SO ORDERED.

SIGNED this 28th day of January, 2022.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:	
Judith Judalena Short,	Case No. 21-50463
	Chapter 7
Debtor.	
Forsyth Redi-Mix, Inc.,	
Plaintiff,	
v.	Adv. Proc. No. 21-06021
Judith Judalena Short, individually and doing business as Alpha Construction of the Triad, Inc., and doing business as Alpha Construction of NC, Inc., and doing business as Alpha Concrete Designs, LLC,	
Defendant.	

ORDER
DENYING DEFENDANT'S MOTION TO QUASH OR ISSUE PROTECTIVE ORDER AND MOTION TO LIMIT DISCOVERY

This adversary proceeding comes before the Court on the Motion to Quash Subpoenas or Issue Protective Order (Docket No. 13, the "Motion") filed by Judith Judalena Short (the "Defendant"), under Federal Rules of Civil Procedure 26 and

45, as made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7026 and 9016. Forsyth Redi-Mix, Inc. (the "Plaintiff") filed its response in opposition to the Motion (Docket No. 17, the "Response") and the Defendant subsequently filed a reply (Docket No. 18, the "Reply"). While not framed as such by the Defendant, the Court interprets the Motion as both a motion for protective order under Rule 26(c) and a motion to limit discovery under Rule 26(b)(2)(C). For the reasons discussed below, the Court will deny the Motion in its entirety as the Defendant has not shown good cause for a protective order and the documents requested are relevant to the claims and defenses in this adversary proceeding.

BACKGROUND AND PROCEDURAL HISTORY

This proceeding arises from a state court action initiated by the Plaintiff against the Defendant, her companies, and other named relatives and business associates.[1] The Plaintiff and the Defendant, who owned and operated several concrete finishing businesses, began a working relationship in late 2015 through which the Plaintiff supplied the Defendant's companies with ready-mix concrete on credit (Docket No. 7, ¶¶ 7–9). The Plaintiff alleges the Defendant, as well as several other coconspirators, acquired and wrongfully retained monies owed for the delivered ready-mix concrete through deceitful, fraudulent, and unlawful financial dealings.

On February 3, 2021, the Plaintiff filed an action against the Defendant and other named defendants in the North Carolina General Court of Justice, Superior Court Division, Forsyth County, North Carolina (the "State Court"), styled *Forsyth Redi-Mix, Inc. v. Alley, et. al.*, No. 20-CVS-634 (Docket No. 13, Ex. B) (the "State Court Action"). The Plaintiff issued subpoenas *duces tecum* to five banks and credit unions[2] (the "Banks and Credit Unions"), to which the defendants in the State

[1] While the Court assumes the reader's familiarity with the factual underpinnings of the parties' dispute in this adversary proceeding, it briefly recites the procedural history as it has some bearing on determining the relevancy of the requested bank records.

[2] The five banking institutions subject to the subpoenas at issue are First Citizens Bank & Trust Company, Allegacy Federal Credit Union, Truist Bank, Truliant Federal Credit Union, and Wells Fargo Bank, N.A. (Docket No. 13, Ex. A.)

Court Action filed objections and motions to quash (Docket No. 17, p. 4). Before those objections and motions could be decided, and before the discovery phase of the State Court Action could be concluded, the Defendant and her former spouse and co-defendant Jeffrey Wayne Alley, each separately filed chapter 7 bankruptcy petitions. The State Court Action against the Defendant was stayed as of the Defendant's bankruptcy filing and remains so as of this Order.

The Plaintiff commenced this adversary proceeding by filing a complaint on October 13, 2021, requesting that the Court declare the debt allegedly owed by the Defendant, in the approximate amount of $798,860.81, to be nondischargeable under 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). After the Defendant filed her Answer (Docket No. 5), the Plaintiff filed an Amended Complaint on November 23, 2021 (Docket No. 7, the "Amended Complaint").

In the Motion, the Defendant objects to the Plaintiff's issuance of subpoenas *duces tecum* to the Banks and Credit Unions, which seek production of certain bank records from accounts held or controlled by the Defendant from January 1, 2016 to the present. The Defendant argues that the alleged activities giving rise to the Plaintiff's nondischargeability cause of action occurred between the middle of 2018 and January 2019 and, therefore, "any banking activity prior to December 31, 2017 and subsequent to February 1, 2019 has no relevance whatsoever to Plaintiff's claims or Judith Short's defenses in this adversary proceeding" (Docket No. 13, ¶ 8). Based on the perceived lack of relevancy, the Defendant argues the requested discovery is not proportionate to the needs of the case and the subpoenas are overly broad, burdensome, and oppressive (Docket No. 13, ¶ 10). The Defendant also asserts, without elaboration, that she "has a right to privacy with respect to the subject bank accounts, particularly with respect to any account in her individual name" (Docket No. 13, n.1). For those reasons, the Defendant requested the Court enter an order quashing the subpoenas or, in the alternative, enter a protective order limiting the document production to the period of January 1, 2018 to February 1, 2019.

In the Response, the Plaintiff asserts first that the Defendant lacks standing under Rule 45 because "only a subpoenaed person has standing to quash" (Docket No. 17, pp. 8–9). Second, the Plaintiff argues the Defendant failed to support her assertions that the subpoenas are overly broad, burdensome, or oppressive with the requisite degree of specificity required under the Federal Rules of Civil Procedure. Third, the Plaintiff maintains that an individual cannot quash a subpoena to his or her bank on the theory that it infringes a privacy right. Fourth, the Plaintiff argues the requested documents are relevant to establishing its claims. Specifically, the banking records could prove the Defendant's receipt of monies which should have been used to pay her creditors (Docket No. 17, p. 18).

None of the five respondent Banks and Credit Unions filed an objection to any of the subpoenas. According to the Defendant, the Banks and Credit Unions are aware of the Motion and, while prepared to produce the requested documents, await this Court's decision on the matter before complying with the Plaintiff's subpoenas.

The Court conducted a hearing on the Motion on January 4, 2022, at which Ashley Rusher appeared on behalf of the Plaintiff and Daniel Bruton appeared on behalf of the Defendant. Both sides presented arguments on the Defendant's standing to seek a protective order and the relevancy of the requested documents. Counsel for the Plaintiff conceded the issue of standing given the Defendant's alternative request for relief in the form of a protective order, and also orally amended the Response to limit any document requests to the period of January 1, 2016 to July 21, 2021, the petition filing date in the Defendant's underlying bankruptcy case. At the conclusion of the hearing, the Court took the matter under advisement.

DISCUSSION

The Federal Rules of Civil Procedure provide that, unless limited by a court order, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); *see Norton v. Tabron*, 727 F. App'x 762, 766

(4th Cir. 2018). Courts "are afforded broad discretion with respect to discovery generally," *Cook v. Howard*, 484 F. App'x 805, 812 (4th Cir. 2012), and, while discovery under the Rules "is broad in scope and freely permitted[,]" *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir. 2003), Rule 26(c) provides that the Court may, "for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" Fed. R. Civ. P. 26(c)(1).

While the Defendant presents the Motion as one for a protective order, the principal objection she raises to the requested bank records is a purported lack of relevancy to the claims and defenses in this adversary proceeding. While the Defendant's other assertions, specifically that the subpoenas are overly broad, burdensome, oppressive, and an infringement of her privacy interests, can and will be considered in the context of a motion under Rule 26(c), the Defendant's objection based on relevancy is more properly considered under Rule 26(b)(2)(C).[3] This rule provides that the Court, "on motion or on its own," should limit discovery that "is outside the scope permitted by Rule 26(b)(1)[;]" i.e., any discovery beyond the scope of relevance described in subparagraph (b)(1). Fed. R. Civ. P. 26(b)(2)(C)(iii). Based on this guidance, the Court will separately treat the Defendant's objection based on relevance as a motion to limit discovery under Rule 26(b)(2)(C) and consider it after first evaluating the Defendant's request for a protective order under Rule 26(c).

A. Defendant's Motion for Protective Order

While the Motion largely challenges the subpoenas on a perceived lack of relevancy to the underlying claims, the Defendant also asserts that the subpoenas are overly broad, burdensome, and oppressive. Additionally, the Defendant

[3] *See Nicholas v. Wyndham Int'l, Inc.*, 373 F.3d 537, 543 (4th Cir. 2004) ("[I]n response to a motion for protective order under Rule 26(c)…[the] court may limit 'the frequency or extent of use of discovery methods otherwise permitted' under the Federal Rules of Civil Procedure if it concludes that [the requested documents are subject to the limitations cited in Rule 26(b)(2)(C)]" (emphasis added) (quoting Fed. R. Civ. P. 26(b)(2)(C))).

maintains that she has a right to privacy in the requested bank records, which further supports entry of her requested protective order.

"To obtain a protective order under Rule 26(c), the party resisting discovery must establish that the information sought is covered by the rule and that it will be harmed by disclosure." *Kinetic Concepts, Inc., v. Convatec, Inc.*, 268 F.R.D. 255, 259 (M.D.N.C. 2010) (quoting *In re Wilson*, 149 F.3d 249, 252 (4th Cir. 1998)). If the Defendant makes this showing, the Plaintiff "then must establish that the information is sufficiently necessary and relevant to [its] case to outweigh the harm of disclosure." *Id.* at 260.

Protective orders sought under Rule 26 "are wholly within the court's discretion" and "[t]he burden of showing good cause for a protective order rests on the party requesting relief." *Pro Billiards Tour Ass'n v. R.J. Reynolds Tobacco Co.*, 187 F.R.D. 229, 230 (M.D.N.C. 1999) (cleaned up). The "[s]tandard for issuance of a protective order is high[,]" *In re Anderson*, 594 B.R. 309, 314 (Bankr. D. Md. 2016), and "the burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *Jones v. Circle K Stores, Inc.*, 185 F.R.D. 223, 224 (M.D.N.C. 1999) (quoting *In re Terra Int'l*, 134 F.3d 302, 306 (5th Cir. 1998)).

The Court finds the Defendant has not shown good cause for entry of a protective order. Outside of the discussion on relevance and the footnote asserting a right to privacy, the Defendant does not provide a basis or explanation for her objections that the subpoenas are overly broad, burdensome, or oppressive. The Defendant has not shown she will be burdened by the production—the Banks and Credit Unions are responsible for producing the documents and none of those institutions have objected on the grounds of undue burden. *See Boodram v. Coomes*, No. 1:12CV-00057-JHM, 2016 WL 11333773, at *4 (W.D. Ky. Jan. 5, 2016). Nor has the Defendant shown that the scope of the document request is overly broad. This is not an instance where the Plaintiff has requested a blanket production of bank records without any temporal restriction. *See, e.g.*, *Williams*

v. Magnolia Cafe, No. 18-1020-EWD, 2020 WL 8513837, at *14 (M.D. La. Sept. 29, 2020) (request for all bank statements during unspecified period of time was overly broad); *Treadway v. Otero*, No. 2:19-CV-244, 2020 WL 602225, at *3 (S.D. Tex. Feb. 7, 2020) (finding request for production overly broad and burdensome where plaintiff sought "all documents" and "all bank records"). Instead, as discussed in detail below, the Court finds the subpoenas are "sufficiently limited to the relevant account[s] and time period to meet the liberal standard of relevancy under Rule 26(b)(1)." *City of St. Petersburg v. Total Containment, Inc.*, No. 06-20953-CIV, 2008 WL 1995298, at *4 (E.D. Pa. May 5, 2008).

Courts in the Fourth Circuit, including the Middle District of North Carolina, have declared "boilerplate objections to discovery requests, including for documents, invalid." *Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 241, 241 n.22 (M.D.N.C. 2010) (collecting cases). "Claims of overbreadth and undue burden should be supported by specific information demonstrating how the request is overly broad and unduly burdensome." *Zurich Am. Ins. Co. v. Hardin*, No. 8:14-CV-775, 2019 WL 3082608, at *5 (M.D. Fla. July 15, 2019). The Defendant has not come forward with specific evidence to support her assertions that production of the banking records is overly broad, burdensome, or oppressive.

The Defendant asserts, by way of a footnote in the Motion, that she "has a right of privacy with respect to the subject bank accounts, particularly with respect to any account in her individual name" (Docket No. 13, n.1). The Defendant does not assert any privilege in the documents, nor could she because "[c]ourts have uniformly held that the banker-depositor privilege was not recognized at common law and does not exist in the Federal Courts." *Capuccio v. Capuccio (In re Capuccio)*, 558 B.R. 930, 934 (Bankr. W.D. Okla. 2016) (internal quotation marks omitted) (collecting cases). And, the Defendant has provided no legal basis to support her general claim of a right to privacy. Accordingly, those records, if determined by the Court to be relevant, must be turned over to the Plaintiff.

