustee for the Vance R. Martin GST Exempt Family Trust f/b/o W. Derek Martin, Jeffrey V. Martin, as Trustee for the Vance R. Martin GST Exempt Family Trust F/B/O Jeffrey V. Martin, and Grace Elizabeth Martin Johnston, as Trustee for the Vance R. Martin GST Exempt Family Trust F/B/O Grace Elizabeth Martin Johnston. These named Defendants shall be joint and severally liable. However, each Trust individually shall only be liable up to the total of \$20,000.00 as indicated by the jury.

As to Count XIX, judgment shall be entered in the amount of \$457,675.44 against Defendants Martin Sublease, LLC, W. Derek Martin, as Trustee for the Vance R. Martin GST Exempt Family Trust f/b/o W. Derek Martin, Jeffrey V. Martin, as Trustee for the Vance R. Martin GST Exempt Family Trust F/B/O Jeffrey V. Martin, and Grace Elizabeth Martin Johnston, as Trustee for the Vance R. Martin GST Exempt Family Trust F/B/O Grace Elizabeth Martin Johnston. These named Defendants shall be joint and severally

liable. However, each Trust individually shall only be liable up to the total of \$152,558.48 as indicated by the jury.

As to Count XXV, judgment shall be entered in the amount of \$75,000.00 against W. Derek Martin individually and in the amount of \$25,000.00 against Bradley D. Bellville individually, for a total of \$100,000.00 in punitive damages.

In all, based on the jury's verdict, judgment shall be entered in favor of the Post-Confirmation Committee for Small Loans, Inc., *et al.* for a total of \$1,639,526.32 in compensatory and punitive damages.

Emergency Motion

Having so ordered judgment, the Court finds that the Committee's Emergency Motion for Constructive Trust, Authority to Commence Garnishment Proceedings, and Authority to Conduct Discovery (Doc. 352) is **MOOT** and is **DENIED** as such **WITHOUT PREJUDICE**.

SO ORDERED, this 21st day of July, 2017.

/s/ W. Louis Sands

W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT