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COUNSEL FOR VISTA BANK

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

IN RE:

Reagor-Dykes Motors, LP, *et al.*

Debtors.

Case No. 18-50214-rlj-11
Jointly Administered

Reagor-Dykes Imports, LP,
Reagor-Dykes Auto Company, LP, and
Reagor-Dykes Plainview, LP,

Plaintiffs and Counter Vista

vs.

Vista Bank,

Vista and Counter/Cross Plaintiff

vs.

Adversary No. 18-05005-rlj

Reagor-Dykes Motors, LP,
Reagor-Dykes Amarillo, LP,
Reagor-Dykes Floydada, LP,
Reagor-Dykes Snyder, L.P.,
Reagor Dykes III LLC,
Reagor-Dykes II LLC,
Reagor-Dykes Auto Mall, Ltd., and
Reagor-Dykes Auto Mall I LLC,

Cross Vista.

**VISTA BANK'S ANSWER, COUNTER AND CROSS COMPLAINT FOR
DECLARATORY JUDGMENT**

Vista Bank ("Vista") files this Answer, Counter and Cross Complaint for Declaratory Judgement ("Counter Complaint") to the Plaintiffs Complaint to Turnover Estate Property, Avoid and Recover Unauthorized Post-Petition Transfers Pursuant to 11 U.S.C. §§ 542, 549, 550 and 551, and to Disallow Claims under 11 U.S.C. § 502 and alleges as follows:

I. SUMMARY OF ACTION

1. The Debtors perpetrated a multi-million dollar check kiting fraud on Vista. The Reagor-Dykes Debtors (defined below), through their chief restructuring officer and his counsel (together, the "Reagor-Dykes CRO") originally filed this adversary proceeding over a year ago to prevent Vista, as a collecting bank holding millions of dollars in the Debtors' bad checks, from asserting its contractual and equitable rights, including setoff and recoupment, to recover a small portion of the losses the Debtors inflicted on Vista.

2. Vista brings this Counter Complaint to obtain a declaratory judgment regarding the legal rights and claims asserted by the Reagor-Dykes Debtors and Reagor-Dykes CRO, against Vista in an ongoing scheme to extort creditors like Vista who already suffered millions in damages due to Reagor-Dykes' criminal actions. The Reagor-Dykes Debtors allege non-existent and equitably barred claims and causes of action against Vista and other creditors, demanding payments to fund administratively insolvent bankruptcy estates¹ and force support for an unconfirmable chapter 11 plan. Vista seeks a judicial declaration regarding the rights and other legal relations between Vista and the Reagor Dykes Debtors as authorized by Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 7001(1) and (9). Further, Vista asserts its defenses to the CRO's asserted claims.

¹ The Reagor-Dykes CRO has run up over \$5,000,000 in unpaid administrative expenses.

II. PARTIES

A. Plaintiff, Vista Bank

3. Vista Bank is a Texas financial institution formed and existing under the laws of the State of Texas.

B. Vista, Reagor-Dykes Debtors

4. Reagor-Dykes Imports, LP is a debtor in possession in chapter 11 Case No. 18-50215 pending in this Court.

5. Reagor-Dykes Amarillo is a debtor in possession in chapter 11 Case No. 18-50216 pending in this Court.

6. Reagor-Dykes Auto Company, LP is a debtor in possession in chapter 11 Case No. 18-50217 pending in this Court.

7. Reagor-Dykes Plainview, LP is a debtor in possession in chapter 11 Case No. 18-50218 pending in this Court.

8. Reagor-Dykes Floydada, LP is a debtor in possession in chapter 11 Case No. 18-50219 pending in this Court.

9. Reagor-Dykes III LLC is a debtor in possession in chapter 11 Case No. 18-50321 pending in this Court.

10. Reagor-Dykes Snyder, L.P. is a debtor in possession in chapter 11 Case No. 18-50322 pending in this Court.

11. Reagor-Dykes II LLC is a debtor in possession in chapter 11 Case No. 18-50323 pending in this Court.

12. Reagor Auto Mall Ltd is a debtor in possession in chapter 11 Case No. 18-50324 pending in this Court.

13. Reagor Auto Mall I LLC is a debtor in possession in chapter 11 Case No. 18-50325 pending in this Court.

14. All of the above debtors are referred to as the “Reagor-Dykes Debtors” or “Reagor-Dykes,” and all of their bankruptcy cases are jointly administered under lead Case No. 18-50214, in which this Adversary is filed (the “Bankruptcy Case”).

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334(b) in that this action arises under, arises in and/or relates to cases pending under chapter 11 of the Bankruptcy Code.

16. The statutory predicates for the relief requested in the Counter Complaint are Bankruptcy Code § 105 and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 7001(1) and (9). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

17. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and/or 1409, because the Debtors’ above-captioned bankruptcy cases are pending in this Court.

IV. DECLARATORY JUDGMENT

18. This case involves an actual controversy, within jurisdiction of this Court, or the federal district court, and a judicial declaration is necessary regarding the rights and other legal relations between the parties, as set out below. Therefore, the relief requested by Vista is specifically authorized by Bankruptcy Code § 105, Bankruptcy Rules 7001(1) and (9), and 28 U.S.C. §§ 2201 and 2202.

V. FACTUAL BACKGROUND

A. The Debtors' Fraud.

19. Reagor-Dykes was a group of entities operating automotive dealerships which sold new and used vehicles from various original equipment manufacturers including but not limited to Ford, General Motors, Toyota, Lincoln, and Mitsubishi.

20. It is well known throughout West Texas that on August 1, 2018, certain of the Reagor-Dykes entities filed for bankruptcy protection after being sued by Ford Motor Credit Company ("Ford") on July 31, 2018, for more than \$40 million dollars, arising out of what Ford called the largest floor plan finance fraud in U.S. history. What is less known is Reagor-Dykes dedicated an entire department to perpetuating a check kite involving several banks, which caused approximately \$24,000,000 in damages, with approximately \$13,000,000 of those damages being suffered by Vista.

21. On or about July 28, 2018, Ford discovered Reagor-Dykes' floorplan fraud and demanded payment in full. Reagor-Dykes could not pay, and Ford refused to settle. As a result, certain Reagor-Dykes entities filed petitions for bankruptcy.

22. After Reagor-Dykes filed its petitions in bankruptcy, Vista learned about the bankruptcy around noon on August 1, 2018. Assuming this was a run-of-the mill bankruptcy, and not a fraud event, Vista processed checks based upon "available" funds. Unfortunately, on August 2, 2018, Vista received more than \$5,000,000 in chargebacks from other banks, and instantly knew there was something at play far worse than bankruptcy.

23. Vista's depository relationship was with the Reagor-Dykes Mitsubishi Lubbock Dealership, Reagor-Dykes Plainview Ford Lincoln Dealership, and the Reagor-Dykes Toyota Dealership. The Reagor-Dykes entities controlling these dealerships were: (i) Reagor-Dykes Auto Company, LP, (ii) Reagor-Dykes Imports, LP, and (iii) Reagor-Dykes Plainview, LP.

These entities maintained routine business accounts at Vista, such as savings, checking, loans, and certificate of deposit accounts, and each account was subject to an account agreement. The account agreements expressly grant Vista the right to extend immediate access to funds and to recover unpaid funds from the account.

24. Shane Smith was the chief financial officer of Reagor-Dykes. He, along with no less than seven (7) other employees, engaged in both the check kite and floor plan fraud because, Reagor-Dykes “was under-capitalized due to its aggressive growth and acquisitions of new dealerships, above-market employee compensation, and unnecessary overhead.”² These eight (8) prior employees have each pled guilty for their role in Reagor-Dykes’ fraud, which was for the benefit of Reagor-Dykes. Hence, this criminal enterprise operated to inflate the egos and wallets of its corporate officers and owners.

25. Not a single bank has been implicated in these guilty pleas.

B. The Debtors’ Fraud Against Vista.

26. The Debtors, their affiliated Reagor-Dykes entities, and other responsible parties perpetrated a multi-million dollar check kiting fraud on Vista.

27. Specifically, Debtors Reagor-Dykes Imports, LP, Reagor-Dykes Auto Company, LP, and Reagor-Dykes Plainview, LP (together, the “Account Debtors”) each deposited millions of dollars in uncollected bad checks (drawn on Reagor-Dykes entity accounts at other banks that those banks returned as unpaid, the “Bad Checks”) into the Account Debtors’ depository accounts at Vista (collectively, the “Accounts”). The Account Debtors’ deposits of Bad Checks at Vista are summarized as follows:

Account Debtor	Vista Account Number	Returned Check Total
Reagor-Dykes Imports, LP	XXXX194	\$5,319,000.00

² See Criminal Factual Resume of former Reagor-Dykes CFO, Shane Smith, Exhibit 1.

