IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTINA L. KRUSE; THE GUARDIANSHIP AND CONSERVATORSHIP OF CHRISTINA KRUSE, by and through VERDA KRUSE, as sole surviving guardian and conservator of CHRISTINA KRUSE; and HARLEY J. HUDSON, Plaintiffs, v. DAVID M. REPP; DICKINSON, MACKAMAN, TYLER & HAGEN, P.C.; ZACHARY I. GUINN; BRADLEY J. VAN VARK; and FIRST STATE BANK OF LYNNVILLE, IOWA, Defendants.	)	Case No. 4:19-cv-00106-SMR-SBJ ORDER ON DEFENDANTS' MOTIONS TO DISMISS

After obtaining a $2.5 million personal injury judgment and successfully setting aside a series of financial transactions found to have been intentionally designed to fraudulently shield assets from satisfying their judgment lien, Plaintiffs filed this lawsuit against the attorneys and bankers who, they allege, worked hand-in-hand with the tortfeasor to frustrate their collection efforts. [ECF No. 18-2]. Defendants move to dismiss the petition in its entirety. [ECF Nos. 4; 11]. The parties requested oral argument, but the Court finds a hearing is unnecessary. *See* LR 7(c). Accepting as true the facts alleged in the First Amended Petition ("Petition"), and drawing all reasonable inferences in Plaintiffs' favor, the Court GRANTS in part and DENIES in part Defendants' Motions to Dismiss.

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I. BACKGROUND

Plaintiffs' Petition documents a saga of injury and admission, judgment and avoidance after Plaintiff Christina L. Kruse ("Kruse") was horrifically injured in a car accident caused by Steven Weller ("Weller"), a local farmer and crop insurance agent.[1] A bench trial found Weller liable and determined Plaintiffs were owed approximately $2.5 million in compensatory damages for past and future medical costs, loss of function, pain and suffering, and loss of consortium. Rather than compensating Kruse for her injury, Weller undertook a series of financial transactions that have since been found to have been made with the specific intent to shield his assets from Plaintiffs' judgment and adjudicated fraudulent.

The crux of Plaintiffs' allegations in this case centers on the role of Defendants' services as legal and banking professionals in Weller's attempt to avoid his obligation to compensate Kruse for her injuries or otherwise obstruct Plaintiffs' efforts to collect on their judgment lien. Much of the factual basis for the lawsuit is established historical fact and a matter of public record through prior

[1] Kruse brings suit on her own accord, as well as through her mother acting as legal guardian and conservator. Kruse's son, Harley J. Hudson, is also a named plaintiff. *See* [ECF No. 18-2 ¶¶ 1–2].

litigation. *See generally* [ECF No. 18-2 ¶¶ 10–12, 15–17, 19–22].[2] The drama plays out over the course of three acts, which the Court reproduces below.

A. *Act One: The Automobile Accident and Personal Injury Lawsuit*

The scene opens with trauma and a confession. On January 28, 2012, Steven Weller ran a stop sign in rural Davis County, Iowa, striking Kruse broadside in an catastrophic automobile accident. [ECF No. 18-2 ¶¶ 19, 23]. Weller witnessed the extensive damage to the vehicles, the incapacitation of Kruse and her passengers, and the lifesaving efforts by emergency responders in the wake of the accident; when law enforcement responded to the scene, he immediately acknowledged that he was entirely at fault. *Id.* ¶¶ 19(b), 24–25. Weller formally admitted his culpability through admissions made in the course of the lawsuit that followed. *Id.* ¶ 28. He also stipulated to the amount of Kruse's necessary medical expenses and agreed they were caused by the

[2] For the purpose of Defendants' Motions to Dismiss, the Court accepts as true the factual allegations in the Petition. *See Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010) (indicating courts must accept as true the plaintiffs' factual allegations, but they need not accept as true their legal conclusions). Generally, the Court does not consider matters outside the pleadings in deciding a motion to dismiss under Rule 12. But "documents 'necessarily embraced by the complaint' are not matters outside the pleading." *Enervations, Inc. v Minn. Mining & Mfg. Co.*, 380 F.3d 1066, 1069 (8th Cir. 2004) (citations omitted). And documents incorporated by reference, items necessarily "integral to the claim," and matters "subject to judicial notice" or of public record may properly be considered in evaluating whether a complaint states a claim for which relief may be granted. 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed.); *see also Enervations*, 380 F.3d at 1069 (considering written agreement alleged to have amended contractual relations between the parties); *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999) (relying on a transcript of judicial proceedings in prior case). Moreover, "[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c); *accord Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 921 (8th Cir. 2001). Defendants offer no convincing reason why the Court should ignore the documents attached to Plaintiffs' Petition and submitted in their resistance to this motion when the papers are overwhelmingly matters expressly referenced in the Petition, matters of public record subject to judicial notice, or both. Nor do they object to the documents' authenticity. Accordingly, the Court will consider those extrinsic materials satisfying the proper criteria in evaluating the sufficiency of Plaintiffs' Petition.

collision. *Id.* ¶ 29. Weller entered into settlement negotiations with Kruse, but efforts to come to a resolution were unfruitful. *See generally id.* ¶¶ 40–44.

After a three-day bench trial in April 2015, the Iowa district court found in favor of Kruse and awarded $2,557,100 in damages; judgment was entered on May 1, 2015. *Id.* ¶¶ 15, 19(l)–(m), 20–21. Weller owns farm and commercial real estate in Mahaska County, Iowa. *See id.* ¶¶ 32, 53; *see generally id.* at 140–45 (2002 mortgage), 161–70 (2007 mortgage). Kruse filed her judgment in the office of the Clerk of the Iowa District Court for Mahaska County on May 8, 2015, which became a lien against Weller's real estate on that date. *Id.* ¶¶ 21, 22; *see also* Iowa Code § 624.24 (providing lien attaches to real estate located outside the county where judgment was entered when "filed in the office of the clerk of the district court of the county in which the real estate lies").

B. Act Two: Weller Reorganizes His Assets

The second act transitions from remorse to resistance. The facts alleged by the Petition make plain that, from the time immediately following the car accident, Weller desired to reduce his obligation to compensate Kruse for the injuries he caused by hiding or otherwise shielding his assets and sought out professional assistance in doing so. He redoubled these efforts in the months following the personal injury trial which, according to the Petition, continue to the present day.

1. Initial efforts

Shortly after the collision, Weller spoke with his children about his financial concerns stemming from the car accident. *Id.* ¶ 27. Weller's experience as an insurance agent led him to believe he would face a major lawsuit resulting from his negligence and gave him a prescient warning that he faced a judgment that could put his family farm and other valuable assets at risk. *See id.* ¶¶ 26–27. Weller's fears were confirmed when he was informed by his insurance company

that he would need to retain his own legal counsel to represent him in the personal injury lawsuit because his exposure exceeded his policy limits. *Id.* ¶ 30.

Accordingly, Weller retained a local "estate planning" attorney shortly after the accident who advised him to transfer his farms and other real estate into a revocable trust and to make cash gifts to family members, which he agreed to do. *Id.* ¶¶ 31, 32, 25. On March 23, 2012, Weller transferred all of his real estate by quit claim deed into the newly-formed Steven J. Weller Revocable Trust (the "Trust"), of which he was the sole trustor, trustee, and primary beneficiary. *Id.* ¶¶ 11, 32–33. Weller then made numerous $13,000 cash "gifts" to a number of individuals totaling $104,000, including to his son, daughter, brother, nephew, niece, girlfriend, girlfriend's daughter, and girlfriend's granddaughter, in addition to making significant contributions to his children's college savings funds. *Id.* ¶ 35. In preparing for pre-trial settlement negotiations in the personal injury action, Weller presented personal financial documents to Kruse that "grossly undervalued Weller's farm property and homestead," forming the basis for settlement offers well below the judgment eventually rendered. *See id.* ¶¶ 40–44.[3] Weller was later advised that these gifts were unlawful fraudulent transfers, and that he should reverse the transactions. *See id.* ¶¶ 39, 41.

2. Weller retains Repp and the Dickinson Law Firm

Against this backdrop, the Petition alleges, Weller turned to the Attorney Defendants. *See id.* ¶ 47. When it became apparent that Kruse would not accept a settlement Weller was willing to offer (one that allowed Weller to keep his farms) and the Trust could not protect his assets as he had been told, Weller sought out additional professional advice. *Id.* ¶¶ 34, 44–46.

[3] The pleadings do not allege or otherwise indicate that Weller's insurance counsel was aware of Weller's misrepresentations or his intention to hide his assets.

Defendant David M. Repp is an attorney at the Des Moines law firm Dickinson, Mackaman, Tyler & Hagen, P.C. (the "Dickinson Law Firm") (collectively, the "Attorney Defendants"). *Id.* ¶¶ 3–4. Weller testified in his judgment debtor examination that he sought out Repp because of the threat Kruse's personal injury lawsuit posed to his assets. *Id.* ¶¶ 47, 82. He was explicit in the reason for retaining Repp: "I went to him because of [Kruse's personal injury] lawsuit." *Id.* ¶ 47 at 14 (alteration in original). And according to the allegations contained in the Petition, the purpose behind seeking Repp's representation was no secret to his new attorney: Weller told Repp that he had been in an auto accident; that the plaintiff (Kruse) claimed millions of dollars in damages; and that his insurance coverage would likely be exhausted by the claims against him. *Id.* ¶¶ 47–48. Weller also testified that he told Repp of his previous attempts to shield himself from judgment by transferring his assets to a revocable trust and making cash "gifts." *See id.* ¶ 49. To this end, Weller testified he went to Repp specifically because Repp holds himself out as an "asset protection attorney." *Id.* ¶ 47 at 15; *see also id.* ¶ 82.

Repp agreed with the assessment that the attempted cash gifts were likely fraudulent and unlawful transfers of wealth. *Id.* ¶ 49.[4] But he recommended that Weller could protect his assets another way, instead: by transferring his assets—including his farmland—to a limited liability company. *Id.* ¶ 50. Repp organized Weller Farms, LLC ("Weller Farms") on Weller's behalf on March 3, 2015, just over one month before trial in the personal injury case was scheduled to begin. *Id.* ¶ 52. He proceeded to prepare the documentation to effect the transfer of Weller's assets to the newly-founded entity. *Id.* ¶¶ 52–53, 61, 69. The operating agreement governing the LLC named Weller and his adult son, Cody Weller, the only members of the organization. *See id.* ¶ 61. Among

[4] The Petition alleges the Attorney Defendants represented that these "gifts" were returned to Weller but were in fact "funneled by Weller and Repp to Weller Farms." [ECF No. 18-2 ¶¶ 112–19].

other things, the objective of Weller Farms was to "provide protection to family assets from the claims of future creditors against family members." *Id.* ¶ 62. And it contained, according to Plaintiffs, special creditor-thwarting provisions that were "beyond the understanding and abilities of laypersons" and "particularly draconian." *See id.* ¶¶ 65–66.[5] Weller, acting as sole trustee, conveyed all of his farm real estate (with the exception of his homestead and office building) from the Trust to Weller Farms via quit claim deed the same day the entity was formed. *Id.* ¶ 53.

Weller testified he knew, at the time of these transactions approximately one month before the personal injury trial, that he was likely to incur liability to Kruse that well exceeded his assets based on his admission of liability. *Id.* ¶¶ 56–58. Nevertheless, included with the quit claim deed was a trustee's affidavit—signed by Weller, prepared and notarized by Repp—stating that the Trust was conveying the real estate "free and clear of any adverse claim." *Id.* ¶ 71. Though the real estate and assets conveyed would have normally been of substantial value, Plaintiffs allege Repp and Weller prepared false and misleading documents about the financial condition of Weller Farms that represented the entity as having a negative net equity of ($16,506) after the transfer. *See id.* ¶¶ 88–89. These financial statements, Plaintiffs allege, came almost immediately after the court rendered judgment in Kruse's favor as a further effort to extract a settlement that was a fraction of what Kruse was owed. *Id.* ¶ 90.

[5] For instance, Plaintiffs claim the Weller Farms operating agreement: allowed Weller to retain voting rights in the company's distributions even if there was an execution upon or assignment of his membership interest; provided that a levy of execution on financial distributions would trigger a buy-out provision to first allow Weller Farms and then Cody Weller to buy Weller's interest at an amount set by the Wellers themselves; retained authority for Weller to deplete all profits and assets of the entity through salaries to its members at an amount determined by the Wellers; and allowed the Wellers to obtain personal loans secured by mortgages on the assets of Weller Farms. *See* [ECF No. 18-2 ¶ 65].

3. January 4, 2016 refinancing with First State Bank

"Without financing," the Petition alleges, "the scheme to defraud Kruse would have collapsed and could not have continued." *Id.* ¶ 91. According to the Petition, Weller called on the Bank Defendants for help.

Defendants Zachary I. Guinn and Bradley J. Van Vark were, at the time, loan officers at First State Bank of Lynnville, Iowa ("First State" or the "Bank"), which is also a named defendant in this action (collectively, the "Bank Defendants"). *Id.* ¶¶ 7–8. Guinn is now Assistant Vice President at First State, and Van Vark currently serves as Vice President. *Id.* First State holds mortgages on Weller's real estate from transactions executed in 2002 and 2007 that continue to encumber his farmland. *See id.* at 140–45, 161–70. On October 9, 2015, Guinn and Weller jointly prepared a personal financial statement for First State's records to be used in future loans. *Id.* ¶ 95.[6] The Petition alleges this financial statement did not contain any reference to the judgment as an outstanding liability, even though the documents were prepared five months after Kruse's $2.5 million judgment lien was entered and recorded and Guinn reviewed Weller's credit report, where he should have learned of it. *Id.* ¶¶ 94–95, 100. The statement also listed the farm real estate as a personal asset of Weller, more than six months after Weller conveyed the property to Weller Farms and the quitclaim deed had been recorded. *Id.* ¶ 96. Instead of indicating Weller was insolvent, the financial statement reported Weller had a positive net worth of $375,871 by excluding Kruse's judgment and including Weller Farm real estate on the document. *Id.* ¶ 101.

[6] The Petition does not assert Van Vark played an active role in the allege scheme himself, but claims, upon information and belief, that he possessed actual knowledge or was on notice of the car accident and personal injury trial, Kruse's resulting $2.5 million judgment, and the plan to organize Weller Farms by virtue of his position as Guinn's superior and his previous involvement with Weller's loan account. [ECF No. 18-2 ¶ 144].

This October 2015 financial statement was used by First State to refinance the mortgages securing Weller's farm real estate approximately three months later. *Id.* ¶ 97. The Petition alleges that on January 4, 2016, Weller, Weller Farms, and First State executed a series of transactions that involved the following security interests and debt obligations:

- An additional real estate mortgage for $500,000 secured by Weller's farm real estate, granted by Weller Farms;
- A guaranty from Weller Farms guaranteeing all past, present, and future debts incurred by Weller to First State, whether it be personal, business, or another type of debt;
- A personal loan to Weller for $296,648.87, purportedly secured by a future advance clause in the 2002 farm mortgage; and
- A second personal loan to Weller for $40,357, purportedly secured by a future advance clause in the 2007 commercial real estate mortgage.

Id. ¶ 98 (a)–(d). At the time of this arrangement, the May 11, 2015 financial statement prepared by Weller and Repp reported Weller Farms as having a net equity value of ($16,506). *Id.* ¶¶ 89, 98(a).

Plaintiffs allege in their pleadings that the January 4, 2016 refinancing contained abnormalities evidencing First State's knowledge of Weller's fraudulent transactions with Weller Farms and his broader scheme to defraud Kruse. These abnormalities include: First State's use of the farm real estate to secure the personal loans to Weller despite Guinn's knowledge of Weller Farms' existence; First State's continued documentation of the farmland as Weller's personal asset in the face of the recorded quit claim deed transferring that property to the LLC; and in light of these features, the Bank's structuring of the refinancing to permit Weller to obtain personal loans with a guaranty from Weller Farms under mortgages secured by property formally owned by the business entity, as opposed to loaning money to Weller Farms under a new note with a guaranty from Weller personally. *See id.* ¶ 136. Moreover, Plaintiffs allege First State was blindly indifferent to the fraudulent nature of Weller Farms and the real estate conveyances because, among other

things, Weller Farms was undercapitalized, did not follow corporate formalities, and comingled company assets with Weller's personal finances. *Id.* ¶ 157. Plaintiffs' theory: the financing, secured by false financial statements for Weller and Weller Farms, enabled Weller to continue borrowing money with loans secured by the real estate and other assets transferred to Weller Farms without exposing those assets to Kruse's judgment lien. *See id.* ¶¶ 92–93.

C. Act Three: The Fraudulent Transfer Action

The Weller saga concludes in a dramatic culmination of culpability. Plaintiffs filed suit in equity in the Iowa District Court for Mahaska County on March 3, 2016, challenging the validity of Weller's financial dealings starting shortly after the auto accident in 2012 and continuing through the 2016 refinancing. *See id.* ¶ 17. Weller was represented by the Attorney Defendants. *Id.* ¶ 17. After a bench trial, the Iowa district court found in favor of Plaintiffs in a written order dated March 13, 2018. *Id.* ¶ 121; *see also id.* at 103–05 (fraudulent transfer trial order).

By clear and convincing evidence, the trial court found Weller Farms was formed with the specific intent to shield Weller's assets and prevent Kruse from levying her judgment lien against his real estate. *Id.* at 100. Noting that although such business formation and asset organization practices are a common and often legitimate way to secure personal retirement and guarantee an inheritance for one's children, the facts established estate planning was not Weller's intent; to the contrary, the court observed that "Weller has attempted to go about his life and conduct business as though he did not owe Plaintiffs $2.6 million [sic]. Bluntly, he has not acted like a person who has any intent on satisfying the judgment against him." *Id.* at 100–01; *see also id.* at 98 ("[A]voiding paying Christina Kruse and her family the necessary money for Ms. Kruse to live is not an honorable venture. In fact, it is fraud and it is not allowed by Iowa law."). The court concluded that "Weller's

actions in creating the LLC and subsequent behavior indicate his goal was and still is to prevent creditors from obtaining the value of [his] land." *Id.* at 102.[7]

Accordingly, the state court avoided and set aside as fraudulent the following transactions:

- Weller's eight 2012 cash gifts to family members given immediately following the accident;
- Later contributions to the college savings accounts for Weller's children made in 2013;
- The March 3, 2015 quit claim deed from Weller, acting as trustee of the Steven J. Weller Revocable Trust, to Weller Farms, along with "all other title documents associated with the avoided transfers . . . , transfers by Steven J. Weller in the [Weller Farms] Operating Agreement . . . , and acts and transactions, including transfers or obligations incurred by Weller Farms LLC, or anyone acting on behalf of Weller Farms LLC";
- All transfers made by Weller to Weller Farms and all obligations incurred by Weller on behalf of Weller Farms, including the real estate mortgage, guaranty, loans, and security interests contemplated by the January 4, 2016 refinancing with First State Bank, including, without limitation, "all loans signed by Steven J. Weller in any capacity on January 4, 2016, and all other security interests, loans, or documents granted by either Defendant Steven Weller in any capacity related to Weller Farms LLC or individually."

See id. ¶¶ 115, 122, 126; *see also id.* at 103–05 (trial order). Accordingly, the judge decreed that "[a]ll assets of Weller Farms LLC are owned in substance by Steven J. Weller and remain available to creditors . . . including Plaintiffs . . . free and clear of any claims by Cody Weller, Weller Farms LLC, or Steven J. Weller Revocable Trust." *Id.* ¶¶ 129–30.

[7] The trial court also found that Cody Weller did not conspire with his father to defraud Kruse and, contrary to Weller's testimony, played no role in the entity's formation. [ECF No. 18-2 at 95].

D. Curtain Call: The Mortgage Foreclosure Action and Federal Racketeering Litigation

Plaintiffs' efforts to collect on their $2.5 million judgment continues. After the Iowa district court issued its ruling in the fraudulent transfer case, First State filed suit to foreclose on the January 4, 2016 notes advancing the sums of $296,648.87 and $40,357.70, as well as a newer note entered into in 2017 for $60,117.67. *Id.* ¶ 18; *see also id.* at 124–26, 129–31, 133–34. The Bank contends these transactions are senior interests secured by the 2002 and 2007 mortgages on Weller's real estate, a position Plaintiffs reject. *See id.* at 124–25, 129–30.[8] The mortgage foreclosure case is currently pending in the Iowa District Court for Mahaska County. *See id.* ¶ 18.

Plaintiffs initiated this lawsuit, also in the Iowa District Court for Mahaska County, on February 28, 2019. [ECF Nos. 18-1 at 1]. Their nine-count, 263-paragraph Petition brings suit against the Attorney Defendants and the Bank Defendants, alleging both knowingly participated in Weller's fraudulent attempts to shield his assets from Plaintiffs' judgment lien and unlawfully assisted Weller in avoiding his obligation to compensate Kruse for her personal injuries. *See generally* [ECF No. 18-2 at 1]. Count I alleges transferee and obligee liability against First State under Iowa's Uniform Fraudulent Transfer Act ("IUFTA"), Iowa Code § 684.7 (2015). Count II alleges the Attorney Defendants and Bank Defendants aided and abetted Weller's fraudulent transfers, and should be jointly and severally responsible under the IUFTA; Count IV alleges the Attorney Defendants and Bank Defendants are liable under that statute as co-conspirators in Weller's scheme to defraud Kruse. Count III alleges Defendants intentionally interfered with Plaintiffs' efforts to levy their judgment lien and collect their personal injury award or, in the alternative, aided and abetted such interference, asserting a claim for general tortious interference

[8] There is no indication First State seeks to foreclose on the avoided 2016 mortgage for $500,000. *See* [ECF No. 18-2 ¶¶ 124–26].

under the Iowa common law; Count V alleges they are liable as co-conspirators for Weller's tortious interference. Counts VI and VII assert civil causes of action under the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964; though they advance several theories of recovery, Plaintiffs generally allege the Attorney Defendants conducted or otherwise participated in the conduct of a racketeering enterprise with the purpose of defrauding Kruse, while all Defendants at least conspired to do so, *see* 18 U.S.C. § 1962(c), (d). Count VIII raises a claim for intentional infliction of emotional distress. Finally, Count IX requests injunctive, declaratory, and other equitable relief.

After removing the action to federal court, the Attorney Defendants promptly moved to dismiss Plaintiff's Petition under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. [ECF No. 4]. The Bank Defendants filed their own motion shortly thereafter, joining the Attorney Defendants' motion and raising additional arguments for dismissal. [ECF No. 11]. Plaintiffs resist.

II. STANDARD OF REVIEW

The Federal Rules of Civil Procedure require a complaint to present "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Conversely, a complaint is subject to dismissal when it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To meet this standard, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although the plausibility standard "is not akin to a 'probability

requirement,'" it demands the pleadings demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Thus, a complaint must plead more than mere "labels and conclusions" or "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (alteration in original) (quoting *Twombly*, 550 U.S. at 555, 557). All reasonable inferences must be drawn in the plaintiff's favor, *Crooks v. Lynch*, 557 F.3d 846, 848 (8th Cir. 2009), but "[t]he facts alleged in the complaint 'must be enough to raise a right to relief above the speculative level,'" *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009) (quoting *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009)).

Claims alleging fraud are subject to a heightened pleading standard. *Crest Const. II, Inc. v. Doe*, 660 F.3d 346, 353 (8th Cir. 2011); *see also Murr Plumbing, Inc. v. Scherer Bros. Fin. Servs. Co.*, 48 F.3d 1066, 1069 (8th Cir. 1995) ("The particularity requirements of Rule 9(b) apply to allegations of mail fraud and wire fraud when used as predicate acts for a RICO claim." (citations omitted)). "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). The complaint must therefore state with particularity "the who, what, when, where, and how." *Great Plains Tr. Co. v. Union Pac. R.R. Co.*, 492 F.3d 986, 995 (8th Cir. 2007). But matters such as "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b).

Constitutional considerations also constrain a plaintiff's ability to seek relief. A complaint that fails to articulate an "'injury in fact' to the plaintiff that is 'fairly traceable to the challenged action of the defendant,' and 'likely [to] be redressed by a favorable decision,'" does not present a "case" or "controversy" within the meaning of Article III of the United States Constitution to establish the "irreducible constitutional minimum of standing" for the suit to be heard in federal court. *Braden*, 588 F.3d at 591 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

"The standing inquiry is not, however, an assessment of the merits of a plaintiff's claim." *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1023 (8th Cir. 2012). A facial attack to a plaintiff's standing to bring suit invokes federal courts' subject mater jurisdiction and is reviewed as a challenge to the sufficiency of the pleadings. Fed. R. Civ. P. 12(b)(1); *see Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 521 (8th Cir. 2007).

III. ANALYSIS

The Amended Petition makes plain that, from the beginning, Weller sought to avoid his obligation to compensate Kruse for the injuries caused by his negligence and received professional direction and assistance to do so. Assuming the factual allegations contained in the pleadings to be true, and affording them all reasonable inferences, Plaintiffs state a cognizable injury and advance plausible claims under RICO and the IUFTA. Further, Defendants have not provided a persuasive argument as to why Iowa law would not recognize a claim for intentional interference under the facts of this case and the Court concludes Plaintiffs may proceed with their claim under the *prima facie* tort doctrine. But Plaintiffs fail to advance facts that support a claim for common law intentional infliction of emotional distress, so that count must be dismissed. And although the Iowa Supreme Court has not considered the question, this Court concludes the IUFTA does not support liability on a theory of civil conspiracy or aiding and abetting fraudulent transfers.

At this early stage in the case, the allegations documented by Plaintiffs' Petition are just that—allegations. But they are troubling allegations nonetheless. The facts, as pleaded by the Plaintiffs, do not tell a story of bankers acting like bankers or attorneys acting like attorneys; they allege plausible claims that the Defendants departed from the "traditional rendition of [professional] services" and "crosse[d] the line" to active participation in a fraudulent scheme. *Handeen v. Lemaire*, 112 F.3d 1339, 1348–49 (8th Cir. 1997).

A. Article III Standing

First, a word on standing. Defendants move to dismiss Plaintiffs' Petition in part under Rule 12(b)(1), appearing to challenge the Court's subject matter jurisdiction. Curiously, however, all of the arguments raised in Defendants' briefs appear to hinge on *statutory* standing, not *constitutional* standing—that is, Plaintiffs' ability to demonstrate they are entitled to relief, as opposed to their pleading of an actual, concrete and particularized injury to personal legal interests. *See* [ECF No. 8 at 22–25]; [ECF No. 11-1 at 11-22]; *cf. Subramanian v. Tata Consultancy Servs. Ltd.*, 352 F. Supp. 3d 908, 915–16, 918 (D. Minn. 2018) (holding plaintiff had Article III standing but failed to plead facts supporting statutory standing under RICO). Though the question of whether a plaintiff pleads facts sufficient to establish an Article III "case" or "controversy" is "closely bound up with the question of whether and how the law will grant [the plaintiff] relief," it is important "not to conflate Article III's requirement of injury in fact with a plaintiff's potential causes of action." *Braden*, 588 F.3d at 591.

"When a plaintiff alleges injury to rights conferred by statute, two separate standing-related inquiries are implicated: whether the plaintiff has Article III standing (constitutional standing) and whether the statute gives that plaintiff authority to sue (statutory standing)." *Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 934 (8th Cir. 2012). Constitutional standing is "a question of justiciability" and considers only "the constitutional power of a federal court to resolve a dispute and the wisdom of so doing." *Id.* (second quote citing *Graden v. Conexant Sys., Inc.*, 496 F.3d 291, 295 (3d Cir. 2007)). A federal court must dismiss the action if, at any time, the court determines that it lacks subject-matter jurisdiction. Fed. R. Civ. P. 12(h)(3). Statutory standing, by contrast, "goes to the merits of the claim," *Miller*, 688 F.3d at 934, and "has nothing to do with whether there is a case or controversy under Article III." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97

(1998). At the pleading stage, the plaintiff bears the burden of clearly alleging facts demonstrating she "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan*, 504 U.S. at 560–61; *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

Plaintiffs certainly fulfill Article III's standing requirements here. Plaintiffs plead facts that allege Defendants obstructed Plaintiffs' efforts to levy their $2.5 million judgment lien on Weller's farm real estate and erected barriers to their recovery of compensatory damages won in the personal injury lawsuit. According to Plaintiffs, these barriers deprived them of money to which they are owed for past and future medical costs. [ECF No. 18-2 ¶ 19(l)]. Defendants' alleged participation in the fraud also necessitated extensive and costly litigation. *E.g.*, *id.* ¶¶ 17-18, 120–34. These allegations successfully state an injury-in-fact that shows Plaintiffs suffered an invasion of their own "'legally protected interest' that is 'concrete and particularized.'" *Spokeo*, 136 S. Ct. at 1548 (quoting *Lujan,* 504 U.S. at 560). And as will become clear in the discussion that follows, Plaintiffs' injury is actual, not "conjectural" or "hypothetical"; it is "fairly traceable" to the conduct of the Attorney Defendants and Bank Defendants. *See id.* Finally, Plaintiffs seek a wide array of declaratory and injunctive relief that would allow Plaintiffs to levy their judgment lien on Weller's real estate free and clear of the 2016 transactions with First State, as well as compensatory damages, punitive damages, treble damages, attorney's fees, and costs. A favorable jury verdict or court ruling granting the relief Plaintiffs seek would redress those financial harms. *See* 18 U.S.C. § 1964(a), (c); Iowa Code § 684.7.

B. Iowa Uniform Fraudulent Transfer Act

The Court first turns to Plaintiffs' claims brought under the IUFTA, 1994 Iowa Acts ch. 1121, § 16 (codified at Iowa Code § 684.12 (1995)).[9] In Count I Plaintiffs seek to hold First State liable under the statute's substantive provision as a subsequent transferee or obligee of Weller's farm real estate; they allege in Counts II and IV all Defendants are liable as accessories to Weller's fraud. The Bank Defendants contend Plaintiffs have not been prejudiced by the Bank Defendants' alleged conduct and thus lack standing to bring suit. They also argue Plaintiffs' claim for aiding and abetting Weller's fraudulent transfers and conspiracy in his ongoing scheme to defraud cannot be maintained as a matter of law.

1. Standing: injury and prejudice

At common law, it was entirely lawful for a debtor to prefer one creditor over another "even if the debtor's intentions toward the nonpreferred creditor are spiteful and will delay or prevent them from obtaining payment." *First State Bank, Belmond v. Kalkwarf*, 495 N.W.2d 708, 712 (Iowa 1993). And so long as a preferred creditor "acts in good faith for [its] own protection," the creditor's knowledge of the debtor's fraudulent purpose did not defeat its claim. *Id.* However, a transferee "may not lawfully take a conveyance in order to further the plans of the debtor to hinder, delay, or defraud other creditors; the acceptance of a conveyance under such circumstances amounts to a participation in the debtor's fraud." *Prod. Credit Ass'n of Midlands v. Shirley*, 485 N.W.2d

[9] The Iowa Legislature amended Chapter 684 of the Iowa Code in 2016 to by replacing the UFTA and enacting the Uniform Law Commission's restyled promulgation of the law, the Uniform Voidable Transfers Act ("UVTA"). *See* 2016 Iowa Acts ch. 1040, § 15. With the exception of a few specific substantive revisions, the IUVTA mostly reflected grammatical and stylistic alterations and is substantially similar to its predecessor in almost every regard; the amendment was only meant to "address a small number of narrowly-defined issues, and was not a comprehensive revision." Prefatory Note to the UVTA, at 5 (Uniform L. Comm'n 2014). Because all transactions at issue in this case occurred prior to the effective date of the amended statute, all citations to the relevant law will be to the IUFTA unless otherwise noted.

469, 472 (Iowa 1992). When a preferred creditor knows of the debtor's fraudulent intent and accepts a transfer of security "wholly *or in part* to aid the fraud," that creditor lacks good faith because it "participated in the wrong," rendering the transaction fraudulent. *First State Bank*, 495 N.W.2d at 712 (emphasis added). Fraud is rarely committed openly, and as a result, "direct evidence of it is rarely obtainable; fraud may, and usually must be proved by circumstantial evidence." *Shirley*, 485 N.W.2d at 472. "Badges" or "indicia" of fraud at common law included: "inadequacy of consideration, insolvency of the transferor, pendency or threat of third-party creditor litigation, secrecy or concealment, departure from the usual method of business, any reservation of benefit to the transferor, and the retention by the debtor of possession of the property." *Benson v. Richardson*, 537 N.W.2d 748, 756 (Iowa 1995).

It is generally understood that the IUFTA codified the state's common law jurisprudence on fraudulent conveyances when it was enacted in 1995. *See Schaefer v. Schaefer*, 795 N.W.2d 494, 498 (Iowa 2011) ("The rationale for the right to reclaim fraudulently conveyed property is, and always has been, to prevent a debtor from 'frustrat[ing] his creditor's rights and avoid[ing] his obligations by changing title to his assets.'" (quoting 37 Am. Jur. 2d *Fraudulent Conveyances and Transfers* § 1, at 520 (2001)). Under the IUFTA, "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation . . . [w]ith the actual intent to hinder, delay, or defraud any creditor of the debtor." Iowa Code § 684.4(1)(a) (2015). Many of the same indicia of fraud recognized by the common law were incorporated into the statutory regime. *See id.* § 684.4(2)(a)–(k) (listing factors to be considered in determining whether the debtor's actual intent was fraudulent). In the event a transfer or obligation is found to be fraudulent, a creditor is entitled to an array of civil remedies, including avoidance of the transfer or obligation and other equitable relief warranted by the circumstances.

Id. § 684.7(1)(a), (1)(c) (2015). A defrauded creditor "may recover judgment for the value of the asset transferred . . . or the amount necessary to satisfy the creditor's claim" against any subsequent transferee, though a good-faith transferee is entitled to a preservation of its interest in the asset. *See id.* § 684.8(2), (4) (2015).

But a defrauded creditor "must show prejudice, even if the transferor's fraudulent intent is evident." *Schaefer*, 795 N.W.2d at 498. First State does not actually contend Plaintiffs fail to state a claim under the IUFTA, but rather challenges Plaintiffs' standing to pursue an action under that statute. *See Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 885 (Iowa Ct. App. 1996) ("A fraudulent conveyance will not be set aside unless complaining creditor can show they were prejudiced."). To show prejudice, or injury, "creditors must be able to show they would have received something which has become lost to them by reason of the conveyance." *C. Mac Chambers Co. v. Iowa Tae Kwon Do Academy, Inc.*, 412 N.W.2d 593, 596 (Iowa 1987). First State urges that Plaintiffs cannot show they suffered any injury or were otherwise prejudiced by the Bank's participation in the January 4, 2016 refinancing because the Bank's 2002 and 2007 mortgages on Weller's farm real estate reflect prior-recorded senior security interests that have absolute priority over Plaintiffs' subsequent 2015 judgment lien. Plaintiffs have not lost anything they are entitled to, so the argument goes, because Plaintiffs' allegations against First State depend on the conclusion that "all of [the Bank's] right, title, and interests in the real estate and assets involved in the fraudulent refinancing are subordinated to Kruse and [her] $2.5 million judgment." [ECF No. 18-2 ¶ 109]; *see also id.* ¶¶ 169–71, 174, 253. It is not, the Bank contends, and Plaintiffs therefore lack standing to pursue any cause of action premised on Weller's fraudulent conveyances.

The Court disagrees. Plaintiffs plead facts that support a reasonable inference that the Bank knew of Weller's fraudulent intent and was motivated, at least in part, by a desire to assist Weller's

fraudulent transfers and overall scheme. Taken as true at the pleading stage, the Petition raises legitimate questions of the Bank's motivation for the January 4, 2016 refinancing. If the Bank's sole motive was self preservation and good-faith protection of its senior security interests, the discrepancies and irregularities present in the transaction—recognizing Weller Farms's existence while simultaneously ignoring its ownership of the real estate; devaluing the land as a personal holding of Weller while also omitting Kruse's $2.5 million judgment from his financial statement—are unusual because they would not have been necessary to effectuate a refinancing through ordinary banking practices. On the other hand, the arrangement benefitted Weller greatly: it enabled Weller's fraudulent scheme by allowing him to at once legally disassociate himself personally from his valuable property while at the same time continuing to enjoy the use and benefit of those same assets for the operation of his business and daily life; and it erected a second barrier to Kruse's recovery by appearing to disassociate the refinancing from his fraudulent transactions with Weller Farms, even though the LLC in truth owned the property at the time and thus its guaranty of the loan would have been crucial to securing the transaction. The upshot of all this is that the refinancing, structured the way it was, further insulated Weller from Kruse's judgment lien and allowed him to operate as if it did not exist.

The Bank offers no explanation except to complain that Plaintiffs' scrutiny of the 2016 refinancing would force it to place form over substance. But for purposes of establishing First State's knowledge and intent surrounding the 2016 refinancing, context is key; the form of the transaction, compared to its substance, matters. The structuring of the 2016 refinancing infers First State's knowledge of and assistance to Weller's illegal efforts in light of multiple indicia of fraud that would have been available to the Bank under the facts alleged in the Petition. To start, Weller did not even directly own the real estate as he conveyed it to a corporate entity he almost entirely

controlled. *See* Iowa Code § 684.4(2)(a), (b) (considering "[w]hether the transfer or obligation was to an insider" and "[w]hether the debtor retained possession or control of the property transferred after the transfer" in evaluating fraudulent intent); *see also* § 684.1(8)(b), (c) (defining an "insider" to include a director, officer, or "person in control" of a business debtor). The transfer occurred within weeks of a trial for which Weller had admitted complete liability. *See id.* § 684.4(2) (g) (considering "[w]hether the debtor removed or concealed assets"). And Kruse obtained and publicly-recorded her $2.5 million personal injury judgment a matter of months prior to the creation of the financial documents underlying the 2016 refinancing and less than one year before the advances were made. *See id.* § 684.4(2)(j) (considering "[w]hether the transfer occurred shortly before or shortly after a substantial debt was incurred"). Moreover, after incurring a $2.5 million liability for Kruse's personal injuries, Weller would have almost certainly been insolvent. *See id.* § 684.4(2)(i) (considering "[w]hether the debtor was insolvent or became insolvent shortly after the transfer was made"; *see also id.* § 684.2(1) ("A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets."). Contrary to First State's contentions, Plaintiffs' challenge to the transaction simply expects the Bank to respect form and not disregard substance in its lending practices. Being unnecessary under normal circumstances to grant the loans and with no other legitimate reason for doing so, the structuring of the 2016 refinancing provides a reasonable inference that the Bank made a deliberate decision to structure the deal in a way beneficial to Weller to, at least in part, assist him in his effort to defraud Kruse.

To this First State claims that the advances made through the 2016 refinancing did not affect the value of Plaintiffs' judgment lien because the lien was already subordinate to the Bank's senior interests, and as such Plaintiffs still lack any cognizable injury or prejudice. But First State cannot deny that the Petition alleges the 2016 advances made under the 2002 and 2007 mortgages had the

effect of diluting the amount Kruse could collect after liquidating the real estate and first satisfying the Bank's senior interests by increasing the amount claimed by the Bank. If Plaintiffs are successful in proving First State knew of Weller's fraudulent intent and entered into the 2016 refinancing motivated, even if only in part, to aid Weller's effort to shield his assets from Kruse through the Weller Farms scheme, the Bank would not be a good-faith transferee and its priority—at least as to the sums advanced in 2016—would not be honored as to Kruse. *See* Iowa Code § 684.4(1)(a); *id.* § 684.7(1); *cf.* Iowa Code § 654.12A(2) ("[T]he priority of a prior recorded mortgage . . . does not apply to loans or advances made after receipt of notice of foreclosure or action to enforce a . . . subsequently recorded or filed lien."). Nothing in the pleadings indicates Plaintiffs would have recovered *nothing* had they been able to levy their judgment lien against Weller's farm real estate in the absence of his fraud and the 2016 notes—even after first liquidating First State's senior interest in the land. To the contrary, the 2000 mortgage and future advance clause secures credit in an amount up to $300,000, [ECF No. 18-2 at 140]; but First State extended $296,648.87 under that mortgage in the 2016 refinancing and presently seeks to foreclose on $292,351.58, *id.* at 124, 126. Similarly, the 2007 mortgage and future advance clause secures credit in an amount up to $50,000, *id.* at 162; but First State extended $40,357.70 under that mortgage in the 2016 refinancing and presently seeks to foreclose on $35,084.94, *id.* at 129, 131. Plaintiffs raise an inference that, absent the sums advanced under the 2016 refinancing, the real estate would not be heavily encumbered and, even as junior lienholders to the Bank's mortgages themselves, would stand to recover at least some value from the sale of Weller's farm. *See Shirley*, 485 N.W.2d at 474–75 (finding prejudice to defrauded creditor where the defendant's fraudulent acts "effectively prevented [the creditor] from bidding at a sheriff's judicial sale" for farmland because "[e]vidence presented at trial indicated that had [the bank] received the actual value" of assets

transferred to it, the bank "would have in turn credit bid between $90,000 to $100,000 less at the judicial sale"); *cf. Regions Bank v. J.R. Oil Co., LLC*, 387 F.3d 721, 729–31 (8th Cir. 2004) (holding injury to junior security interests and rights to repayment "is not injury that may support standing" where senior security interest "completely encumbered the collateral" rendering the junior interest "of no value from its inception").[10]

The Court, of course, expresses no opinion as to whether Plaintiffs will, in the end, be able to substantiate their claims to be entitled to the relief they seek. For now, it suffices that Plaintiffs adequately plead facts that, taken as true, demonstrate First State's knowledge and intent as to the circumstances giving rise to fraud and establish a concrete injury sufficient to bring suit. *See* Fed. R. Civ. P. 9(b). Because although First State certainly had the right to protect its interests and is not liable simply for taking *good-faith* action as a "preferred creditor," *see First State Bank*, 495 N.W.2d at 712, the irregularities and circumstances surrounding the January 4, 2016 refinancing alleged in the Petition, viewed in a light most favorable to Plaintiffs, provide a reasonable inference that was not the case, *see Benson*, 537 N.W.2d at 758, 760; *Shirley*, 485 N.W.2d at 473–75.

2. Accessory liability: aiding and abetting fraudulent transfers and civil conspiracy

The Iowa Supreme Court has not considered whether a civil action may be brought against a party that aids or abets another to violate the IUFTA or conspires to do the same; but "[w]hen a state's highest court has not decided an issue, it is up to this court to predict how the state's highest court would resolve that issue." *Church Mut. Ins. Co. v. Clay Ctr. Christian Church*, 746 F.3d 375,

[10] The injury analysis pertaining to the Bank's 2016 refinancing applies equally to Plaintiffs' civil RICO and common law tortious interference claims. *See Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 496 (1985) (providing civil RICO plaintiffs have standing "if, and can only recover to the extent that, [s]he has been injured in [her] business or property"); *Grimm v. US W. Commc'ns, Inc.*, 644 N.W.2d 8, 12 (Iowa 2002) (requiring plaintiff alleging intentional interference with contractual relationships to show "the amount of damages" sustained).

380 (8th Cir. 2014) (citation omitted). Decisions of intermediate appellate courts are not controlling, but can be persuasive in determining the condition of state law. *See Cont'l Cas. Co. v. Advance Terrazzo & Tile Co.*, 462 F.3d 1002, 1007 (8th Cir. 2006).

Defendants contend liability under theories of aiding and abetting and civil conspiracy are not available under the IUFTA because the statute provides remedies only against a debtor or transferee. The Court agrees and predicts the Iowa Supreme Court would not recognize accessory liability under the state's fraudulent conveyances act if squarely presented with the issue.

a. IUFTA background

Iowa adopted the IUFTA in 1995. *See* 1994 Iowa Acts ch. 1121, § 16 (codified at Iowa Code § 684.12 (2005)). Described above, the statute provides a defrauded creditor with a right of action to avoid a fraudulent transaction and recover the value of the asset transferred. *Schaefer*, 795 N.W.2d at 497 ("Creditors have the right to set a fraudulent conveyance aside and collect the proceeds to satisfy the debt owed."). On its face, the IUFTA provides a cause of action and remedies only "against the debtor and transferee," not against any other party. *Id.* at 498 ("[Iowa's] fraudulent conveyance law voids the transaction as between the creditors of the transferor and the transferee, but does not render the conveyance void as between the transferor and the transferee.") (citing Iowa Code § 684.7); *see also* Iowa Code § 684.8(2) (providing "the creditor may recover judgment for the value of the asset transferred" against "the first transferee of the asset," "the person for whose benefit the transfer was made," or "an immediate or mediate transferee of the first transferee who took for value"). However, the statute expressly retains "the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause," to supplement its provisions under the common law unless expressly displaced by the IUFTA. Iowa

Code § 684.10 (2015). Commentary to the recently revised version of the statute reflects an aversion to intrude into supplementary principles of state common law, specifically disclaiming that "[t]he Act does not address the extent to which a person who facilitates the making of a transfer or the incurrence of an obligation that is voidable under the Act may be subject to liability for that reason, whether under a theory of aiding and abetting, civil conspiracy, or otherwise." UVTA § 15, cmt. 5 (Am. Law Inst. 2014) ("UVTA") (noting state law regarding rules of professional conduct, attorney-client privilege, and criminal sanctions govern such matters).

b. Accessory liability

As a general matter, accessory liability based on theories of aiding and abetting or civil conspiracy rest on principles of tort law, as those doctrines are fundamentally intended to remedy "harm resulting to a third person from the tortious conduct of another." *See* Restatement (Second) of Torts § 876 (1979). Aiding and abetting and civil conspiracy are not actionable in and of themselves but give rise to a cause of action by virtue of a person's involvement in the underlying tortious acts that result in injury. *See Wright v. Brooke Grp. Ltd.*, 652 N.W.2d 159, 172 (Iowa 2002) (citing *Basic Chems., Inc. v. Benson*, 251 N.W.2d 220, 232 (Iowa 1977)). Civil conspiracy requires "an agreement . . . between the two persons to commit a wrong against another" and a mutual "intent to commit the act that causes injury"; a party is guilty of aiding and abetting a tortious act to another if the person knows of the wrong and provides "substantial assistance . . . in the achievement of the primary violation." *Ezzone v. Riccardi*, 525 N.W.2d 388, 398 (Iowa 1994).

The overwhelming number of courts to have considered the question of whether state fraudulent conveyance statutes support a cause of action for aiding and abetting or civil conspiracy have answered in the negative, albeit for different reasons largely resting on state law grounds. *See GATX Corp. v. Addington*, 879 F. Supp. 2d 633, 643–45, 648–50 (E.D. Ky. 2012) (surveying

courts' interpretation of accessory liability for fraudulent transfers noting that the majority of jurisdictions reject both theories). Textually, states adopting the UFTA have agreed that the statute contains no language that would suggest the creation of a distinct cause of action for accessory liability under a theory of aiding and abetting or civil conspiracy. *E.g. Freeman v. First Union Nat'l Bank*, 865 So.2d 1272, 1276 (Fla. 2004); *cf. FDIC v. Porco*, 552 N.E.2d 158, 159 (N.Y. 1990) (holding, under New York fraudulent conveyance statute, that the act "did not, either explicitly or implicitly, create a creditor's remedy for money damages against parties who . . . were neither transferees of the assets nor beneficiaries of the conveyance"). But Plaintiffs rightfully point out that such a view ignores the supplementary role of state common law in achieving a rounded picture of the act's liability scheme. Iowa Code § 684.10; *see also* UVTA § 15, cmt. 5. The statute's text, alone, is not dispositive because liability depends on the common law principles it incorporates.

Most courts reject accessory liability on the basis that an action for fraudulent transfer is fundamentally equitable in nature and a plaintiff suing in equity cannot recover monetary damages, which are traditionally a remedy at law. *E.g.*, *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1052–53 (Nev. 2015); *GATX*, 879 F. Supp. 2d at 648; *Forum Ins. Co. v. Devere Ltd.*, 151 F. Supp. 2d 1145, 1148–49 (C.D. Cal. 2001), *aff'd sub nom. Forum Ins. Co. v. Comparet*, 62 F. App'x 151 (9th Cir. 2003). Consistent with this view, many of these courts recognize that liability cannot attach to a *non-transferee* precisely because such a remedy would necessarily be for damages—not the equitable return of value to the defrauded creditor—and equity would not support a remedy against a party that never possessed the disputed property. *E.g.*, *GATX Corp.*, 879 F. Supp. 2d at 641–43; *Lewellen v. Universal Underwriters Ins. Co.*, 574 S.W.3d 251, 270 (Mo. Ct. App. 2019). *But see Beaulieu Grp., LLC v. Reichley*, No. 10-CI-3017-A, 2012 WL 6108022 (Ga. Super. Ct. Nov. 20, 2012) (concluding case law pre-dating statute supported recovery

in tort against corporate officers "whose acts of bad faith, actual fraud or conspiracy perpetrated a fraudulent transfer" and was not displaced by the legislature's enactment of the UFTA). One court has also opined that a fraudulent transfer is not an "independent tort" to which accessory liability can attach for precisely this reason. *See FDIC v. S. Prawer & Co.*, 829 F. Supp. 453, 456–57 (D. Me. 1993). Indeed, the notion that an aggrieved creditor can sustain a cause of action for aiding and abetting a fraudulent transfer or conspiring to do the same is decidedly the minority view. *Cf. Summers v. Hagen*, 852 P.2d 1165, 1169 (Alaska 1993) (holding that because the fraudulent conveyance of a debtor's property constitutes "a definite legal wrong, that wrong could be the subject of a civil conspiracy" in cases where "the existing equitable remedy of voiding the transfer is inadequate"); *McElhanon v. Hing*, 728 P.2d 256, 263 (Ariz. Ct. App. 1985), *rev'd in part on other grounds*, 728 P.2d 273 (Ariz. 1986).

c. Iowa law

The majority view seems to be most consistent with the position of the Iowa common law. Even in 1903, there was "a diversity of opinion as to whether a conspiracy to remove or conceal property so that it may not be reached by legal process is actionable." *Bitzer v. Washburn*, 121 Iowa 462, 96 N.W. 978, 980 (1903). But Iowa has, in at least one early twentieth-century case, declined to permit recovery of money damages in a suit for conspiracy under the common law of fraudulent transfers. *McKay v. Barrick*, 207 Iowa 1091, 224 N.W. 84, 86 (1929).

In *McKay*, the plaintiff obtained judgment for an outstanding debt owed to her by A.D. Barrick and Onie Barrick. *Id.* at 85. In an explicit and admitted effort to prevent the plaintiff from obtaining their real estate or its fair value, the Barricks conveyed land to their foster daughter, Nina May Barrick. *Id.* The plaintiff commenced an action in equity against the Barricks and Nina May to recover the amount owed. *Id.* The trial court agreed the three defendants "conspired for the

unlawful purpose of putting the properties referred to out of plaintiff's reach" and awarded damages "in a greater sum than the amount of plaintiff's judgment." *Id.* The Iowa Supreme Court reversed. *Id.* at 86. Even though the plaintiff had not secured a lien on any of the defendants' property, and the Barricks were therefore "at liberty to make such disposition of the property as they saw fit," the Court noted she still could have maintained an action to void the conveyances "made with [the] intent to defraud creditors," if the necessary conditions were met. *Id.* at 85–86. But, the Court observed, that was not what the plaintiff had done—even though the suit was originally docketed in equity, the Court observed the plaintiff's action, fundamentally, "was nevertheless one to recover damages, and it was a judgment for damages that she obtained in the lower court." *Id.*

Central to understanding *McKay* is the role of the actors. Crucially, the disappointed creditor in that early case did not seek to set aside the transactions or recover the value of the property in satisfaction of her judgment. Rather, her complaint, and the nature of the remedy she asserted, sought compensatory damages against the transferee of the conveyances. *See id.* The Court held:

> [Plaintiff] might pursue by legal process the property so conveyed, she might aid her process by suit in equity, or she might proceed by creditor's bill. *She had not, however a cause of action at law against the grantee Nina May for damages*. As that which is alleged to have been done by the defendants individually did not give plaintiff a cause of action for damages against any of them individually, it gives her none by force of the additional charge of conspiracy. . . . *Whatever may have been plaintiff's reason for not proceeding in some form with her suit to subject the property [to her lien], she had no cause of action for damages*.

Id. (emphasis added) (citations omitted). Thus, at the common law, Iowa did not allow for a general damages remedy for fraudulent conveyances—even against transferees.

Plaintiffs contend the legislature's adoption of the IUFTA overruled the common law rule expressed in *McKay*, but the Court is not so sure.[11] Early on, an action to set aside a fraudulent transfer has always been viewed as, fundamentally, an equitable remedy:

> In the case of a conveyance fraudulent as to creditors a creditor may disregard the transfer and follow the property as that of the debtor. He may proceed at law by attachment or execution, by levy or garnishment, or, on observing the prerequisites thereto, may proceed in equity against the property. Thereby he sues not for damages for fraud but to obtain an equitable levy or an equitable lien upon and to subject the property itself. If the property has been disposed of, the proceeds in the hands of the fraudulent grantee may not be recovered at law, but may in equity be impressed with a trust.

Lambers v. Reisman Co., 207 Iowa 711, 223 N.W. 541, 546 (1929). That being the case, the common law reflected "[t]he principle . . . that the conveyance, being fraudulent as to creditors, may be disregarded" precisely because "[t]he creditor's remedy is against *the property*, against that which has been fraudulently diverted from payment of the [transferor]'s debts." *Id.* (emphasis added). And that is still the case today, under the statute that codified the common law on fraudulent conveyances. Iowa Code §§ 684.4(1) (stating a "transfer made or obligation incurred by a debtor is fraudulent *as to a creditor*" (emphasis added)); § 684.7 (providing for "avoidance of the transfer or obligation," "attachment or other provisional remedy against the asset transferred," and other relief "[s]ubject to applicable principles of equity"); § 684.8(2) (providing for transferee liability); *see Schaefer*, 795 N.W.2d at 497 ("Generally, fraudulent conveyance law operates to make the conveyance at issue voidable at the option of a qualifying injured creditor."); *accord McKay*,

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[11] Plaintiffs' emphasis on Iowa cases permitting accessory liability under other causes of action misses the point. Crucially, none of the cases actually relate to the nature of a claim brought under the IUFTA because each involved actions that sounded in tort and properly sought compensatory damages. *Cf. Basic Chems., Inc.*, 251 N.W.2d at 232–33 (conspiracy to misappropriate trade secrets); *Shannon v. Gaar*, 233 Iowa 38, 6 N.W.2d 304, 307 (Iowa 1942) (conspiracy to interfere with contract); *Robbins v. Heritage Acres*, 578 N.W.2d 262, 265 (Iowa Ct. App. 1998) (conspiracy to deprive individual of necessary medical care).