Nevertheless, while the Defendant's asserted privacy interests cannot foreclose discovery of the requested banking records, this District has recognized that production of bank records creates "a high potential to disclose a whole host of irrelevant and confidential" information. *Elsayed v. Fam. Fare LLC*, No. 1:18CV1045, 2019 WL 8586708, at *4 (M.D.N.C. Oct. 31, 2019). Therefore, the Court will direct the Plaintiff to redact the Defendant's financial account numbers and any other private information (as governed by Federal Rule of Bankruptcy Procedure 9037) prior to filing any of the banking records on the docket as exhibits.

For these reasons, the Court will overrule the Defendant's overbreadth, undue burden, and oppressiveness objections, as well as her broad assertions of privacy over the banking records. The Motion is therefore denied to the extent it seeks a protective order under Rule 26(c).

B. Defendant's Motion to Limit Discovery under Rule 26(b)(2)(C)

The scope of discovery, as interpreted by the Supreme Court, is broadly construed to include "any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). In assessing whether nonprivileged information is within the proper scope of discovery, the Federal Rules of Civil Procedure direct as follows:

> Parties may obtain discovery regarding *any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1) (emphasis added).

"The trial court has broad discretion in determination of relevance for discovery purposes." *Lindsay v. Glick*, No. 1:15CV596, 2016 WL 6238542, at *3

(M.D.N.C. Oct. 25, 2016); *see also Watson v. Lowcountry Red Cross*, 974 F.2d 482, 489 (4th Cir. 1992). "The burden is on the party resisting discovery on relevancy grounds to support his objection" and "generally, the mere cry of irrelevance without any statement in support of the objection is disfavored by the court." *Elkins v. Broome*, No. 1:02-CV-305, 2004 WL 3249257, at *1 (M.D.N.C. Jan. 12, 2004) (internal citations omitted).

Although Rule 26 does not define relevancy, it has been "broadly construed to encompass *any possibility* that the information sought may be relevant to the claim or defense of any party." *Revak v. Miller*, 7:18-CV-206, 2020 WL 1164920, at *2 (E.D.N.C. Mar. 9, 2020) (emphasis added). While courts and parties are directed to focus on the "actual claims and defenses involved in the action[,]" Fed. R. Civ. P. 26(b)(1) advisory committee note (2000), "[t]his narrowly defined focus does not mean that a fact must be alleged in a pleading for a party to be entitled to discovery of information concerning that fact." 6 MOORE'S FEDERAL PRACTICE § 26.42 (3d ed. 2021). Instead, a fact must simply be "germane to a claim or defense in the pleading" and, in determining whether a discovery request is relevant, courts "must look beyond the allegation of a claim or defense to the controlling substantive law." *Id.*[4]

The Plaintiff's requested relief in this adversary proceeding is to declare debt owed to it by the Defendant nondischargeable under 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6). The first step, however, to excepting a debt from discharge under any of the subsections of § 523(a) is to establish the existence of an underlying debt. *O'Gara v. Hunter (In re Hunter)*, 610 B.R. 479, 492–93 (Bankr. M.D.N.C. 2019). The Defendant asserts the Plaintiff is "utilizing the discovery process in this case to obtain irrelevant information that may be relevant in the State Court Action." (Docket No. 13, ¶ 9). Despite the Defendant's assertions to the contrary, not all discovery that may be relevant to the State Court Action is irrelevant to this

[4] One court cautioned that "counsel should be forewarned against taking an overly rigid view of the narrowed scope of discovery. While the pleadings will be important, it would be a mistake to argue that no fact may be discovered unless it directly correlates with a factual allegation in the complaint or answer." *Thompson v. Dep't of Hous. & Urban Dev.*, 199 F.R.D. 168, 172 (D. Md. 2001).

proceeding. Because the State Court Action is stayed and the Plaintiff's claims have not yet been litigated or reduced to judgment, the Plaintiff must conduct discovery that would enable it to establish the underlying debt under state law. Therefore, the Court will consider whether the requested bank records are relevant not only to the direct elements of the Plaintiff's nondischargeability causes of action under § 523(a), but also to establishing the underlying debts under North Carolina law.