Reagor-Dykes Auto Company, LP	XXXX693	\$4,183,000.00
Reagor-Dykes Plainview, LP	XXXX788	\$4,080,000.00

28. On August 1, 2018, after Vista advanced provisional credit to the Account Debtors for the Bad Checks, the Account Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”).

29. Both pre and post-petition, the same Accounts received and still hold other deposits from third parties that did collect. These collected deposits in the Accounts are summarized as follows (the “Collected Funds”):

Account Debtor	Vista Account Number	Collected Funds on Petition Date	Funds Collected since Petition Date
Reagor-Dykes Imports, LP	XXXX194	\$21,427.07	\$424,992.05
Reagor-Dykes Auto Company, LP	XXXX693	\$71,332.80	\$54,785.53
Reagor-Dykes Plainview, LP	XXXX788	\$10,805.57	\$528,218.00

30. The Account Debtors’ deposit agreements with Vista grant Vista a security interest and setoff rights in the Accounts and the Collected Funds to satisfy any provisional credit advance that later results in an overdraft.

31. Vista seeks relief from the automatic stay to enforce its security interests, rights of setoff and recoupment pursuant to the account agreements⁶, and state and bankruptcy law, and to apply the Collected Funds in each Account to reduce each Account Debtor’s overdraft and Bad Check liability for the same Account.

32. The Account Debtors’ deposit agreements with Vista grant Vista a security interest and setoff rights in the Accounts and the Collected Funds to satisfy any provisional credit advance that later results in an overdraft. Vista, as a collecting bank holding millions of dollars in the Debtors’ bad checks, properly filed proofs of claim and a motion for relief from the

stay in the Bankruptcy Case to assert its contractual and equitable rights, including setoff and recoupment, to assert the losses the Debtors inflicted on Vista. (Doc. 454).

C. The Reagor-Dykes Debtors' Attempt to Extort Vista

33. On November 14, 2019, Reagor-Dykes sent a demand letter to Vista, alleging that Vista is liable to Reagor-Dykes as follows:

- for aiding and abetting Shane Smith in his breach of fiduciary duty,
- knowingly participating in Shane Smith's breach of fiduciary duty,
- wrongfully keeping pre- and post-petition deposits (the subject of Vista's previously filed adversary action, *see* Doc. 454),
- wrongfully setting off against a \$2MM certificate of deposit (this matter was previously decided by this Court, *see* this Court's November 15, 2018 Order, Doc. 548, granting Vista leave to setoff disputed funds),
- conspiracy to commit common-law fraud,
- negligent supervision, *respondeat superior*, together with liability for intentional torts that were ratified by Vista,
- common-law and statutory contribution, and
- for equitable subordination.

In essence, Reagor-Dykes contends Vista failed to stop Reagor-Dykes' check kite fraud and should therefore be liable to Reagor-Dykes.

34. On October 26, 2018, Vista filed Motion for Relief from the Automatic Stay to Apply Setoffs and Recoup Overdraft Liability against Funds on Deposit (the "Lift Stay Motion"). *See* Doc. 454. In response, the Reagor-Dykes CRO filed this adversary proceeding against Vista.

VI. CLAIMS FOR RELIEF

35. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

36. A justiciable controversy exists between Vista and Reagor-Dykes regarding the rights and other legal relations of the parties with respect to the remedies available to Reagor-Dykes, such that a declaration is necessary pursuant to 28 U.S.C. §§ 2201 and 2202.

37. Pursuant to Bankruptcy Rule 7001(1), this Court has authority to decide “a proceeding to recover money or property”, including the Reagor-Dykes Debtors’ demand for money and property from Vista as set forth in this Complaint. Further, Bankruptcy Rule 7001(9), specifically authorizes this Court to enter “declaratory judgment relating to any of the foregoing” including demands under Bankruptcy 7001(1) as detailed in this Complaint. Accordingly, in the exercise of its Bankruptcy Rule 7001(9) authority and equitable powers under Bankruptcy Code §105, the Court should enter declaratory judgment against the Reagor-Dykes Debtors and in favor of Vista as follows:

COUNTER AND CROSS CLAIM COUNT 1: DECLARATORY JUDGMENT - AIDING AND ABETTING

38. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

39. Under Texas law, Shane Smith’s and his co-conspirator’s knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes’ business.