224 N.W. at 86. Plaintiffs offer no authority for the proposition that the IUFTA otherwise displaced these principles when its text seems to have incorporated them.

Still, at least one intermediate appellate court has permitted an aggrieved creditor to pursue claims for both aiding and abetting fraudulent transfers and civil conspiracy under the Iowa's version of the UFTA. *See Shea v. Lorenz*, No. 14-0898, 2015 WL 4158781, at *8–9, *12–16 (Iowa Ct. App. July 9, 2015). There, the debtor had been ordered to pay the plaintiff (his former spouse) property equalization payments and traditional alimony until her death or remarriage. *Id.* at *2. The alimony obligation was established as a lien against the debtor's estate. *Id.* The debtor's daughter held power of attorney governing his affairs. *Id.* During the dissolution proceedings it was discovered that certain investment accounts listed the debtor's children as beneficiaries, violating the parties' prenuptial agreement; the beneficiary designations were amended, but were later changed back in favor of the debtor's children. *Id.* Payments were consistently made to the plaintiff until the debtor's death due to an insufficiency of funds. *Id.* The plaintiff then sued all of the debtor's children, as beneficiaries of the accounts, along with the debtor's financial planner, who had managed the accounts. *Id.* The district court granted summary judgment in favor of the financial planner and, after a bench trial, dismissed the remaining claims except those against the debtor's daughter. *Id.* at *3.

Acknowledging that the plaintiff's true claim sought a constructive trust while the others alleged in the petition were "theories by which a constructive trust might be imposed," *see id.*, the Iowa Court of Appeals affirmed the dismissal of the financial planner but reversed as to the lower court's disposition of the claims against the debtor's children, *id.* at *20. The court held that, as a matter of law, the financial planner could not have aided and abetted the debtor and his daughter to fraudulently transfer the account funds or engaged in a conspiracy to do the same because the

undisputed evidence showed that the financial planner did not know of the daughter's fraudulent purpose for changing the beneficiary designation and did not advise her in doing so. *Id.* at *8–9 (citing Restatement (Second) of Torts § 876 (1979); *Wright*, 652 N.W.2d at 171–74; *Basic Chems., Inc.*, 251 N.W.2d at 233; *Ezzone*, 525 N.W.2d at 398). But finding the change of account beneficiaries to be a fraudulent transfer, the court allowed the plaintiff's judgment on her accessory claims against the debtor's children to stand. *See id.* at *11–17. Again relying on the Second Restatement of Torts, the court of appeals held that the plaintiff was entitled to judgment against the debtor's daughter for aiding and abetting the fraudulent alteration on the accounts and for conspiring with the debtor to keep those funds from satisfying the alimony order. *See id.* at *15–16 ("[Restatement (Second) of Torts § 876] has been held to specifically provide for joint and several liability when someone gives substantial encouragement or assistance to another's tortious conduct."). The other children were responsible for returning the amount of the fraudulently transferred funds necessary to satisfy the plaintiff's claim because they did not give anything of reasonably equivalent value in exchange for the transfer. *Id.* at *11–12; *see also* Iowa Code § 684.8(1).

Shae is distinct from this case in at least one important way. The debtor's daughter in that case was one of the beneficiaries in whose favor the account designation was changed—that is, she was a transferee of the fraudulent conveyance. By this token, *Shae* seems to be inconsistent with the *McKay* common law rule that a fraudulent conveyance action for compensatory damages cannot be maintained against a transferee as an accessory to the unlawful transfer. At the same time, *Shae* conforms to imposing liability on the individual who herself obtains property conveyed through fraud, consistent with the equitable principles undergirding the IUFTA, even if under the guise of tort law. *See* Iowa Code § 684.8(2)(a) (permitting recovery of "the value of the asset transferred"

against any subsequent transferee that did not take in good faith). In this case, by contrast, every Defendant that Plaintiffs allege to have aided and abetted Weller's fraudulent transfers or conspired to assist him, save First State, are strangers to the transfer of ownership—they are *non*-transferees, *non*-parties to the fraudulent conveyances. So even if the principles espoused by the appellate court in *Shae* could be read to supplement the IUFTA and support accessory liability under the statute, such a rule would not apply here.

Plaintiffs have not identified one case applying Iowa common law or the IUFTA where a defrauded creditor was allowed to recover damages that were strictly compensatory, not equitable, in nature against non-parties to the fraudulent conveyance. *Shae* did not consider the viability of accessory liability under the IUFTA because that issue was not raised, and the case does not support a conclusion to the contrary. Plaintiffs' claim imposing accessory liability under the IUFTA fails to state a claim upon which relief can be granted.

C. RICO

The Court next turns to Plaintiffs' claims under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962. Section 1962(c) of the act renders it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." Congress passed RICO in 1970 with the broad aim of eradicating organized crime and corrupt business activity, proclaiming the statute's provisions "shall be liberally construed to effectuate its remedial purposes." Organized Crime Control Act of 1970, Pub. L. No. 91–452, § 904(a), 84 Stat. 922, 947 (1970); *see also, e.g.*, *Boyle v. United States*, 556 U.S. 938, 944 (2009); *United States v. Turkette*, 452 U.S. 576, 587 (1981). Those who conspire to violate RICO also fall within the statute's broad purview. 18 U.S.C.

§ 1962(d). And the statute provides civil remedies to "[a]ny person injured in [her] business or property by reason of" the enterprise's racketeering activities, permitting the recovery of treble damages and attorneys fees. 18 U.S.C. § 1964(c).

To state a claim under § 1962(c), Plaintiffs must plead facts that, if proven, demonstrate "(1) the conduct (2) of an enterprise (3) through a pattern of racketeering activity." *Salinas v. United States*, 522 U.S. 52, 62 (1997) (citing *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 496 (1985)). Defendants contend the Petition establishes none of the requisite elements to state a RICO violation and further fails to satisfy the statutory injury requirement to bring suit for civil damages.

1. Enterprise

A RICO "enterprise" is the vehicle through which a defendant conducts an unlawful pattern of racketeering activity, *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 (1994), and is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4); *see also Turkette*, 452 U.S. at 581–82 (describing two categories of enterprises: "legal entities" and associations). But "[t]he 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart from the pattern of activity in which it engages." *Turkette*, 452 U.S. at 583. Rather:

> The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise.

Id. Though "proof of one does not necessarily establish the other," *id.*, "evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce.'" *Boyle*, 556 U.S. at 947 (citation omitted). The ultimate inquiry is "whether the

enterprise encompasses more than what is necessary to commit the predicate RICO offense." *Diamonds Plus, Inc. v. Kolber,* 960 F.2d 765, 770 (8th Cir. 1992). Thus, to state a claim under § 1962(c), a complaint must allege the existence of an enterprise that "would still exist were the predicate acts removed from the equation." *Crest Const. II*, 660 F.3d at 354–55 (quoting *Handeen*, 112 F.3d at 1352). Plaintiffs allege three alternative enterprise theories: the "Weller Enterprise," consisting of Weller the individual, operated and managed by the Attorney Defendants; the "Weller Farms Enterprise," consisting of the limited liability company, operated and managed by the Attorney Defendants and Weller; and the "Weller Law Enterprise," consisting of Weller, the Attorney Defendants, and Cody Weller as an "association-in-fact," and also operated and managed by the Attorney Defendants and Weller. [ECF No. 18-2 ¶¶ 225–27].

The Weller Enterprise and the Weller Farms Enterprise certainly fall within RICO's purview as enumerated enterprises, and neither the Attorney Defendants nor the Bank Defendants seriously contend otherwise.[12] "Legal entities are garden-variety 'enterprises' which generally pose no problem of separateness from the predicate acts." *Bennett v. Berg*, 685 F.2d 1053, 1060 (8th Cir. 1982); *see also id.* ("An enterprise is particularly likely to be found where . . . the enterprise alleged is a legal entity rather than an 'associational enterprise.'"). Indeed, Weller the "individual" would continue to exist as an a natural person—a farmer, insurance agent, and father—even in the absence of the acts of racketeering alleged as part of his scheme to defraud Kruse; Weller Farms is a "legal entity"—organized under the laws of the State of Iowa and, minus fraud or wrongdoing, an otherwise legitimate farming business—that exists apart from the alleged acts of racketeering. *See* 18 U.S.C. § 1961(4).

[12] None of the Defendants appear to challenge the viability of the "Weller Enterprise" as an "individual" or the "Weller Farms Enterprise" as a "legal entity," instead focusing their argument exclusively on the "Weller Law Enterprise" as an association-in-fact.

The Weller Law Enterprise presents a closer question. An association-in-fact enterprise consists of "a group of persons associated together for a common purpose of engaging in a course of conduct" and is "proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Boyle*, 556 U.S. at 944–45 (quoting *Turkette*, 452 U.S. at 580, 583). Though § 1961(4) "does not specifically define the outer boundaries of the 'enterprise' concept," the idea behind an enterprise comprised of "any union or group of individuals associated in fact" is quite "obviously broad": "The term 'any' ensures that the definition has a wide reach, and the very concept of an association in fact is expansive." *Id.* at 944 (citation omitted). At its core, "an association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.* at 948. But it is less clear here that the enterprise—essentially, the attorney-client relationship between Weller, his son, and the Attorney Defendants—is sufficiently distinct from the alleged pattern of racketeering where Plaintiffs claim the entire basis for the attorney-client relationship was always for the purpose of furthering Weller's fraud on Kruse. *See* [ECF No. 18-2 ¶¶ 47–51, 54, 67, 71, 77–78, 90].

Granting Plaintiffs' Petition all reasonable inferences, the Court concludes the Weller Law Enterprise possesses the requisite structural features of an actionable association-in-fact enterprise. *See Boyle*, 556 U.S. at 945–46 ("In the sense relevant here, 'structure' means '[t]he way in which parts are arranged or put together to form a whole' and '[t]he interrelation or arrangement of parts in a complex entity.'" (citing American Heritage Dictionary 1718 (4th ed. 2000))).[13] The first of

[13] The statute's language makes clear that a RICO enterprise founded on an association-in-fact must possess at least three structural features: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle*, 556 U.S. at 946; *see also Nelson v. Nelson*, 833 F.3d 965, 968 (8th Cir. 2016) (noting that "while an association-in-fact need not have any particular indicia of organization, . . . it does need some sort of discrete existence and structure uniting its members in a

these, a common *purpose*, is easily satisfied by the pleadings. The Petition thoroughly alleges members of the Weller Law Enterprise shared the venture or undertaking of shielding Weller's assets, especially his farm real estate, to delay, frustrate, or obstruct Kruse's collection of her $2.5 million personal injury judgment. [ECF No. 18-2 ¶ 226(a)]. This common purpose is supported most acutely by the Petition's recitation of Weller's own testimony given in his judgment-debtor examination, where he states he "went to [Repp] because of [Kruse's personal injury] lawsuit" and because Repp holds himself out as an asset protection attorney. *Id.* ¶ 47 (second alteration in original). The circumstances of their relationship also support a common purpose as well. Weller told Repp about the details of the collision, the extent of Kruse's injuries, and the impending trial, to which he had already admitted fault. *Id.* ¶¶ 47–48. Weller also told Repp of his previous efforts to shield his assets by "gifting" thousands of dollars to friends and family members—on the advice of former counsel. *Id.* ¶¶ 46–51; *see also id.* ¶¶ 110–19. And the Petition describes in detail how, under Plaintiffs' theory of the case, Repp subsequently organized a shell company and related paperwork to transfer all of Weller's valuable farmland away from Weller personally to a separate entity in the face of what he understood to be a judgment of liability that was all but certain. *See, e.g.*, *id.* ¶¶ 52–74. Indeed, the entity itself was given as one of its explicit objectives to "provide protection to family assets from the claims of future creditors against family members," *id.* ¶ 62, and, in Plaintiffs' words, contained a number of "creditor-thwarting features," *see id.* ¶ 65; *cf. Craig Outdoor Advert., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1026–27 (8th Cir. 2008) (holding RICO enterprise was not pleaded because at least one of the alleged members was acting "strictly in its own best interests," and necessarily had "divergent goals" (citations omitted)).

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cognizable group"). Defendants neither cite *Boyle* nor argue any of the three structural features are missing from the Weller Law Enterprise.

The second structural feature, *relationships among those associated with the enterprise*, is also well-pleaded. According to the Petition, Weller, his son, Repp, and the Dickinson Law Firm are related through an attorney-client relationship formed in the spring of 2015 immediately prior to trial in the underlying personal injury lawsuit. [ECF No. 18-2 ¶ 226(b)]; *see also, e.g.*, *id.* ¶¶ 47–48, 52–53, 60, 66–67, 69–70. After Weller initially retained Repp to set up Weller Farms and transfer his assets to the entity, Cody Weller was named one of two members of the LLC, the other being Weller himself. *Id.* ¶¶ 61, 63. Cody Weller signed the company's operating agreement and is a party to that agreement. *Id.* ¶ 63; *see also id.* ¶¶ 65–66. According to the Petition, Cody Weller's involvement was used mostly to promote a "false narrative" for the creation of Weller Farms—that the company was his idea as an estate planning mechanism to allow him to eventually take over the family farm (it was not). *Id.* ¶¶ 76–87. Finally, Repp is an attorney at the Dickinson Law Firm, and the Petition claims at least one other attorney from the firm assisted Repp in representing Weller. *See id.* ¶ 64.

Finally, the Petition thoroughly alleges the enterprise's *longevity*, the third structural characteristic of an association-in-fact enterprise. Plaintiffs allege the attorney-client relationship existed from at least March 3, 2015, and continues to exist to the present day. *Id.* ¶ 226(c). This has been more than enough time for those members to pursue the enterprise's alleged purpose. Indeed, the actions taken on behalf of the enterprise—the formation of Weller Farms and the conveyance of Weller's real estate to the entity via quitclaim deed, to name two—have themselves already succeeded in interfering with and delaying Kruse's collection of her judgment; to this day, the Petition alleges, Kruse has not been adequately compensated for the horrific injuries she sustained at the hands of Weller's negligence. *See id.* ¶ 231; *see also id.* at 98 (fraudulent transfer trial order) (noting that by March 2018, three years after Kruse's $2.5 million verdict against him,

Weller "ha[d] only voluntarily paid $27,000 to [Kruse] which was not through insurance proceeds or court-ordered," and even that was done only on the advice of counsel). And the Petition expressly makes out the case that the Weller Law Enterprise continues to pursue this purpose by defending the barriers it erected to Kruse's recovery. *See, e.g.*, *id.* ¶¶ 87, 231. In sum, the Petition adequately alleges the Weller Law Enterprise as an association-in-fact.

Instead of challenging the structural features of the Weller Law Enterprise, Defendants rely almost exclusively on *Stephens, Inc. v. Geldermann, Inc.*, 962 F.2d 808 (8th Cir. 1992) to argue that the Petition fails to advance any facts of the enterprise "beyond the minimal association surrounding the pattern of racketeering activity" to state an actional association-in-fact. *See id.* at 816. *Stephens* is distinguishable. There, a senior corporate officer tasked with control over the plaintiff's commodity trading account at a brokerage firm opened a parallel account in his mother's name and, trading through both accounts, assigned only the profitable trades to his personal account and the unprofitable ones to his employer's account after he had already learned which ones had been successful. *Id.* at 810. The plaintiff brought suit against its former employee and the brokerage firm alleging, among other things, that an association-in-fact RICO enterprise existed between the officer, the brokerage firm, and several of the firm's employees. *Id.* at 815. Even though this trading practice was in direct violation of financial regulations, and there was some evidence that "supported an inference that [the brokerage firm] suspected trading improprieties involving [the officer's] account, but actively concealed [its] existence," the United States Court of Appeals for the Eighth Circuit dismissed the RICO count levied against the brokerage firm. *Id.* at 810, 815. The alleged enterprise, the court determined, did not extend beyond the "minimal association" between the officer and the brokerage firm because "[t]he only common factor that linked all these parties together and defined them as a distinct group" was the "daily interstate telephone calls and

confirmation mailings" between the officer and the firm, which formed the predicate acts of mail and wire fraud. *Id.* at 815–16. In other words, absent these wire and mail communications, there was no relationship between the participants of the alleged RICO enterprise. *See id.* These acts were not proven to have been in furtherance of a "common or shared purpose" of defrauding the plaintiff and, "thus, were not acts of the enterprise." *Id.* at 816.