As amended in open court, the Plaintiff seeks records from the Banks and Credit Unions related to accounts held or controlled by the Defendant from January 1, 2016 to July 21, 2021. The Defendant argues that the records of any banking activity prior to December 31, 2017 and after February 1, 2019 are not relevant to the Plaintiff's claims in this adversary proceeding. Because the Defendant concedes that activities occurring between January 1, 2018 and January 31, 2019 are relevant to the Plaintiff's asserted claims (Docket No. 13, ¶ 8), the Court is left to consider the remaining two timeframes.

Records Prior to January 1, 2018

The first segment of requested bank records at issue spans from January 1, 2016 to December 31, 2017 (the "Early Records"). The Plaintiff's business relationship with the Defendant dates from October 2015, when the Defendant's company submitted a credit application for the extension of credit for purchase of ready-mix concrete (Docket No. 7, ¶ 7, Ex. A). While the earliest of the joint-check agreements was not executed until September 21, 2017 (Docket No. 7, ¶ 45), the Plaintiff contends the Defendant's overextension of the credit provided by the Plaintiff, which in turn necessitated the joint-check agreements, potentially began much earlier.

On its claim under § 523(a)(2)(A), the Plaintiff asserts the Defendant obtained money by false pretenses, false representations, and actual fraud (Docket No 7, ¶ 118). A party seeking to establish that a debt is nondischargeable under § 523(a)(2)(A) "must prove the debtor's scienter – the intent to deceive, regardless of whether the claim is for a false representation, false pretenses, or actual fraud." *McGee v. Reed (In re Reed)*, No. 18BK19801, 2021 WL 4028730, at *7 (Bankr. N.D.

Ill. Sept. 3, 2021). The Plaintiff has also articulated several theories of liability under North Carolina law, one of which is a claim of actual fraud. Actual fraud requires five elements: (1) false representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) *made with intent to deceive*, (4) which does in fact deceive, and (5) resulting in damage to the injured party. *Head v. Gould Killian CPA Grp., P.A.*, 812 S.E. 2d 831, 837 (N.C. 2018) (emphasis added).

For both the § 523(a)(2)(A) claim as well as the underlying fraud claim under North Carolina law, the Plaintiff must demonstrate the Defendant's intent to deceive, which can be inferred from circumstantial evidence. *See, e.g.*, *Kaczkowski v. Dovan (In re Dovan)*, No. 13-2055, 2015 Bankr. LEXIS 3299, at *27 (Bankr. M.D.N.C. Sept. 29, 2015); *Hudgins v. Wagoner*, 694 S.E. 2d 436, 445 (N.C. Ct. App. 2009).

Circumstantial evidence of fraudulent intent can include, among other things, a broader pattern of deceit.[5] As one bankruptcy court described in the context of a § 523(a)(2)(A) action, "[i]ntent to deceive can be inferred where there is a pattern of misrepresentation, there are similar statements made to multiple parties, [and] there is persistence in continuing deceit …" *FTC v. Ettus (In re Ettus)*, 596 B.R. 405, 412 (Bankr. S.D. Fla. 2018). Bank records from the start of the Defendant's credit-reliant business relationship with the Plaintiff are thus relevant to establishing circumstantial evidence of Defendant's fraudulent intent for both the § 523(a)(2)(A) claim as well as the underlying debt. Specifically, the Early Records could demonstrate, by way of the Defendant's transfers and use of deposits, a continuing pattern of deceit over the course of the parties' relationship wherein the Defendant continued to extend her credit and make false promises to repay the loans without ever having any intent to do so. *See Daly v. Braizblot (In re*

[5] *See, e.g.*, *In re Reed*, 2021 WL 4028730, at *7 (finding debt nondischargeable based, in part, on pattern of deceit and noting that "[w]hile one suspicious act may be excused as circumstantial, many lead to clear and convincing evidence that a party intended to deceive"); *In re Krizan*, No. 20-10233-7, 2021 WL 3007911, at *6–7 (Bankr. W.D. Wis. July 15, 2021) (finding debt nondischargeable where debtor "[e]ngaged in a pattern of deceit" over a long course of time); *Meekins v. Box*, 567 S.E. 2d 422, 428 (N.C. Ct. App. 2002) (affirming award of damages for fraud where the "Defendant engaged in a pattern of deceit over the course of the relationship with the Plaintiff").