40. The Texas Supreme Court has yet to recognize a cause of action for aiding and abetting. Moreover, Texas banks do not owe any duties to parties with whom there is no special relationship.

41. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, and Texas law has yet to recognize a cause of action for aiding and abetting, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct.

42. Therefore, Vista seeks a declaration that Reagor-Dykes had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable solely for allegedly aiding and abetting Reagor-Dykes' criminal conduct, and Texas law would not recognize a cause of action for aiding and abetting.

43. At a minimum, Vista's liability, if any, should be limited to the Account Debtors.

**COUNTER AND CROSS CLAIM COUNT 2: DECLARATORY JUDGMENT –
KNOWINGLY PARTICIPATING IN SHANE SMITH'S BREACH OF FIDUCIARY
DUTY**

44. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

45. Under Texas law, Shane Smith's and his co-conspirator's knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes' business.

46. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct.

47. Therefore, Vista seeks a declaration that Reagor-Dykes had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable for allegedly knowingly participating in Reagor-Dykes' criminal conduct.

48. At a minimum, Vista's liability, if any, should be limited to the Account Debtors.

**COUNTER AND CROSSCLAIM COUNT 3: DECLARATORY JUDGMENT –
WRONGFULLY KEEPING PRE- AND POST-PETITION DEPOSITS**

49. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

50. This matter is presently before this Court. On October 26, 2018, Vista initiated an adversary proceeding in this Court pertaining to the pre- and post-petition deposits held by Vista. *See* Doc. 454. This matter is currently set for hearing on January 24, 2019.

51. Therefore, Vista seeks a declaration that Reagor-Dykes cannot bring an additional cause of action related to these funds, as this Court has exclusive jurisdiction over that case and controversy.

**COUNTER AND CROSS CLAIM COUNT 4: DECLARATORY JUDGMENT –
WRONGFULLY SETTING OFF AGAINST A \$2MM CERTIFICATE OF DEPOSIT**

52. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

53. On November 15, 2018, this Court granted Vista leave to setoff \$2MM of disputed funds. *See* Doc. 548.

54. Therefore, Vista seeks a declaration that Reagor-Dykes cannot attack this Court's prior ruling via another legal action in any other forum, as this Court has exclusive jurisdiction over that case and controversy.

**COUNTER AND CROSS CLAIM COUNT 5: DECLARATORY JUDGMENT –
CONSPIRACY TO COMMIT COMMON-LAW FRAUD**

55. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

56. Under Texas law, Shane Smith's and his co-conspirators' knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes' business.

57. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct.

58. Therefore, Vista seeks a declaration that Reagor-Dykes had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable solely for allegedly conspiring to commit common-law fraud with Reagor-Dykes.

**COUNTER AND CROSSCLAIM COUNT 6: DECLARATORY JUDGMENT –
NEGLIGENT SUPERVISION, *RESPONDEAT SUPERIOR*, TOGETHER WITH
LIABILITY FOR INTENTIONAL TORTS THAT WERE RATIFIED BY VISTA**

59. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

60. Under Texas law, Shane Smith's and his co-conspirators' knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes' business. Moreover, Texas banks do not owe any duties to parties with whom there is no special relationship.

61. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct. Reagor-Dykes alleges Vista acted tortiously by virtue of its allegedly participation in Reagor-Dykes' criminal conduct.

62. Therefore, Vista seeks a declaration that Reagor-Dykes had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable solely for allegedly participating in Reagor-Dykes' criminal conduct.

63. At a minimum, Vista's liability, if any, should be limited to the Account Debtors.

**COUNTER AND CROSSCLAIMS COUNT 7: DECLARATORY JUDGMENT –
COMMON-LAW AND STATUTORY CONTRIBUTION**

64. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

65. Under Texas law, Shane Smith's and his co-conspirators' knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes' business. Moreover, Texas banks do not owe any duties to parties with whom there is no special relationship.