In contrast, the Weller Law Enterprise has existed as an attorney-client relationship that would persist even without the alleged predicate acts of mail and wire fraud, which are discussed in detail below. The Petition supports reasonable inferences that Weller and the Attorney Defendants advanced the common goal of the enterprise not solely through the use of interstate mails and wires but in-person activity. *See United States v. Lemm*, 680 F.2d 1193, 1201 (8th Cir. 1982) (concluding arson ring constituted actionable RICO enterprise where members carried out various other activities in furtherance of its scheme to defraud insurance companies without the use of mails or wires, such as purchasing, repairing, and destroying property). At a minimum, Plaintiffs contend the Attorney Defendants represented Weller in court during the fraudulent transfer trial. [ECF No. 18-2 ¶¶ 17, 120–134]; *see also id.* at 91–105 (trial order and verdict). Plaintiffs' allegations likewise infer that the Weller Farms transactions involved in-person consultations in forming and later pursuing their attorney-client relationship. *Compare id.* ¶¶ 47–50, 53, 57, 60 *with id.* ¶ 63. In short, reasonable inferences supported by the Petition—and common sense—demonstrate Plaintiffs allege an enterprise that existed as something more than just communications and actions taken over interstate mails and wires; that is, an attorney-client relationship evidenced by conduct not itself actionable as a predicate federal offense listed in § 1961(1). *See Lemm*, 680 F.2d at 1201; *Liberty Mut. Fire Ins. Co. v. Acute Care Chiropractic Clinic P.A.*, 88 F. Supp. 3d 985, 1002–03 (D. Minn. 2015) (concluding association-in-fact enterprise

consisting of clinic, chiropractor, and related companies was actionable because the entities "could continue to provide medical services and treatment for patients, and bill patients directly, but not submit [the fraudulent forms] by mail or wire" and would still satisfy *Boyle*'s three criteria absent the predicate acts); *cf. Stephens, Inc.*, 962 F.2d at 815–16; *Rosemann v. Sigillito*, 956 F. Supp. 2d 1082, 1095–96 (E.D. Mo. 2013) (dismissing civil RICO claim where the only non-racketeering activity linking the members of the enterprise was a loan between two companies drafted by the organizer of the scheme, with nothing to suggest other members of the enterprise were involved outside of the alleged racketeering activity itself).

Moreover, the circumstances surrounding the alleged predicate acts themselves permit a reasonable inference of an association-in-fact enterprise. As the United States Supreme Court made clear in *Turkette* and restated in *Boyle*, the evidence used to prove the pattern of racketeering activity and the evidence establishing a RICO enterprise "may in particular cases coalesce." *Boyle*, 556 U.S. at 947 (quoting *Turkette*, 452 U.S. at 583). Compared to an instance where "several individuals, independently and without coordination, engaged in a pattern of crimes listed as RICO predicates," *id.* at 947 n.4, the facts alleged in the Petition serve as proof of both the existence of the Weller Law Enterprise and that its participants engaged in a pattern of racketeering activity while advancing a shared purpose, *cf. Craig Outdoor*, 528 F.3d 1027–28; *Stephens, Inc.*, 962 F.2d at 815–16. Defendants are correct to the extent they claim Plaintiffs must plead a RICO enterprise "beyond that inherent in the pattern of racketeering activity" as "a separate element"; but the Supreme Court has roundly rejected the position that "the existence of an enterprise may *never* be inferred from the evidence showing that persons associated with the enterprise engaged in a pattern of racketeering

activity." *Boyle*, 556 U.S. at 947 (emphasis added).[14] Indeed, considering that *Boyle* upheld an instruction that permitted the jury to find an association-in-fact enterprise "form[ed] solely for the purpose of carrying out a pattern of racketeering acts" and provided that "[c]ommon sense suggests that the existence of an association-in-fact is oftentimes more readily proven by what is [sic] does, rather than by abstract analysis of its structure," 556 U.S. at 942, 951 (alterations in original), the Supreme Court's decision "demonstrated that the evidentiary bar of proving an association-in-fact is low," Julie R. O'Sullivan, *Federal White Collar Crime* 649 (7th ed.). Other courts, relying on *Boyle* and *Turkette*, have likewise recognized that RICO enterprises consisting of attorney-client relationships may form an association-in-fact that involve more than the alleged acts of racketeering by taking into account the broader nature of the relationship. *See, e.g.*, *Ouwinga v. Benistar 419 Plan Servs., Inc.*, 694 F.3d 783, 791, 794–95 (6th Cir. 2012) (holding the plaintiffs sufficiently pleaded RICO enterprise where attorneys associated with others to sell fraudulent financial products and the complaint "delineate[d] the specific roles and relationships of the [d]efendants," alleging

[14] The parties disagree about whether an association-in-fact enterprise must have an "ascertainable" structure, as several courts (including the Eighth Circuit Court of Appeals) had previously interpreted *Turkette* to require. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 549 (9th Cir. 2007) (citing, among others, *Asa-Brandt, Inc. v. ADM Inv'r Servs., Inc.*, 344 F.3d 738, 752 (8th Cir. 2003)). The Supreme Court rejected this formalistic syllogism in *Boyle*. 556 U.S. at 947 (concluding, in context of criminal RICO action, that "telling the members of the jury that they had to ascertain the existence of an 'ascertainable structure' would have been redundant and potentially misleading" because "[w]henever a jury is told that it must find the existence of an element beyond a reasonable doubt, that element must be 'ascertainable' or else the jury could not find that it was proved"). This case is not docketed as a criminal one, but Defendants have not advanced any argument, let alone a persuasive one, that this same rationale would not extend to civil RICO actions. Though some decisions by the Eighth Circuit Court of Appeals continue to use the "ascertainable structure" language, *see, e.g.*, *Crest Const. II*, 660 F.3d at 354–55, others do not, *see, e.g.*, *Nelson*, 833 F.3d at 968–69 ("[W]hile an association-in-fact need not have any particular indicia of organization, . . . it does need some sort of discrete existence and structure uniting its members in a cognizable group." (citing *Boyle*, 556 U.S. at 948)). It is not a formal requirement of the enterprise element in post-*Boyle* cases to even "use the term 'structure'" provided that "the substance of the relevant point is adequately expressed." 556 U.S. at 946.

the enterprise "functioned for the common purpose of promoting a fraudulent welfare benefit plan to generate commissions and related fees"); *Metro. Prop. & Cas. Ins. Co. v. Savin Hill Family Chiropractic, Inc.*, 266 F. Supp. 3d 502, 522–23, 526, 528–29 (D. Mass. 2017) (finding the plaintiffs adequately pleaded a RICO conspiracy based on an enterprise including law firm, lawyers, paralegals, and chiropractic office formed for the purpose of facilitating unlawful and improper referrals and fraudulent treatment and billing practices against insurance company); *Mayfield v. Asta Funding, Inc.*, 95 F. Supp. 3d 685, 697–98, 699–700 (S.D.N.Y. 2015) (declining to "fashion a judge-made exception to RICO liability for litigation activities" where complaint alleged enterprise consisting of debt-buying company, debt collection law firm, and associated individuals engaged in "a broad scheme to defraud tens of thousands of New Yorkers by fraudulently obtaining default judgments against them in state court"); *Llewellyn-Jones v. Metro Prop. Grp, LLC*, 22 F. Supp. 3d 760, 791–92 (E.D. Mich. 2014) (concluding RICO enterprise consisting of attorney defendants and other associates was actionable because it fulfilled *Boyle*'s three structural criteria and was sufficiently distinct from the pattern of racketeering activity even though the proof was the same); *Feld Entm't Inc. v. Am. Soc'y for the Prevention of Cruelty to Animals*, 873 F. Supp. 2d 288, 313–15 (D.D.C. 2012) (holding that the enterprise consisting of "the plaintiffs' side of the [prior] case," including the "plaintiffs, plaintiffs' counsel and two other benefactors" was sufficiently distinct and alleged the common purpose of furthering the enterprise's objectives, not the individual defendants' objections).

Unlike those cases cited by Defendants, *see, e.g.*, *Crest Construction II*, 660 F.3d at 355, Plaintiffs' pleadings are far from conclusory. To the contrary, Plaintiffs' 263-paragraph Petition thoroughly alleges three alternative enterprises.

2. Pattern of "racketeering activity"

A "'pattern of racketeering activity' requires at least two acts of racketeering activity," with the last occurring within ten years of another prior act. 18 U.S.C. § 1961(5). Congress has defined "racketeering activity" to include a panoply of federal and state crimes. *See id.* § 1961(1). Civil liability does not hinge on a RICO defendant's conviction of the predicate acts forming the basis of a racketeering allegation. *Sedima*, 473 U.S. at 493. The "pattern" requirement is quite flexible, too. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 238–39 (1989).

a. Racketeering activity

Plaintiffs allege the Defendants engaged in a pattern of mail fraud (18 U.S.C. § 1341)[15] and wire fraud (18 U.S.C. § 1343).[16] "When pled as RICO predicate acts, mail and wire fraud require a showing of: (1) a plan or scheme to defraud, (2) intent to defraud, (3) reasonable foreseeability that the mail or wires will be used, and (4) actual use of the mail or wires to further the scheme." *H & Q Properties, Inc. v. Doll*, 793 F.3d 852, 856 (8th Cir. 2015) (citation omitted). The Attorney Defendants do not challenge the assertion that the acts laid out by the Petition fulfill the elements of those crimes, nor could they; Plaintiffs' 263-paragraph Petition thoroughly alleges a well-documented pattern of racketeering activity.

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[15] The mail fraud statute, 18 U.S.C. § 1341, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, . . . distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, . . . or private or commercial interstate carrier . . . shall be fined under this title or imprisoned not more than 20 years, or both.

[16] The wire fraud statute, 18 U.S.C. § 1343, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

Scheme to defraud. The Petition alleges Defendants "engaged in a scheme to defraud Kruse by means of fraudulently conveying and transferring Weller's assets for the purpose of thwarting Kruse's ability to collect [her] $2.5 million judgment" while enabling Weller to continue to benefit from the use of his money and property. [ECF No. 18-2 ¶ 160]. This assertion is well-pleaded. The Petition lays bare Weller's prior attempts to shield his assets prior to retaining Repp by transferring his real estate to a revocable trust and gifting cash to family and friends. *Id.* ¶¶ 30–36. And it alleges the Attorney Defendants continued this scheme through the creation of Weller Farms to accomplish the same purpose. *Id.* ¶¶ 49–50, 52–55, 60–62. As determined by the state trial court judge in the fraudulent transactions case, "Steven Weller's actions in creating the LLC and subsequent behavior indicate[d] his goal was and still is to prevent creditors from obtaining the value of his land," establishing by clear and convincing evidence the conveyances to Weller Farms—advised, organized, and executed by Repp and Dickinson Law Firm—were fraudulent and intended to obstruct Kruse's efforts to collect her personal injury judgment. *Id.* at 102; *see also id.* ¶ 128. Indeed, one of the "objectives" of the LLC was to "provide protection to family assets from the claims of future creditors against family members," *id.* ¶ 62, who, in this case, were found to have been Plaintiffs, *id.* ¶ 68.

Fraudulent intent. Weller's intent to defraud Kruse is well-established and beyond dispute. *See id.* ¶¶ 68, 127–30. The Petition alleges facts that, given every reasonable inference, show it was also well-known to the Attorney Defendants when they rendered their professional services in his assistance. Despite having been informed of an almost certain judgment holding Weller liable for extensive and debilitating personal injuries that he had already admitted to causing—a mere two months prior to trial—and despite having been informed of Weller's previous unlawful attempts to hide his money and land—which all agreed were fraudulent—the Attorney Defendants represented

to Weller that he could still succeed in moving his assets out of the reach of Kruse by instead transferring them to an LLC. But "[f]or whatever reason, ultimately transferring the money to [Weller Farms] and away from the creditors did not strike [Weller] and his counsel [the Attorney Defendants] as just as eyebrow raising," as the transactions were "clearly fraudulent." *Id.* ¶¶ 115; *id.* at 101. Contrary to the position taken by the Attorney Defendants, the Petition, afforded all reasonable inferences, does not allege the Attorney Defendants merely represented a client later found guilty of fraudulent conduct. Given their knowledge of Weller's purpose, and their own expertise to distinguish between legitimate and illegitimate asset protection, the Petition alleges facts that reasonably infer they shared his intent when advancing this goal by designing, implementing, and defending the transactions to Weller Farms—at a time when they knew their client faced a lawsuit which he knew would result in a large judgment, sought to transfer substantially all of his assets, had previously concealed assets, and would still effectively retain control over the property transferred. *See* Iowa Code § 684.4(1)(a), (2)(b), (2)(d), (2)(e), (2)(g), (2)(j) (listing factors that provide indicia of fraud).

Defendants also contend Plaintiffs have failed to adequately plead mail and wire fraud with sufficient specificity under Rule 9(b) of the Federal Rules of Civil Procedure. "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). But "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." *Id.* Good faith (or lack thereof) is certainly a condition of the mind that Plaintiffs are allowed to plead generally and prove circumstantially. After recounting in detail what Repp knew and when he knew it, the Petition succinctly alleges "Repp's advice to Weller was motivated by an intent and purpose to hinder, delay, or defraud Kruse in the collection of her foreseeable and inevitable judgment." [ECF No. 18-2 ¶ 51]; *see also, e.g.*, *id.* ¶¶ 54, 67, 70, 77. *Contra. Crest*

Constr. II, 660 F.3d at 358 (holding the complaint "does not identify [the who, what, when, where, and how] with respect to a single allegation of mail or wire fraud; in fact the Complaint fails to specify a single date with respect to any such allegation" (alteration in original)); *Nitro Distrib., Inc. v. Alticor, Inc.*, 565 F.3d 417, 429 (8th Cir. 2009) (dismissing complaint that only "allege[d] in very general terms that [the defendant] engaged in racketeering that 'involved the use of interstate telephone and the U.S. mails on a number of occasions'").

Transmission of mails and wires in furtherance of the scheme. "One 'causes' the mails to be used where he 'does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended.'" *United States v. Nguyen*, 829 F.3d 907, 921 (8th Cir. 2016) (quoting *Pereira v. United States*, 347 U.S. 1, 8–9 (1954)). When mail or wire transmission follows in the ordinary course of business or normal activity, it is reasonably foreseeable. *See Pereira*, 347 U.S. at 8–9. The mail or wire transmissions "need not be an essential element of the scheme"; it is enough for "the mailing [or wire] to be 'incident to an essential part of the scheme' or 'a step in [the] plot.'" *Schmuck v. United States*, 489 U.S. 705, 710–11 (second alteration in original) (quoting *Pereira*, 347 U.S. at 8 (first quote); *Badders v. United States*, 240 U.S. 391, 394 (1916) (second quote)). Even "innocent" mailings or wires, containing no false information, may satisfy the transmission element. *Id.* at 715 (citing *Parr v. United States*, 363 U.S. 370, 390 (1960)); *cf. Badders*, 240 U.S. at 394 ("Intent may make an otherwise innocent act criminal, if it is a step in a plot."). "The gravamen of the offense is the scheme to defraud." *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 647 (2008).

Plaintiffs allege numerous instances where the Attorney Defendants used mails and wires in furtherance of their representation of Weller to assist him in shielding his assets from Kruse. *See* [ECF No. 18-2 ¶ 164]. The part Defendants question is whether they formed a "pattern."

b. Pattern: relatedness and continuity

A RICO plaintiff must plead facts that "show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity," evidencing some "continuity plus relationship which combines to produce a pattern." *H.J. Inc.*, 492 U.S. at 239 (emphasis omitted) (second quote citing 116 Cong. Rec. 18940 (1970) (Sen. McClellan)). "Prohibited activities are related if they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'" *Handeen*, 112 F.3d at 1353 (quoting *H.J. Inc.*, 492 U.S. at 240). Much like establishing an association-in-fact enterprise, "these two constituents of RICO's pattern requirement must be stated separately, though in practice their proof will often overlap." *H.J. Inc.*, 492 U.S. at 239.

"Continuity" is both close-ended and open-ended, the former "referring either to a closed period of repeated conduct" and the latter demonstrated by "past conduct that by its nature projects into the future with a threat of repetition." *Id.* at 241. To plead close-ended continuity, a plaintiff in this circuit must state facts that establish "related acts continuing over a period of time lasting at least one year." *Crest Const. II*, 660 F.3d at 357 (citing citation omitted); *see H.J. Inc.*, 492 U.S. at 242 (requiring "a series of related predicates extending over a substantial period of time"). Alternatively, a plaintiff must plead open-ended continuity by showing that "the related predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit." *H.J. Inc.*, 492 U.S. at 242. But "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement." *Id.* Ultimately, whether the predicates alleged demonstrate a threat of continued racketeering activity "depends on the specific facts of each case." *Id.*

According to the Petition, the first of these acts of racketeering took place after Repp filed the Weller Farms certificate of organization with the Iowa Secretary of State when he applied or caused Weller to apply for an employer identification number with the IRS. [ECF No. 18-2 ¶¶ 52, 164]. Over the next several days, Repp transmitted documents and caused their return through interstate mail and wires in executing and recording documents related to Weller Farms and the transfer of Weller's real estate. *See id.* ¶¶ 63, 74, 164 at 44. Plaintiffs then allege that, "in an attempt to extract a minimal, negligible, and unfavorable settlement to Kruse and favorable to Weller," Repp and Weller jointly prepared and transmitted "false, misleading, and bogus financial statements" to Kruse and her counsel by deflating the value of the newly-formed Weller Farms, *after* the transfer of the farm assets to the LLC. *Id.* ¶¶ 88–90. Plaintiffs contend Repp then used electronic filings with the state district court to advance and perpetuate a "false narrative" of Weller Farms—that it was organized solely for estate planning purposes and to effectuate his son's eventual takeover of the family farm—and the later-avoided transfers to the entity that he knew to be untrue and unsupported by the evidence. *See, e.g.*, *id.* ¶¶ 80–87, 119; *see generally id.* at 92, 98–102 (trial order analyzing arguments made in briefs). And Plaintiffs allege the Attorney Defendants maintained this false narrative, even after the creation of and conveyances to Weller Farms were adjudicated to be fraudulent transactions made with the specific intent to shield his assets from Kruse. *Compare id.* at 101 (fraudulent transfer trial order finding Weller "practiced financial maneuvers which have kept his personal assets out of reach of [Kruse]") *and id.* at 118 (ruling on attorney fees) (finding Weller "was conniving in his actions to prevent [Kruse] from gaining access to the assets in Weller Farms") *with* [ECF No. 20-7 ¶ 6] (Weller resistance to motion for attorney fees) (claiming "Plaintiff's Reply insinuates that Steven Weller hid assets from his creditors. This assertion could not be further from the truth.").