Braizblot), 194 B.R. 14, 20 (Bankr. E.D.N.Y. 1996). Further, these records could provide information that provides a basis for impeachment.

Accordingly, the Court finds the information within the Early Records is relevant to the claims and defenses at issue and thus within the broad scope of relevance described under Rule 26(b)(1). Therefore, the Court will deny the Motion to the extent it seeks to limit discovery of the Early Records.

Records After February 1, 2019

The other segment of requested bank records at issue spans from February 1, 2019 to July 21, 2021 (the "Later Records"). The Plaintiff asserts its debt should also be excepted from discharge pursuant to § 523(a)(4) as the debt was "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Specifically, the Amended Complaint alleges that the Defendant "fraudulently appropriated, embezzled and stole property rightly belonging to the Plaintiff for her own benefit" (Docket No. 7, ¶ 123).

The required elements of embezzlement under § 523(a)(4) are: (1) entrustment to the debtor of (2) property (3) of another (4) which the debtor appropriates for his or her own use (5) with intent to defraud. *C&B Farms, Inc. v. Barnhart (In re Barnhart)*, No. 11-800307, 2013 WL 3779908, at *6 (Bankr. M.D.N.C. July 18, 2013). Importantly, "it is improper to automatically assume embezzlement has occurred merely because property is missing, since it could be missing simply because of noncompliance with contractual terms." 4 COLLIER ON BANKRUPTCY ¶ 523.10.

To except its debt from discharge under a theory of embezzlement, the Plaintiff must show the Defendant appropriated the Plaintiff's property for her own use with fraudulent intent. To that end, the Later Records are relevant to showing how the Defendant used the money that was intended for the Plaintiff; specifically, whether Defendant used money at issue for automobiles and real estate as alleged by the Plaintiff (Docket No. 7, ¶ 12).[6] The records of how the money was spent could

[6] *See, e.g.*, *Ambassador Steel Fabrication, LLC v. Thornton (In re Thornton)*, 615 B.R. 824, 832 (Bankr. C.D. Ill. 2020) (finding no proof that the debtor appropriated funds for his own use as he "did

also be used to address any potential defenses that the Defendant used the money in a good faith belief that the property was her own or that the use was otherwise authorized.[7]

Therefore, the Court finds the Later Records relevant to the claims and defenses and thus within the broad scope of relevance described under Rule 26(b)(1).

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that the Defendant's motion for a protective order is DENIED.

IT IS FURTHER ORDERED that the Defendant's motion to limit the extent of discovery under Rule 26(b)(2)(C) is DENIED.

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not take a paycheck or a draw from the funds improperly deposited"); *Lento v. Marshall (In re Marshall)*, 497 B.R. 3, 14 (Bankr. D. Mass. 2013) (finding defendant used money owed to the plaintiff "for his own business expenses and operations."); *Lehman v. Benasco (In re Benasco)*, No. 12-1028, 2013 WL 2949138, at *4 (Bankr. E.D. La. June 14, 2013) (finding debtors used appropriated money on personal expenses).

[7] *See MacArthur Co. v. Cupit (In re Cupit)*, 514 B.R. 42, 59 (Bankr. D. Colo. 2014); *see also Pino v. Jensen (In re Jensen)*, No. AP 17-01078, 2019 WL 2403105, at *10 (10th Cir. B.A.P. June 7, 2019) (affirming denial of § 523(a)(4) embezzlement finding where the creditors did not demonstrate the debtor used their funds for purposes outside of the contract); *Orumwense-Lawrence v. Osula (In re Osula)*, 519 B.R. 361, 380–81 (Bankr. D. Mass. 2014) (finding the debtor's use of $62,500 to purchase and improve real property raised the question of whether the debtor used the money for his own benefit in a manner the Plaintiff did not authorize).

PARTIES TO BE SERVED

Forsyth Redi-Mix, Inc., v. Short

Case #21-6021

Ashley S. Rusher
via cm/ecf

Randolph M. James
via cm/ecf

Daniel C. Bruton
via cm/ecf

William P. Miller, BA
via cm/ecf

Judith Judalena Short
591 Medinah Drive
Winston Salem, NC 27107-6045