66. Texas' proportionate responsibility statute recognizes a right to contribution only for claims based in tort and for which Vista could be liable. *See* Tex. Civ. Prac. & Rem. Code §§ 33, *et seq.* Further, Texas' proportionate responsibility statute requires a jointly and severally liable Vista to pay greater than its share of responsibility before it may seek contribution. Tex. Civ. Prac. & Rem. Code § 33.015. Notwithstanding, Reagor-Dykes asserts Vista would be liable for its proportionate share of any liability owed by the Reagor-Dykes' bankruptcy estates to their creditors as measured by the claims' registry.

67. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct.

68. Therefore, Vista seeks a declaration that, if any, its liability is limited to only tort-based claims of third parties, to whom Vista could be liable, and who have filed tort-based claims against Reagor-Dykes. Further, Vista's obligation to pay contribution, if any, does not arise until after Reagor-Dykes has paid greater than its share of responsibility under Texas' contribution statute. Tex. Civ. Prac. & Rem. Code §§ 33.015 and 33.016.

**COUNTER AND CROSSCLAIM COUNT 8: DECLARATORY JUDGMENT –
EQUITABLE SUBORDINATION**

69. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

70. Under Texas law, Shane Smith's and his co-conspirators' knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Moreover, Texas banks do not owe any duties to parties with whom there is no special relationship.

71. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Reagor-Dykes' criminal conduct.

72. Therefore, Vista seeks a declaration that, if any, its claims can only be equitably subordinated as it pertains to Account Debtors.

**COUNTER AND CROSSCLAIMS COUNT 9: DECLARATORY JUDGMENT – *IN PARI
DELICTO***

73. Vista repeats and realleges the allegations set forth in all preceding paragraphs of this Complaint as if fully set forth herein.

74. Under Texas law, Shane Smith's and his co-conspirators' knowledge of all material facts of the check kite and floor plan fraud are imputed to Reagor-Dykes. Shane Smith and his co-conspirators have pleaded guilty to fraud on behalf of and in furtherance of Reagor-Dykes' business.

75. Despite Reagor-Dykes' knowledge of all material facts of the check kite and floor plan fraud, Reagor-Dykes seeks to hold Vista liable for damages caused by Vista's alleged participation in Reagor-Dykes' criminal conduct. Vista contends Reagor-Dykes cannot hold Vista liable solely for its alleged participation in Reagor-Dykes' criminal conduct. Vista further alleges, assuming Vista harmed Reagor-Dykes, the *in pari delicto* doctrine is a complete bar to Reagor-Dykes' claims for relief. Reagor-Dykes contends the *in pari delicto* doctrine does not bar its claims for relief and that it may hold Vista liable solely for its alleged participation in Reagor-Dykes' criminal conduct.

76. Therefore, Vista seeks a declaration that Reagor-Dykes had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable solely for allegedly participating in Reagor-Dykes' criminal conduct.

VII. ANSWER TO COMPLAINT

77. Paragraph 1 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that Plaintiffs seeks relief under the statutory predicates cited in Paragraph 1. Vista denies Plaintiffs are entitled to such relief.

78. Paragraph 2 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that Plaintiffs seeks relief under the statutory predicates cited in Paragraph 2. Vista denies Plaintiffs are entitled to such relief.

79. Paragraph 3 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that Plaintiffs seeks relief under the statutory predicates cited in Paragraph 3. Vista denies Plaintiffs are entitled to such relief.

80. Paragraph 4 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that Plaintiffs seeks relief under the statutory predicates cited in Paragraph 4. Vista denies Plaintiffs are entitled to such relief.

81. Paragraph 5 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that the Court has subject matter jurisdiction over this adversary proceeding and denies Plaintiffs are entitled to any relief.

82. Paragraph 6 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that Plaintiffs seeks relief under the statutory predicates cited in Paragraph 6. Vista denies Plaintiffs are entitled to such relief.

83. Paragraph 7 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that this is core proceeding. Vista denies Plaintiffs are entitled to any relief.

84. Paragraph 8 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista admits that venue is proper. Vista denies Plaintiffs are entitled to any relief.

85. Vista admits the Plaintiffs are debtors in possession and is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 9 of the Complaint and, therefore, denies them.

86. Vista denies that Gene McLaughlin is its registered agent and admits that it is a depository banking and lending institution domiciled in the State of Texas. The remaining

allegations in Paragraph 10 of the Complaint states a legal conclusion and does not require a response.