These acts completed between March 2015 and May 2018 obviously occurred over a longer span of time than the three-day period asserted by the Attorney Defendants. By the same token, the Attorney Defendants' continued insistence on the propriety of Weller's financial transactions in the face of a judicial finding that directly and unequivocally held to the contrary supports a reasonable inference of a threat of long-term, ongoing efforts to continue assisting Weller's fraud. The fact a state court judge nullified the transactions orchestrated by the Attorney Defendants does not eliminate the threat because "[t]he lack of a threat of continuity of racketeering activity cannot be asserted merely by showing a fortuitous interruption of that activity." *See Heinrich v. Waiting Angels Adoption Servs., Inc.*, 668 F.3d 393, 410 (6th Cir. 2012) ("Subsequent events are irrelevant to the continuity determination . . . because 'in the context of an open-ended period of racketeering activity, the threat of continuity must be viewed at the time the racketeering activity occurred."); *accord CVLR Performance Horses, Inc. v. Wynne*, 524 F. App'x 924, 929 (4th Cir. 2013); *Inteliquent, Inc. v. Free Conferencing Corp.*, No. 16-cv-06976, 2017 WL 1196957, at *10 (N.D. Ill. Mar. 30, 2017) (finding open-ended continuity where complaint did not allege a "natural ending point" or "'clear and terminable goal' of an alleged scheme that dispels any 'threat' of repetition" (citation omitted)); *Larsen v. Lauriel Invs., Inc.*, 161 F. Supp. 2d 1029, 1044 (D. Ariz. 2001) (finding open-ended continuity where scheme would have continued but for SEC enforcement proceedings); *Nafta v. Feniks Int'l House of Trade (U.S.A.) Inc.*, 932 F. Supp. 422, 427–28 (E.D.N.Y. 1996) (finding open-ended continuity where scheme continued even after being uncovered and ceased only when the defendant was confronted with the plaintiff's knowledge of the fraud); *Dreieck Finanz AG v. Sun,* No. 89 CIV. 4347 (MBM), 1990 WL 11537, at *9 (S.D.N.Y. Feb. 9, 1990) (finding open-ended continuity where scheme was not ended by plaintiff's fortuitous discovery of scheme).

Plaintiffs have successfully pleaded a pattern of mail and wire fraud of sufficient continuity under both close-ended and open-ended regimes.

3. Conduct of the enterprise's affairs

A pattern of racketeering activity extends civil liability for a substantive RICO violation only to parties that "conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs." 18 U.S.C. § 1962(c). "'Conduct' requires an element of direction," *Reves v. Ernst & Young*, 507 U.S. 170, 178 (1993), so to "conduct" or "participate, directly or indirectly, in the conduct" of the enterprise's affairs, a defendant "must have some part in directing those affairs," *id.* at 179 ("Of course, the word 'participate' makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase 'directly or indirectly' makes clear that RICO liability is not limited to those with a formal position in the enterprise, but *some* part in directing the enterprise's affairs is required." (footnote omitted)). Thus, the statute reaches not only those at the helm of the scheme; it ensnares all who, in some way, "participate in the operation or management of the enterprise itself." *Id.* at 185; *Bennett v. Berg*, 710 F.2d 1361, 1364 (8th Cir. 1983).

Legal and financial professionals certainly "do[] not conduct an enterprise's affairs through run-of-the-mill provision of professional services," *Handeen*, 112 F.3d at 1348, but the Petition makes clear that is not what Plaintiffs allege. If control and disposition are the hallmarks of a landowner's property rights, "[o]f current paramountcy is how much of that control the [judgment] debtor, in this case [Weller], may have relinquished to others." *See id.* at 1349–50. The allegations in Plaintiffs' Petition contend it was significant.

The assertions in this case are part-and-parcel with those affirmed in *Handeen*, where attorneys representing a judgment debtor were plausibly accused of directing their client through

the bankruptcy process to fraudulently shield his assets from a judgment creditor. *Id.* at 1349–51. Accepting the allegations lodged in the Petition as true, as the Court must do at the pleadings stage, reveals that the Attorney Defendants participated in the operation or management of the affairs of the enterprise.[17] At all times the Petition alleges that Weller, a lay person, could not have orchestrated the intricate series of transactions to effectuate his goal of shielding his farmland from Kruse's judgment without relying on the expert direction of legal professionals. *See* [ECF No. 18-2 ¶ 66]. His first attempt came shortly after the accident when he transferred all his real estate into a revocable trust and gifted cash to friends and family pursuant to the advice of a local attorney. *Id.* ¶¶ 31–33. When Weller was advised by his insurance counsel that the cash gifts were fraudulent, however, he followed that advice and attempted to undo the gifts. *Id.* ¶¶ 37–39. But Weller was undeterred. Only after he learned that the trust would not shield his farms or money from Kruse's judgment did he seek out the Attorney Defendants for alternative means to accomplish his aim. *See id.* ¶¶ 44–45. To that end, Repp changed the course of the effort to defraud Kruse and, according to Plaintiffs, "joined in a collaborative undertaking with the objective of releasing [Weller] from the financial encumbrance visited upon him by [Kruse]'s judgment." *See Handeen*, 112 F.3d at 1350. Reversing the mechanisms put in place by Weller's prior attorney, Repp organized Weller Farms, prepared a false and misleading trustee's affidavit deflating the land's value, directed Weller to execute a quit claim deed conveying his real estate to the entity to dilute the value of his personal holdings, and assisted Kruse in preparing false and misleading financial statements in an effort to extract a settlement from Kruse. [ECF No. 18-2 ¶¶ 52–53, 60–61, 69–71, 88–90]. The Attorney

[17] This analysis applies equally to the Petition's allegations that the Attorney Defendants conducted or participated in the conduct of the affairs of each alternatively-pleaded enterprise.

Defendants then defended the transactions in the fraudulent transfer action, devising a legal strategy to attempt to persuade the court to validate the transactions. *See id.* ¶¶ 17, 76, 81, 83, 113, 118–19.

Much like the complexity of the bankruptcy regime, here "the [Petition] could support a showing that the [Attorney Defendants] navigated [Weller] through the [post-judgment asset protection] system." *Handeen*, 112 F.3d at 1350. If substantiated, Plaintiffs' allegations "would not be a case where a lawyer merely extended advice on possible ways to manage an enterprise's affairs." *See id.*; *cf. Azrielli v. Cohen Law Offices*, 21 F.3d 512, 521 (2d Cir. 1994) (holding attorney did not participate in the conduct of a RICO enterprise because he "had no role in the conception, creation, or execution of the purported flip/assignment" scheme and instead relied on documents "presented to him as a *fait accompli*"); *Nolte v. Pearson*, 994 F.2d 1311, 1316–17 (8th Cir. 1993) (ruling law firm's drafting of documents sent to prospective clients based on information provided by client did not establish RICO liability where there was no evidence that the firm participated in directing the affairs of the enterprise because it based its legal advice on false information provided by the client); *Kelly v. Palmer, Reifler, & Assocs., P.A.*, 681 F. Supp. 2d 1356, 1381–83 (S.D. Fla. 2010) (concluding evidence did not show law firm went "beyond rendering traditional legal services to its clients" because "[a]lthough the clients delegated some tasks and authority to the firm, the clients ultimately retained control over the litigation"); *Bailey v. Trenam Simmons, Kemker, Scharf, Barkin, Frye & O'Neill, P.A.*, 938 F. Supp. 825, 827 (S.D. Fla. 1996) (holding that "providing standard legal services does not create RICO liability under the operation and management standard"); *Gilmore v. Berg*, 820 F. Supp. 179, 183–84 (D.N.J. 1993) (concluding lawyer's preparation of allegedly misleading tax opinion letter merely constituted the rendition of traditional legal services, not participation in the direction of the affairs of the enterprise). This course of conduct described by the Petition is not "merely consistent with"

wrongful action, *see Twombly*, 550 U.S. at 557, because the circumstances alleged by Plaintiffs—what the Attorney Defendants knew and when they knew it—is not consistent with "run-of-the-mill provision of professional services," *see Handeen*, 112 F.3d at 1348. As aptly put in *Handeen*:

> Appreciation for the unremarkable notion that the operation or management test does not reach persons who perform routine services for an enterprise should not, however, be mistaken for an absolute edict that an attorney who associates with an enterprise can never be liable under RICO. An attorney's license is not an invitation to engage in racketeering, and a lawyer no less than anyone else is bound by generally applicable legislative enactments. Neither *Reves* nor RICO itself exempts professionals, as a class, from the law's proscriptions, and the fact that a defendant has the good fortune to possess the title "attorney at law" is, standing alone, completely irrelevant to the analysis dictated by the Supreme Court. It is a good thing, we are sure, that we find it extremely difficult to fathom any scenario in which an attorney might expose himself to RICO liability by offering conventional advice to a client or performing ordinary legal tasks (that is, by acting like an attorney). This result, however, is not compelled by the fact that the person happens to be a lawyer, but for the reason that these actions do not entail the operation or management of an enterprise. Behavior prohibited by § 1962(c) will violate RICO regardless of the person to whom it may be attributed, and we will not shrink from finding an attorney liable when he crosses the line between traditional rendition of legal services and active participation in directing the enterprise. The polestar is the activity in question, not the defendant's status.

112 F.3d at 1349. The Court certainly has no basis for speculating whether Plaintiffs will ultimately be able to substantiate the narrative they advance; but to conclude Plaintiffs have failed to state a claim would sanction fraud by the Bar and shut tight the courthouse doors to any person who alleges to be injured by it.

4. RICO conspiracy

Section 1962(d) makes it unlawful for any person to conspire to violate RICO's substantive provisions. To state an actionable RICO conspiracy, a plaintiff must plead facts that show (a) "an

enterprise existed"; (b) "the enterprise affected interstate or foreign commerce"; (c) "the defendant associated with the enterprise"; and (d) "the defendant 'objectively manifested an agreement to participate . . . in the affairs of [the] enterprise.'" *Aguilar v. PNC Bank, N.A.*, 853 F.3d 390, 402 (8th Cir. 2017) (alterations in original) (quoting *United States v. Darden*, 70 F.3d 1507, 1518 (8th Cir. 1995)). In accordance with general conspiracy principles, and contrary to the Bank Defendants' position, there is no requirement that any one conspirator itself agree to commit a predicate act in furtherance of the conspiracy because, "so long as they share a common purpose, conspirators are liable for the acts of their co-conspirators." *Salinas*, 522 U.S. at 64; *see also id.* at 65 ("The interplay between [§ 1962] subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense.").[18] Thus, a RICO conspirator must simply "intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Id.* at 65.

To that end, "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense" so long as "[t]he partners in the criminal plan . . . agree to pursue the same criminal objective." *Id.* at 63; *see also United States v. Kragness*,

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[18] In *Salinas*, the Supreme Court held the defendant-deputy could be found guilty of a RICO conspiracy by merely facilitating a known bribery scheme directed by his boss, the county sheriff:

> [E]ven if [the defendant] did not accept or agree to accept two bribes, there was ample evidence that he conspired to violate 18 U.S.C. § 1962(c). The evidence showed that [the sheriff] committed at least two acts of racketeering activity when he accepted numerous bribes and that [the defendant] knew about and agreed to facilitate the scheme. This is sufficient to support a conviction under § 1962(d).

522 U.S. at 66.

830 F.2d 842, 860 (8th Cir. 1987) ("RICO conspiracy law, like traditional conspiracy law, requires only that each defendant agree to join the conspiracy . . . ."). A civil RICO plaintiff "need only establish a tacit understanding between the parties, and this may be shown wholly through the circumstantial evidence of [each defendant's] actions"; proof of an express agreement is not required. *Aguilar*, 853 F.3d at 402 (alteration in original) (citation omitted).[19] But pleading a RICO conspiracy requires more than stating facts showing the defendant merely associated with co-conspirators, knew about the conspiracy, and was present during conspiratorial discussions. *Rosemann v. St. Louis Bank*, 858 F.3d 488, 500 (8th Cir. 2017). Rather, a plaintiff must demonstrate "that the defendant was aware of the scope of the enterprise and intended to participate in it." *Aguilar*, 853 F.3d at 402 (citation omitted).

The facts alleged in this case are not similar to *Aguilar* and *Rosemann*, contrary to the arguments of the Bank Defendants. In both cases there was insufficient evidence to show that the banks were "aware of the scope of the enterprise and intended to participate in" their client's illicit activity to demonstrate that their employees objectively manifested an agreement to further his Ponzi scheme. *Rosemann*, 858 F.3d at 500 (citation omitted) (emails and overdrafts did not

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[19] *Accord United States v. Zemlyansky*, 908 F.3d 1, 11 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 1355 ("RICO conspiracy requires proof: (a) of an agreement to join a racketeering scheme, (b) of the defendant's knowing engagement in the scheme with the intent that its overall goals be effectuated, and (c) that the scheme involved, or by agreement between any members of the conspiracy was intended to involve, two or more predicate acts of racketeering. . . . So long as the defendant knowingly agreed to facilitate 'the general criminal objective of a jointly undertaken [racketeering] scheme,' the government need not prove that he or she knowingly agreed to facilitate any specific predicate act." (citation omitted)); *RSM Prod. Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 682 F.3d 1043, 1048 (D.C. Cir. 2012) ("To state a § 1962(d) conspiracy, the complaint must allege that (1) two or more people agreed to commit a subsection (c) offense, and (2) a defendant agreed to further that endeavor. A defendant need not agree to be the one to commit the predicate acts. Nor must a defendant 'participate in the operation or management of [the] enterprise in order to be liable for conspiracy.' '[I]t suffices that [the defendant] adopt the goal of furthering or facilitating the criminal endeavor.'" (alterations in original) (citations omitted) (footnote omitted)).

demonstrate bank knew them to be improper and not earned or authorized); *Aguilar*, 853 F.3d at 404 (citation omitted) (bank's internal investigation into customer's financial activity "d[id] not equate to conspiratorial conduct"). By contrast, here Plaintiffs plead detailed factual allegations that, granted every reasonable inference, are sufficient to circumstantially show the Defendants "must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity." *See United States v. Henley*, 766 F.3d 893, 908–09 (8th Cir. 2014) (citation omitted). Described above, the Petition plausibly alleges the Bank Defendants knew the full extent of Weller's fraudulent intentions in using Weller Farms to shield his assets from Kruse. *See* [ECF No. 18-2 ¶¶ 136, 145, 148–57]. The financial discrepancies and irregularities contained in the 2016 refinancing, Plaintiffs claim, was necessary to refinance Weller's personal finances because after Kruse's $2.5 million judgment was recorded, and the value of the farmland was transferred to Weller Farms, Weller was actually "massively insolvent." *Id.* ¶ 98(c). These false and misleading aspects of the documentation produced through Weller's relationship with First State—recognizing Weller Farms' existence while simultaneously ignoring its ownership of the real estate; devaluing the land as a personal holding of Weller while also omitting Kruse's $2.5 million judgment from his financial statement and containing no provision for its payment—produced an arrangement that was unnecessary to effectuate a loan except to benefit an insolvent debtor's aim to avoid compensating his tort victims through continued financing. *See id.* ¶¶ 94–96, 103–105, 107. In other words, the circumstances surrounding the January 4, 2016 refinancing raises a reasonable inference that the refinancing was done that way because the Bank Defendants agreed to further or facilitate Weller's scheme to defraud Kruse. This is sufficient, at least at the pleadings stage, to state a claim for RICO conspiracy. *See, e.g.*, *Reyes v. Zion First Nat'l Bank*, Civil Action No. 10-345, 2012 WL 947139, at *6–7 (E.D. Pa.

Mar. 21, 2012) (alleging bank defendants knowingly facilitated a money laundering scheme by completing wire transfers to fraudulent offshore accounts) (citing *Smith v. Berg*, 247 F.3d 532, 537 (3d Cir. 2001)); *Meeks-Owns v. Indymac Bank, F.S.B.*, 557 F. Supp. 2d 566, 572–74 (M.D. Pa. 2008) (alleging banks conspired with title insurance company to further predatory lending scheme aimed to induce purchase of homes later providing fees when it knew contract price and mortgage substantially exceeded the property's market value); *OSRecovery, Inc. v. One Groupe Int'l, Inc.*, 354 F. Supp. 2d 357, 376 (S.D.N.Y. 2005) (alleging bank conspired to facilitate credit card Ponzi scheme after investigating the company and learning about the enterprise, and the bank's later denial give rise to "an inference of a guilty mind").[20]

Pleaded in the alternative, the Petition also plausibly alleges that the Attorney Defendants knew the full extent of Weller's fraudulent purpose and necessarily agreed to further that enterprise by organizing Weller Farms, effecting the transfer of his assets to the entity, and defending the transactions, described at length above.[21] Weller's testimony in his deposition and debtor's exam, alone, provide a strong inference in favor of Plaintiffs' allegations that the Attorney Defendants agreed to advance the aim of obstructing Kruse's collection efforts.

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[20] The Petition also claims that the Bank Defendants agreed to commit predicate acts of mail and wire fraud in furtherance of the enterprise's goal of shielding Weller's assets from Kruse, alleging Guinn used interstate wires to obtain Weller's credit report in preparing Weller's financial statement that omitted Kruse's $2.5 million judgment, *see* [ECF No. 18-2 ¶¶ 94–97, 164 at 44, 46], and to later collect on the sums advanced through the January 4, 2016 refinancing in the mortgage foreclosure action, *id.* ¶¶ 18, 164 at 46–47; *see also id.* at 122–36 (First State mortgage foreclosure petition).

[21] Just as Defendants do not challenge the adequacy of the Plaintiffs' pleading of the Weller Enterprise or Weller Farms Enterprise, they likewise do not challenge Plaintiffs' alternatively-pleaded allegation that Weller operated or managed, directly or indirectly, the Weller Farms Enterprise (with which Defendants are also alleged, also in the alternative, to have conspired).

5. RICO standing: the direct injury requirement

RICO provides civil remedies to "[a]ny person injured in [her] business or property" by reason of the statute's substantive provisions to sue for treble damages caused by the enterprise's racketeering activities. 18 U.S.C. § 1964(c). But a plaintiff has standing to bring a civil RICO claim "if, and can only recover to the extent that, [s]he has been injured in [her] business or property by the conduct constituting the violation." *Sedima*, 473 U.S. at 496; *accord Gomez v. Wells Fargo Bank, N.A.*, 676 F.3d 655, 660 (8th Cir. 2012) ("To have standing to make a RICO claim, a party must have 1) sustained an injury to business or property 2) that was caused by a RICO violation." (citation omitted)). The alleged RICO violation must be the proximate cause of the plaintiff's injury, that is, there must be "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Protection Corp.*, 503 U.S. 258, 268 (1992). To maintain a civil RICO conspiracy claim, moreover, a plaintiff's injury must derive from an act made unlawful under the statute itself:

> As at common law, a civil conspiracy plaintiff cannot bring suit under RICO based on injury caused by *any* act in furtherance of a conspiracy that might have caused the plaintiff injury. Rather, consistency with the common law requires that a RICO conspiracy plaintiff allege injury from an act that is analogous to an 'ac[t] of a tortious character,' meaning an act that is independently wrongful under RICO.

Beck v. Prupis, 529 U.S. 494, 505–06 (2000) (quoting Restatement (Second) of Torts § 876 cmt. *b* (Am. Law Inst. 1979)) (finding termination of plaintiff from his employment, an overt act allegedly done by company in furtherance of a RICO conspiracy to commit mail and wire fraud, was not an injury itself giving rise to a § 1962(d) claim). The injury compensable by § 1962(c) is, necessarily, "the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise." *Anza v.*

Ideal Steel Supply Corp., 547 U.S. 451, 457 (2006) (quoting *Sedima*, 473 U.S. at 497)). The Bank Defendants contend that even if Plaintiffs can satisfy general standing requirements to bring suit as junior lienholders, described above, they cannot satisfy the more onerous RICO standard.

Plaintiffs' Petition alleges injuries that were proximately caused by predicate acts of mail and wire fraud undertaken in furtherance of the Weller enterprises. The use of interstate mails and wires during the course of the creation of Weller Farms, transfer of property to the entity, and restructuring of Weller's debt all created barriers to Kruse's recovery of her personal injury judgment lien. And Plaintiffs continue to fight the effects of the Weller Farms transfers and 2016 refinancing in the ongoing mortgage foreclosure action initiated by First State.

The Bank Defendants argue Plaintiffs' injury flows from her personal injury and thus is not an injury to her "business or property" to confer RICO standing, but *Handeen* pointedly rejected this position: the injury Plaintiffs allege here is not the bodily damage Kruse sustained as a result of Weller's negligence in the underlying personal injury action, it is the cumulative effect of the fraud done against her in the attempt to prevent her from ever being compensated for that injury. 112 F.3d at 1354. Just because Plaintiffs' judgment lien stems from a personal injury does not make the racketeering harm inflicted on her ability to collect on that lien a personal injury. *See id.* To the contrary, satisfaction of the $2.5 million judgment lien to which Plaintiffs are entitled is certainly a financial property interest Congress intended RICO to protect. *See BCS Servs., Inc. v. BG Investments, Inc.*, 728 F.3d 633, 638 (7th Cir. 2013) (citing *United States v. Sec. Indus. Bank*, 459 U.S. 70, 76–77 (1982)); *Tatung Co. Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1156 (C.D. Cal. 2016) (holding plaintiff that had obtained judgment based on an unpaid debt suffered injury to business or property to confer RICO standing where the debtor siphoned off its assets through fraudulent transfers and "was never able to collect the award or judgment" because the debtor

conspired to render the debtor "an empty shell").[22] Rather than a continuation of Kruse's personal injuries, "[t]he instant litigation is [Kruse]'s attempt to hold responsible those entities and individuals who have conspired to keep [Kruse]'s money away from [her]." *See Tautung Co.*, 217 F. Supp. 3d at 1156.

Regions Bank v. J.R. Oil Co., LLC, 387 F.3d 721 (8th Cir. 2004), the case principally relied on by First State, is easily distinguishable. In that case, a bank brought suit against its debtor for RICO and RICO conspiracy, as well as state law fraud, civil conspiracy, and breach of contract. *Id.* at 727. The bank had financed a $400,000 loan to the debtor who, with the help of his accountant, made grossly fraudulent misrepresentations on his personal and business financial statements in order to secure the loans. *Id.* at 724. It was not until after it funded the loan that the bank completed a lien search and found it was a junior lienholder to a prior security interest in the same assets securing its loan. *Id.* at 724–25. The debtor later filed for bankruptcy, which revealed a complex web of shell companies and transfers to related parties. *Id.* at 725–26.

The bank filed suit alleging the debtor and an enterprise of individuals engaged in fraud that disabled the bank from enforcing its security interest in the debtor's property. *Id.* at 725–27. The district court dismissed the bank's complaint, and the Eighth Circuit Court of Appeals affirmed. *Id.* at 728, 732. Even assuming the debtor and accountant had committed fraud in the procurement of the loan, the court held the bank lacked an injury "by reason of" a RICO violation to confer standing

[22] The Bank Defendants also contend permitting Plaintiffs' attorney's fees to form part of the basis of her pecuniary injury would permit double-recovery and a windfall to Plaintiffs because Plaintiffs have already recovered attorney's fees in the fraudulent transfer case. *See* [ECF No. 18-2 at 118−19]. The Court disagrees. Those attorney's fees related to the expenses incurred while litigating against Weller to set aside Weller Farms transactions and 2016 refinancing as between Kruse and Weller. The present litigation concerns the allegedly wrongful activity of the Attorney Defendants and the Bank Defendants, and seeks to set aside the obligations encumbering the farm real estate as between Kruse and First State. Plaintiffs have certainly incurred more expenses from attorney's fees in pursuit of their compensation.

under the statute. *Id.* at 729. The injury, the court held, was not the later bankruptcy fraud and fraudulent conveyances seeking to avoid satisfaction of the bank's loan, as the bank alleged, but rather the poorly-researched procurement of the loan itself. *Id.* Because it was undisputed that the senior security interests fully encumbered the collateral securing the bank's loan, and the bank granted the loan prior to completing its lien search and discovering it was a junior creditor to collateral that was fully encumbered, "[n]othing that occurred subsequent to the funding of the loan proximately caused any harm" to the bank. *Id.* Though a thin case existed for speculating that the bank's loan and subsequent bankruptcy-related fraud were related, the evidence ultimately presented was "insufficient for a reasonable jury to conclude that a RICO enterprise existed at the time of the loan application, or that the alleged RICO enterprise had anything to do with the loan." *Id.* at 729–30. Even if the claim were better-supported, the bank's "secondary security interest or contractual right to repayment under the $400,000 note" was insufficient to constitute an injury under the statute. *Id.* at 730–31.

Crucially, the bank's "intangible property interest" in *Regions Bank* was rejected specifically for its remoteness, not simply because the security interest was intangible.[23] But the inferiority of the bank's priority, itself, was not what made the bank's interest too remote. Rather, the bank had no *right* to recovery, only an expectancy, precisely because it was secured by an asset that was *fully encumbered*; liquidation of the senior interest would have exhausted the collateral's value, wiping out the bank's interest with nothing remaining with which to fulfill it, so the bank's security interest and right to repayment "were without value from their inception." *Id.* Thus, under

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[23] An injury's "intangible nature does not make it any less 'property' protected by the mail and wire fraud statutes." *Carpenter v. United States*, 484 U.S. 19, 25 (1987). Indeed, many federal crimes protecting intangible property rights serve as RICO predicate offenses under § 1961(1). *See, e.g.*, 18 U.S.C. §§ 1831, 1832 (theft of trade secrets); 2319, 2319A, 2320 (criminal copyright infringement and trafficking of the same).

no circumstances could the bank have recovered the value of the collateral to fulfill the amount owed by the debtor because the bank held no reasonable legal entitlement to the funds. The cases relied on by the court in *Regions Bank* exemplify this explanation. *See Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998) (rejecting RICO suit by disappointed purchasers of sports cards in search of "chase cards" as alleging an injury to "mere expectancy interests" for which they bargained); *In re Taxable Mun. Bond Sec. Litig.*, 51 F.3d 518, 522 (5th Cir. 1995) (holding plaintiff's "lost 'opportunity' to obtain a [state-backed] loan by itself is too speculative to constitute an injury"); *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 & n.4 (9th Cir. 1990) (recognizing insurance policies were RICO "property," but holding plaintiffs suffered no financial loss when they were cancelled because "both the protections [the policies] afforded against potential financial loss in the future and the present peace of mind that flows from such protection"). As discussed above, that is not the case here. Setting aside the funds advanced by First State in the 2016 refinancing, Plaintiffs raise an inference that they would stand to recover at least some value from the liquidation of Weller's real estate—even as junior lienholders.

In sum, Plaintiffs have successfully pleaded an injury-in-fact that is sufficiently proximate to the alleged pattern of racketeering activity to confer RICO standing.

D. Tortious Interference

In Count III, Plaintiffs allege Defendants intentionally and tortiously interfered with Kruse's collection of her $2.5 million judgment or, pleaded in the alternative, aided and abetted Weller in his wrongful interference. Count V alleges Defendants conspired to interfere with Kruse's judgment as part of an ongoing scheme to defraud. Traditionally, Iowa recognized causes of action at common law for tortious interference with rights generally founded on economic relationships and expectancies. Evidence that a person intentionally and improperly interfered with a contract,

caused a third party not to perform or made performance more burdensome, and resulted in damage to the plaintiff gives rise to a claim for tortious interference with a contract. *See Jones v. Univ. of Iowa*, 836 N.W.2d 127, 151 (Iowa 2013) (citing *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 662 (Iowa 2008)). Similarly, "[t]he tort of intentional interference with prospective business advantage imposes liability on a person who intentionally and improperly interferes with the claimant's business expectancies." *Id.* (quoting *Gordon v. Noel*, 356 N.W.2d 559, 563 (Iowa 1984)). Both torts punish interference that is "improper," determined by considering:

> (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties.

Hunter v. Bd. of Trs. of Broadlawns Med. Ctr., 481 N.W.2d 510, 518 (Iowa 1992) (quoting Restatement (Second) or Torts § 767 (1981)). Iowa has long relied on the Second Restatement of Torts in developing and defining the contours of its tort jurisprudence. *See, e.g.*, *Nesler v. Fisher & Co.*, 452 N.W.2d 191, 194 (Iowa 1990) (citing Restatement (Second) of Torts §§ 766, 766A (1979), interference with an existing contract); *id.* at 195 (citing Restatement (Second) of Torts § 766B (1979), interference with a prospective business advantage or contract).

Because Plaintiffs can show neither an existing contract nor prospective business advantage or relation, they assert a claim for general tortious interference—also known as the *prima facie* tort. *See* Restatement (Second) of Torts § 870 cmt. *a* (Am. Law Inst. 1979). The Iowa Supreme Court has not considered whether a civil action may be brought for general tortious interference, applied in the context of a defrauded judgment creditor. Thus, this Court is again called to "predict how the state's highest court would resolve that issue." *Church Mut. Ins. Co.*, 746 F.3d at 380. Defendants argue Plaintiffs do not advance a viable cause of action for general tortious interference and contend

that even if the tort is cognizable under Iowa law, Plaintiffs' claim is barred by the statute of limitations.

1. The "prima facie tort"

Beyond contracts and business relations, the Iowa Supreme Court extended the common law tort of intentional interference outside the commercial context when it recognized a cause of action for the wrongful interference with a gift or inheritance. *See Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795 (Iowa 1978). The Court reviewed the action's similarities with other intentional interference torts recognized by longstanding Iowa common law, along with the jurisprudence of other states, and after being convinced that such a cause of action would not violate the longstanding rule against collateral attacks on an order admitting a will to probate, the Court "c[ould] see no compelling reason . . . to decline to extend this concept to a non-commercial context." *Id.* Relying on § 774B of the Second Restatement of Torts, the Court has continued to advance its jurisprudence in this area of the tort law. *See Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992) (quoting Restatement (Second) of Torts § 774B (1979)).

Iowa later extended the common law tort beyond the economic context when it recognized a cause of action for wrongful interference with custody and parental rights. *Wood v. Wood*, 338 N.W.2d 123, 124 (Iowa 1983). Noting that Iowa had long recognized "the right of a parent to recover damages for deprivation of custody of a child," *id.* (quoting *Everett v. Sherfey*, 1 Iowa 356, 359 (1885)), and that "[t]he claim . . . appear[ed] to have been recognized in every jurisdiction [to have] addressed the issue," *id.* at 124–25, the Court observed that "the recurring scenario [of the abducting spouse] itself suggest[ed] the need for recognition of a civil claim for damages," *id.* at 125. Central to the recognition of the tort was the Court's conclusion that none of the alternative remedies available to the plaintiff successfully redressed the injury caused by an abducting parent

absconding with the child: the Uniform Child Custody Jurisdiction Act was purely jurisdictional and concerned only the return of the child, but provided no compensation for the actual interference with custody; criminal kidnapping statutes were heavy-handed and provided no recovery of expenses or compensation for the victim; and civil contempt proved to be ineffective in that the abducting parent, after leaving the state, was beyond the power of Iowa courts to sanction. *Id.* at 126–27. Adopting § 700 of the Second Restatement of Torts, the Court continues to rely on the Restatement's formulation of the claim. *See id.* at 127; *Wolf v. Wolf*, 690 N.W.2d 887, 891–92 (Iowa 2005) (quoting Restatement (Second) of Torts § 700 (1977)).

This examination of Iowa law on the tort of intentional interference reveals several valuable considerations. First, the action's consistency with the common law and recognition by the Second Restatement of Torts are important factors in crafting the scope of tort law in Iowa. Second, other states' recognition of similar tort principles and treatment of like-minded claims are persuasive, but certainly not commanding. Finally, tort law should be available to provide redress to a party injured by intentionally wrongful conduct where alternatives might not otherwise suffice to address the injury actually sustained, balancing the respective interests at stake while keeping in mind the consequences of accepting the proposed tort.

Plaintiffs urge that Iowa law supports extending the tort of intentional interference to instances where a third party is alleged to have wrongfully interfered with a judgment creditor's efforts to satisfy a compensatory personal injury award by fraudulently shielding and encumbering the tortfeasor's assets. Plaintiffs rely on § 871 of the Second Restatement of Torts, which provides that "[o]ne who intentionally deprives another of his [or her] legally protected property interest or causes injury to the interest is subject to liability to the other if his conduct is generally culpable and not justifiable under the circumstances." *See also* Restatement (Second) of Torts § 870 (Am. Law

Inst. 1979) ("This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability."). According to official comments to the Second Restatement, the rule "applies when the defendant has done a culpable and unjustifiable act that causes injury to any one or more of another's legally protected interests in property or deprives the other of them" and applies even "when there has been harm to or the deprivation of a nonpossessory interest, such as the wrongful destruction or diminution of a claim or deprivation of a future interest in land." Restatement (Second) of Torts § 871 cmt. *a*. Relevant to the allegations in this case, it counsels in favor of a cause of action to redress a party whose property interest is harmed through the tortfeasor's use of the law:

> One who intentionally destroys or diminishes a property interest of another by the wrongful exercise of a legal power, is subject to liability to the other. This is true when one has a power but not a privilege to transfer a title or other interest, legal or equitable, in land, chattels or choses in action in which another has an interest and of which he is deprived by an unlawful exercise of the power.

Id. cmt. *g*. Concerning fraudulent conduct, "[t]he tort lies in causing loss" and "applies to one who assists another to commit a fraud." *Id.* cmt. *e*.

The tort's viability has not been thoroughly litigated, and other courts' consideration of the tort have been mixed. Some states like New Mexico have embraced the doctrine, observing that "there exists a residue of tort liability, which has escaped categorization in the forms of a tort action, that is available for development into recognized torts as the need arises." *See Schmitz v. Smentowski*, 785 P.2d 726, 733–36 (N.M. 1990); *see also Beaudry v. Farmers Ins. Exch.*, 412 P.3d 1100, 1104 (N.M. 2018) ("To bring a successful prima facie tort claim a plaintiff must show '(1) an intentional and lawful act; (2) an intent to injure the plaintiff; (3) injury to the plaintiff as a result of the intentional act; (4) and the absence of sufficient justification for the injurious act.'" (citation omitted)). Missouri, too, recognizes the doctrine. *See Porter v. Crawford & Co.*, 611 S.W.2d 265,

272 (Mo. Ct. App. 1980) (noting there was "no sound reason based upon either precedent or policy why Missouri should not adopt" the *prima facie* tort since "[n]one of the principles relied upon in the evolution of the doctrine are foreign to our law"). Hawaii and New York have also adopted the tort, but only to the extent that other tort actions and remedies do not exist to redress the plaintiff's alleged harm. *See Yoneji v. Yoneji*, 354 P.3d 1160, 1169 (Haw. Ct. App. 2015) ("[T]his court recognized a cause of action for intentional harm to a property interest, under § 871, that narrowly applies to cases . . . where no other well-recognized causes of action are pled to address the alleged harm."); *Curiano v. Suozzi*, 63 N.Y.2d 113, 117 (N.Y. 1984) ("[T]his court recognized the general principle that harm intentionally inflicted is prima facie actionable unless justified," but "[w]hile prima facie tort may be pleaded in the alternative with a traditional tort, once a traditional tort is established the cause of action for prima facie tort disappears" (citation omitted)); *cf. Taylor v. Metzger*, 706 A.2d 685, 701 (N.J. 1998) (observing that one intermediate appellate court had adopted the *prima facie* tort but declining to recognize it in the case of workplace harassment claims where other causes of action were available). Intermediate appeals courts in Oklahoma and Pennsylvania have expressly rejected the doctrine until, and unless, adopted by the state's highest court. *See Tarrant v. Guthrie First Capital Bank*, 241 P.3d 280, 283–84 (Okla. Civ. App. 2010) ("Although [state precedent] does not specifically hold that the prima facie tort theory of recovery is unavailable in any other circumstances, it certainly did so with respect to the facts before the Court in that case. Nonetheless, until the [Oklahoma] Supreme Court expressly adopts the prima facie tort theory of recovery, we are unwilling to do so."); *D'Errico v. DeFazio*, 763 A.2d 424, 433 (Pa. Super. Ct. 2000) (noting "Pennsylvania has not yet adopted intentional or *prima facie* tort as set forth in § 870 of the Restatement"). Federal courts attempting to divine state tort law have mostly assumed, without deciding, that the doctrine could be applied. *See DropzoneMS, LLC v.*

Cockayne, Case No. 3:16-cv-02348-YY, 2019 WL 7630788, at *19–20 (D. Or. Sept. 12, 2019) ("Given the Oregon Supreme Court's hostility toward unhelpful nomenclature but its amiability toward allowing novel tort claims to counter the effects of economic injury sustained by an act undertaken with a 'socially undesirable motive,' Oregon courts may be receptive to such a claim." (citations omitted)); *Ostroff v. FDIC*, 847 F. Supp. 270, 279 (D. R.I. 1994) ("Neither party has argued which jurisdiction's law governs the issues presented in this case, but assuming arguendo that the doctrine of prima facie tort is a recognized basis for relief under the law governing this case, plaintiffs are unable to establish all of the required elements of this tort." (footnote omitted)); *Meadow Ltd. P'ship v. Heritage Sav. & Loan Ass'n*, 639 F. Supp. 643, 653–54 (E.D. Va. 1986) (assuming tort to exist but dismissing for lack of proof on summary judgment); *cf. McLeodUSA Telecomm. Servs., Inc. v. Quest Corp.*, 361 F. Supp. 2d 912, 920 (N.D. Iowa 2005) (granting temporary restraining order on claims for, among other things, *prima facie* tort, citing likelihood of success on the merits).[24]

Of the states that recognize the tort, some have discussed the doctrine in the context of fraudulent financial practices. In *Yoneji*, the Hawaii court rejected the application of the *prima facie* tort doctrine where the trustees of the family trusts alleged the defendants had improperly depleted trust accounts and wrongfully redirect trust funds because the plaintiffs' alleged financial harm could be remedied by their conversion claim, and tort recovery was not necessary. 354 P.3d at 1169. In *Schmitz*, by contrast, the New Mexico court affirmed the plaintiffs' judgment on the general tort where the jury found the bank-defendant was not acting as a noteholder in due course when it

[24] At the same time, federal courts have recognized the principles of the Second Restatement of Torts in bankruptcy proceedings. *See, e.g.*, *In re Lawson*, 791 F.3d 214, 219 (1st Cir. 2015) (discussing § 871 during bankruptcy appeal in the context of the "actual fraud" exception to bankruptcy discharge, noting the Second Restatement was consistent with the "common understanding" of fraud).

knowingly participated in a strawman scheme to misrepresent to authorities the securitization of the underlying loan and moved to foreclose on the note when it had actual knowledge the debtor had no beneficial interest in the note. 785 P.2d at 737–39. And in *Porter*, the Missouri court held the plaintiff successfully stated a claim under the *prima facie* tort doctrine where an insurance company cancelled personal injury settlement payments upon which the plaintiff had written checks, finding the injury to the plaintiff was the pecuniary loss associated with the resulting bank charges. 611 S.W.2d at 272.