87. Vista admits the allegations in Paragraph 11.

88. Vista denies the allegations in Paragraph 12, as the Debtors have liquidated their operations.

89. Vista admits the allegations in Paragraph 13.

90. Vista admits the allegations in Paragraph 14.

91. Vista admits the allegations in Paragraph 15.

92. Vista admits the allegations in Paragraph 16.

93. Vista is without sufficient information or knowledge to admit or deny the allegations in Paragraph 17 of the Complaint and, therefore, deny them.

94. Vista admits that Ford sued the Debtors and are without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 18 of the Complaint and, therefore, deny them.

95. Vista admits that Ford sued the Debtors, the Debtors filed the Bankruptcy Case and that Ford's pleadings speak for themselves, Vista is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 19 of the Complaint and, therefore, deny them.

96. Vista admits the allegations in Paragraph 20.

97. Vista admits the Debtors made deposits in the Pre-Petition Accounts and is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 21 of the Complaint and, therefore, deny them.

98. Vista is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 22 of the Complaint and, therefore, deny them.

99. Vista admits the allegations in Paragraph 23.

100. Vista denies the allegations in Paragraph 24.

101. Vista admits that parties deposited funds into the Pre-Petition Accounts, Vista is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 25 of the Complaint and, therefore, deny them.

102. Paragraph 26 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

103. Paragraph 27 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

104. Paragraph 28 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

105. Paragraph 29 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

106. Paragraph 30 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

107. Vista admits that funds remain in the referenced accounts, the remaining allegations in Paragraph 31 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

108. Paragraph 32 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

109. Paragraph 33 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

110. Vista admits it has asserted set off and recoupment rights against the referenced funds as set forth the Lift Stay Motion and requested a ruling from the Court on the disposition of the referenced funds, the remaining allegations in Paragraph 34 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

111. Vista admits it has asserted set off and recoupment rights against the referenced funds as set forth the Lift Stay Motion and requested a ruling from the Court on the disposition of the referenced funds, the remaining allegations in Paragraph 35 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

112. Paragraph 36 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

113. Vista denies the allegations in Paragraph 37.

114. Paragraph 38 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

115. Paragraph 39 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

116. In response to Paragraph 40 Vista incorporates by reference the responses to Paragraphs 1 through 39 above as if fully set forth herein.

117. Paragraph 41 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

118. Paragraph 42 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

119. Paragraph 43 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

120. Paragraph 44 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

121. Paragraph 45 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

122. Paragraph 46 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

123. Paragraph 47 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

124. In response to Paragraph 48 Vista incorporates by reference the responses to Paragraphs 1 through 47 above as if fully set forth herein.

125. Paragraph 49 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

126. Paragraph 50 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

127. Paragraph 51 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

128. Paragraph 52 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

129. Paragraph 53 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

130. Paragraph 54 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

131. Paragraph 55 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

132. Paragraph 56 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

133. Paragraph 57 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

134. Paragraph 58 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

135. Paragraph 59 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

136. Paragraph 60 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

137. Paragraph 61 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

138. Paragraph 62 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

139. In response to Paragraph 63 Vista incorporates by reference the responses to Paragraphs 1 through 62 above as if fully set forth herein.

140. Paragraph 64 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

141. Paragraph 65 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

142. Paragraph 66 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

143. Paragraph 67 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

144. Paragraph 68 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

145. In response to Paragraph 69 Vista incorporates by reference the responses to Paragraphs 1 through 68 above as if fully set forth herein.

146. Paragraph 70 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

147. Paragraph 71 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

148. Paragraph 72 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

149. Paragraph 73 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

150. Paragraph 74 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

151. Paragraph 75 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

152. Paragraph 76 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

153. Paragraph 77 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

154. In response to Paragraph 78 Vista incorporates by reference the responses to Paragraphs 1 through 77 above as if fully set forth herein.

155. Paragraph 79 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

156. Paragraph 80 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

157. In response to Paragraph 81 Vista incorporates by reference the responses to Paragraphs 1 through 80 above as if fully set forth herein.

158. Paragraph 82 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

159. Paragraph 83 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

160. Paragraph 84 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

161. Paragraph 85 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

162. Paragraph 86 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

163. Paragraph 87 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

164. Paragraph 88 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

165. Paragraph 89 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

166. Paragraph 90 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

167. In response to Paragraph 91 Vista incorporates by reference the responses to Paragraphs 1 through 90 above as if fully set forth herein.

168. Paragraph 92 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

169. Paragraph 93 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

170. Paragraph 94 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

171. Paragraph 95 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

172. Paragraph 96 of the Complaint states a legal conclusion and does not require a response. To the extent a response is required, Vista denies the allegations.

173. The remainder of the Complaint is a request for relief and no response is required. To the extent a response is required, Vista denies Plaintiff is entitled to such relief.

VII. AFFIRMATIVE DEFENSES

174. Vista pleads and sets forth the following defenses, undertaking the burden of proof on such defenses only to the extent required by law.

175. Plaintiffs' claims are barred in whole or in part because they fail to state a claim against Vista upon which relief may be granted.

176. Plaintiffs' claims are barred in whole or in part by recoupment and/or setoff.

177. Plaintiffs' claims are barred in whole or in part by justification and/or privilege.

178. Plaintiffs' claims are barred in whole or in part by mistake.

179. Plaintiffs' claims are barred in whole or in part by estoppel.

180. Plaintiffs' claims are barred in whole or in part by Vista's security interest in the alleged funds.

181. Plaintiffs' claims are barred in whole or in part because the alleged funds did not involve the transfer of any property of the Debtors.

182. Plaintiffs' claims are barred in whole or in part because the alleged transfers were not to or for the benefit of Vista.

183. Plaintiffs' claims are barred in whole or in part because Vista is not the initial transferee, or the immediate or mediate transferee of such alleged transfers.

184. Plaintiffs' claims are barred by Vista's request for stay relief.

185. Plaintiffs' claims are barred in whole or in part because Vista is a mere conduit or financial intermediary.

186. Plaintiffs' claims are barred in whole or in part because the Vista acted in good faith and did not know, or have reason to know, of the circumstances that Plaintiffs allege render the alleged transfers avoidable.

187. Plaintiffs' claims are barred in whole or in part because the Vista received the transfers for value and in good faith.

188. Plaintiffs' claims are barred in whole or in part because the transfers satisfied a debt of the Debtors.

189. Vista reserve the right to assert additional defenses as they become known through investigation and discovery.

VIII. PRAYER FOR RELIEF

WHEREFORE, Vista respectfully requests the Court enter a judgment denying all the Plaintiffs' claims and all relief the Plaintiffs have requested in the Complaint and a declaratory judgment in favor of the Vista against the Reagor-Dykes Debtors:

- a. declaring that Texas law does not recognize a cause of action for aiding and abetting;
- b. declaring the Reagor-Dykes Debtors, and their bankruptcy estates:
 - i. had knowledge of all material facts of the check kite and floor plan fraud and cannot hold Vista liable under any of the following legal theories solely for Vista's alleged participation in Reagor-Dykes' criminal conduct: 1) aiding and abetting, 2) knowing participation in breach of fiduciary duty, 3) conspiracy to commit common-law fraud, 4) negligent supervision, *respondeat superior*, together with liability for intentional torts that were ratified by Vista;
 - ii. cannot bring an additional cause of action related to the pre- and post-petition funds, or the \$2MM certificates of deposits, previously awarded to Vista, as this Court has exclusive jurisdiction over that case and controversy; and
 - iii. right to contribution, if any, only applies to tort-based claims filed in the claims' registry by claimants, to whom Vista could be liable in tort;
- c. declaring that Vista's obligation to pay contribution, if any, does not arise until after Reagor-Dykes has paid greater than its share of responsibility under Texas' contribution statute, Tex. Civ. Prac. & Rem. Code §§ 33.015 and 33.016;

- d. declaring that the *in pari delicto* doctrine is a complete bar against Reagor-Dykes' claims against Vista for 1) aiding and abetting, 2) knowing participation in breach of fiduciary duty, 3) conspiracy to commit common-law fraud, 4) negligent supervision, *respondeat superior*, together with liability for intentional torts that were ratified by Vista; and
- e. awarding Vista such other and further relief, in law or in equity, to which Vista is justly entitled, as is appropriate in the circumstances.

DATED: December 4, 2019.

Respectfully submitted,

/s/ Fernando M. Bustos

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