That brings the focus back to the Iowa common law. In this specific context, the allegations presented by Plaintiffs' Petition could support a cause of action for *prima facie* tort consistent with Iowa law. As described above, Iowa has taken steps, along with most other states, in expanding the tort of intentional interference outside the commercial, and even economic, contexts. *See Wood*, 338 N.W.2d at 127; *Frohwein*, 264 N.W.2d at 795. In *Wood*, the Court even recognized that conduct underlying the harm, "itself, suggest[ed] the need for recognition of a civil claim for damages." 338 N.W.2d at 125. The intentionally wrongful conduct here—taking steps to shield Weller's valuable real estate and other assets in the face of a known personal injury judgment lien—is certainly conduct Iowa law proscribes. *See generally* Iowa Code ch. 684. But other remedies do not exist here. As discussed above, Defendants cannot be liable for the fraudulent transfers under the IUFTA as accessories because that statute supports equitable remedies only, not compensatory damages at law. Although this might suggest Iowa common law would preclude a general tortious interference claim under such circumstances, *cf. Yoneji*, 354 P.3d at 1169, the Court realizes that the injuries sought to be redressed, and the remedies therefore provided to the victim, are entirely different: the former guarantees the *return* of property or its reasonable value to its rightful owner while the latter compensates the victim of intentionally-wrongful acts for the extra

costs and harms associated with the specific conduct taken in furtherance of the wrong, *see Wood*, 388 N.W.2d at 127. And although it might be thought that RICO supplies an adequate alternative, *cf. Marshall v. Fenstermacher*, 388 F. Supp. 2d 536, 599 (E.D. Pa. 2005), this Court finds it hard to believe the Iowa Supreme Court would find a substitute remedy to a state law tort claim under the common law in a supremely complex and onerous federal statute designed to combat organized crime, corruption, and fraud—a result that would effectively preclude an injured litigant from ever vindicating her rights in an Iowa state court.

Defendants' cursory objections to allowing the tort to proceed in this case are unconvincing because they rest solely on the fact there is no Iowa case on point and fail to address, even remotely, the viability of the tort doctrine under the Iowa common law and principles espoused by § 871 of the Second Restatement of Torts. But Plaintiffs' proposed tort is not precluded by any Iowa authority and, here, conforms to general principles for permitting a cause of action for injuries sustained from an intentionally wrongful act. And rather than permitting double recovery, recognizing the tort in the context of a frustrated judgment creditor allows Plaintiffs to seek remedies for each distinct wrong they claim to have suffered. Recognition of general tortious interference—the *prima facie* tort—is ultimately a policy decision only capable of being made by the Iowa Supreme Court. In the absence of any authority compelling otherwise, the Court, exercising respectful caution, can find no persuasive reason to reject the claim barring further development in state law.

2. Aiding and abetting tortious interference and civil conspiracy

Defendants next contend Plaintiffs cannot prosecute a claim for aiding and abetting general tortious interference, arguing only that they cannot be held liable for aiding and abetting a

nonexistent tort. The Second Restatement of Torts provides that one is subject to liability "[f]or harm resulting to a third person from the tortious conduct of another" if he:

> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
>
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

Restatement (Second) of Torts § 876 (1979). *Accord Wright*, 652 N.W.2d at 172; *Ezzone*, 525 N.W.2d at 398. Iowa, of course, follows the Second Restatement of Torts for aiding and abetting and conspiring to commit a tort like intentional interference. *Ezzone*, 525 N.W.2d at 398. As an intentional tort, Plaintiffs' claim for general tortious interference may also be pursued against Defendants as accessories to Weller's conduct. *See Yoneji*, 354 P.3d at 1168.

3. Statute of limitations

Finally, Defendants argue that Plaintiffs tort claims are barred by Iowa's two-year statute of limitations for injuries to the person or reputation. *See* Iowa Code § 614.1(2); *Langner v. Simpson*, 533 N.W.2d 511, 516 (Iowa 1995) ("Iowa Code section 614.1(2) is the general statute of limitations in tort cases."). But Plaintiffs do not allege an injury to person or reputation; they claim they have been injured by Defendants' wrongful interference with the collection of their judgment lien, the compensatory damages to which Kruse is entitled. *See* Iowa Code § 684.1(9) (2015) (broadly defining "property" as "anything that may be the subject of ownership" for purposes of determining rights associated with fraudulent conveyances); *id.* § 684.1(8) ("'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes . . . a judicial lien obtained by legal or equitable process or proceedings . . . ."); *see also*

UFTA § 1, cmt. 10 ("Property includes both real and personal property, whether tangible or intangible, and any interest in property, whether legal or equitable"); *Property*, Black's Law Dictionary (11th ed. 2019) (defining "property" as "the rights in a valued resource such as land, chattel, or an intangible," including the right to collect a debt).[25]

"In general, actions for injuries to property and for relief on ground[s] of fraud must be brought within five years . . . ." *Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993) (citing Iowa Code § 614.1(4)). Iowa courts have applied a five-year limitations period to intentional torts affecting property rights, such as prospective contractual and business relationships. *See Iowa Coal Mining Co. v. Monroe Cty.*, 555 N.W.2d 418, 437 (Iowa 1996) (tortious interference with prospective contractual relationship with customer); *Clark v. Figge*, 181 N.W.2d 211, 215–16 (Iowa 1970) (intentional interference with business relation). The five-year statute of limitations likewise applies to Plaintiffs' *prima facie* tort claim of general interference with the collection of Kruse's judgment lien.

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[25] Defendants argue that Plaintiffs suffered no injury to their property because "a judgment lien has no effect to create any property right in the judgment creditor." *See Hunter v. Citizens' Sav. & Tr. Co.*, 157 Iowa 168, 138 N.W. 475, 476–77 (1912). That case concerned a judgment lienholder whose lien on the debtor's property, the Court held, was extinguished by virtue of its sale to a *bona fide* purchaser by the executors of her estate. *Id.* at 477–78. The line quoted by Defendants, placed into context, merely states the rule that a judgment lien against a debtor's property is extinguished when the debtor no longer possesses an interest in that property. *See Vigars v. Hewins*, 184 Iowa 683, 169 N.W. 119, 120 (1918) (stating "the judgment does not attach to the land as distinct from the title held, or obtained by the debtor, but becomes a lien only upon his interest" (citing *Hunter*, 138 N.W. at 476–78)); *accord* Iowa Code § 684.8(1) (stating "[a] transfer or obligation is not voidable . . . against a person who took in good faith and for reasonably equivalent value"). By contrast, both the IUFTA and the common understanding of the word consider a lien a protected property interest. *See* Iowa Code § 684.1(9) (2015) ("'Property' means anything that may be the subject of ownership" for purposes of avoiding fraudulent conveyances); *Property*, Black's Law Dictionary (11th ed. 2019) (defining "property" as "the rights in a valued resource such as land, chattel, or an intangible," including the right to collect a debt); Property Interest, *Black's Law Dictionary* (11th ed. 2019) ("A legitimate claim of entitlement to some legal or contractual benefit that cannot be taken away without due process.").

Plaintiffs, filing suit on February 28, 2019, brought suit well within the five-year statute of limitations of Iowa Code § 614.1(4). The Petition states a timely claim for tortious interference.

E. Intentional Infliction of Emotional Distress

Plaintiffs allege intentional infliction of emotional distress in Count VIII. To state a claim for intentional infliction of emotional distress, Plaintiffs must plead facts sufficient to establish:

> (1) outrageous conduct by the defendant; (2) the defendant intentionally caused, or recklessly disregarded the probability of causing, the emotional distress; (3) plaintiff suffered severe or extreme emotional distress; and (4) the defendant's outrageous conduct was the actual and proximate cause of the emotional distress.

Fuller v. Local Union No. 106 of United Bhd. of Carpenters & Joiners of Am., 567 N.W.2d 419, 423 (Iowa 1997). "The plaintiff must establish a prima facie case for outrageous conduct, and 'it is for the court to determine in the first instance, as a matter of law, whether the conduct complained of may reasonably be regarded as outrageous.'" *Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 26 (Iowa 2014) (citation omitted). For conduct to be considered "outrageous," it must be "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Hedlund v. State*, 930 N.W.2d 707, 725 (Iowa 2019) (citation omitted); *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 183 (Iowa 1991) (citation omitted). Moreover, "severe or extreme emotional distress" is present "only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it." *Smith*, 851 N.W.2d at 30 (quoting Restatement (Second) of Torts § 46 cmt. *j*, at 77–78 (1965)). The law "requires plaintiffs to 'establish more than the fact that they felt bad for a period of time.'" *Id.* Rather, Iowa cases that have succeeded in demonstrating true emotional harm "have had direct evidence of either physical symptoms of the distress or a clear showing of a notably distressful

mental reaction caused by the outrageous conduct." *Id.* (quoting *Steckelberg v. Randolph*, 448 N.W.2d 458, 462 (Iowa 1989)).

The Court agrees with Defendants that the Petition fails to advance facts that, taken as true, could support a claim for intentional infliction of emotional distress. The Petition is devoid of any substantive factual allegation that Plaintiffs have suffered the kind of emotional distress that is redressable by the law. Nor do Plaintiffs make any attempt to distinguish symptoms stemming from her personal injuries from those currently suffered specifically as a result of the alleged actions of the Attorney Defendants or Bank Defendants. Apart from the conditions from which Kruse suffers already, Plaintiffs merely state, in boilerplate fashion, that "Kruse and Hudson suffered severe or extreme emotional distress." [ECF No. 18-2 ¶ 241]. This is insufficient to state a claim upon which relief can be granted.

F. Injunctive and Declaratory Relief

At last, the Bank Defendants ask the Court to dismiss Count IX of the Petition, which asserts a request for injunctive, declaratory, and other equitable relief. The Petition advances alternative theories that "[u]nder the equitable doctrine of equitable subordination, and in the interests of equity and justice, all of First State's right, title, and interests in the real estate and secured assets involved in the Foreclosure Petition are subordinated to [Plaintiffs] and their $2.5 million judgment." [ECF No. 18-2 ¶ 259]; *see also id.* ¶¶ 248–58. And it states that "[f]ollowing the jury's determination of the legal issues submissible to it, there will remain equitable issues for the Court to decide," reserving provision for "further appropriate equitable and declaratory relief." *Id.* ¶¶ 261–62.

The Bank Attorneys apparently take this to mean Plaintiffs intend to ask this Court to enjoin proceedings in the foreclosure action currently pending in Iowa district court. Because the Anti-Injunction Act, 28 U.S.C. § 2283, generally "prohibits federal courts from enjoining the

proceedings in state courts," *Kansas Pub. Employees Ret. Sys. v. Reimer & Koger Assocs.*, 77 F.3d 1063, 1068 (8th Cir. 1996), they argue Plaintiffs' request must be dismissed.

Rule 12(b)(6) requires dismissal of a complaint that fails to state a claim. But the *claim alleged* is not the same as the *relief sought*. Indeed,

> [t]he sufficiency of a pleading is tested by the Rule 8(a)(2) statement of the claim for relief and the demand for judgment is not considered part of the claim for that purpose, as numerous cases have held. Thus, the selection of an improper remedy in the Rule 8(a)(3) demand for relief will not be fatal to a party's pleading if the statement of the claim indicates the pleader may be entitled to relief of some other type.

Dingxi Longhai Dairy, Ltd. v. Becwood Tech. Grp. L.L.C., 635 F.3d 1106, 1108–09 (8th Cir. 2011) (per curiam) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1255 at 508–09 (3d ed. 2004)); *see Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir. 2002); *Laird v. Integrated Res., Inc.*, 897 F.2d 826, 841–42 (5th Cir. 1990); *Schoonover v. Schoonover*, 172 F.2d 526, 530 (10th Cir. 1949). In other words, the pleading of a claim entitling a plaintiff to relief under Rule 8(a)(2) is distinct from a request for a particular remedy under Rule 8(a)(3)—the former is subject to dismissal under Rule 12(b)(6) (i.e. "failure to state a *claim*") while the latter is not.[26]

The Court will not strike Plaintiffs' request for equitable remedies at this time because it does not really allege a "claim" but a form of relief. As the Bank Defendants acknowledge, an injunction "is inherently an equitable remedy." *Great–West Life & Annuity Ins. Co. v. Knudson*,

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[26] This is inherent in the policies embodied by the Federal Rules of Civil Procedure: Rules 15(a) and 15(b) permit a request for relief to be amended before and even during trial, and Rule 54(c) instructs district courts to grant any relief that is ultimately supported by the evidence. Wright & Miller, *supra*, § 1255 at 511; *see* Fed. R. Civ. P. 15(a)(2) (permitting amendment to the pleadings by leave of the court "when justice so requires"), (b) (permitting a request for relief to be amended during trial absent a showing of prejudice), 54(c) (instructing that all final judgments, except those for default, "should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings").

534 U.S. 204, 211 n.1 (2002); *see also* Wright & Miller, *Federal Practice & Procedure* § 1256 (3d ed. 2004) (noting declaratory judgment is an equitable remedy). The question of whether or not Plaintiffs are entitled to a particular remedy is a matter not presently before the Court as Plaintiffs have not, at this point, sought such relief. Nor is it a proper use of a motion under Rule 12(b)(6) to challenge the pleading of a prayer for relief. *See Reininger v. Oklahoma*, 292 F. Supp. 3d 1254, 1266 (W.D. Okla. 2017) (denying challenge to prayer for injunctive relief under Rule 12(b)); *Lewis v. Ceralvo Holdings, LLC*, No. 4:11-CV-00055-JHM, 2012 WL 32607, at *6 (W.D. Ky. Jan. 6, 2012) (holding injunction, however fashioned, was not a "free standing claim," but a "form of relief that can be requested" and finding the request to meet pleading requirements of Rule 8(a)(3)). The Court must determine at a later date what, if any, equitable relief the law affords.[27]

IV. CONCLUSION

For the reasons discussed above, the Defendants' Motions to Dismiss are GRANTED in part and DENIED in part:

Defendants' motion to dismiss Count I is DENIED;

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[27] Plaintiffs disclaim any desire or attempt to enjoin the state foreclosure action. *See* [ECF No. 20-1 at 60]. Indeed, any such effort faces an uphill battle. Under the Anti-Injunction Act, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The purpose of the Anti-Injunction Act is to "forestall the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977) (plurality op.). Accordingly, the three enumerated exceptions to this rule are narrowly construed, and any party seeking such relief faces a heavy burden. *See Kansas Pub. Employees Ret. Sys.*, 77 F.3d at 1068 ("Courts must construe the exceptions to the Anti–Injunction Act narrowly and resolve doubts in favor of letting the state action proceed."); *see also Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 297 (1970) ("Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy.").

Defendants' motion to dismiss Count II is GRANTED, Plaintiffs' claim for aiding and abetting fraudulent conveyances under the Iowa Uniform Fraudulent Transfer Act is DISMISSED;

Defendant's motion to dismiss Count III is DENIED;

Defendants' motion to dismiss Count IV is GRANTED, Plaintiffs' claim for civil conspiracy to commit fraudulent conveyances under the Iowa Uniform Fraudulent Transfer Act is DISMISSED;

Defendants' motion to dismiss Count V is DENIED;

Defendants' motion to dismiss Count VI is DENIED;

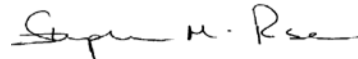
Defendants' motion to dismiss Count VII is DENIED;

Defendants' motion to dismiss Count VIII is GRANTED, Plaintiffs' claim for intentional infliction of emotional distress is DISMISSED;

Defendants' motion to dismiss Count IX is DENIED as not ripe.

IT IS SO ORDERED.

Dated this 20th day of March, 2020.



STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT