UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC,

Plaintiff,

v.

MICHAEL D. BILLINGS and MDB GROUP, LLC; TERRY WAYNE KELLY, JR. and KELLY MANAGEMENT, LLC; and WILLIAM B. MCHENRY, JR. and FIRST SOUTH INVESTMENTS, LLC,

Defendants.

Case No. 3:18-cv-679

Arising out of Case No. 3:18-cv-252, *Securities and Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Alysson Mills, in her capacity as the court-appointed receiver (the "Receiver") for Arthur Lamar Adams ("Adams") and Madison Timber Properties, LLC ("Madison Timber"), through undersigned counsel, respectfully files this memorandum in support of her Motion for Preliminary Injunction against Michael D. Billings and MDB Group, LLC (sometimes collectively, "Billings") and William B. McHenry, Jr. and First South Investments, LLC (sometimes collectively, "McHenry").

INTRODUCTION

The Receiver respectfully moves the Court for an order restraining Billings and McHenry from dissipating assets that belong to the receivership estate.

Billings and McHenry received millions of dollars in alleged "commissions" from Arthur Lamar Adams and Madison Timber Properties, LLC in exchange for their recruitment of new investments in Madison Timber, a Ponzi scheme. The Receiver's complaint alleges Adams and Madison Timber paid these "commissions" in violation of the Mississippi and Texas Uniform Fraudulent Transfer Acts, which entitles the Receiver to "avoid," or reclaim, assets fraudulently transferred to third parties including Billings and McHenry.

The Receiver is almost certain to succeed on the merits of her claims: Madison Timber was a Ponzi scheme, and Billings and McHenry received proceeds from Madison Timber without providing reasonably equivalent value in return. "It takes cheek to contend that in exchange for the payments he received, the [Madison Timber] Ponzi scheme benefitted from his efforts to extend the fraud by securing new investments." *Warfield v. Byron*, 436 F.3d 551 (5th Cir. 2006).

In the meantime, the Receiver seeks an order restraining Billings and McHenry from dissipating assets in their possession that are directly traceable to the Madison Timber Ponzi scheme pending the litigation of the Receiver's claims. Such an order is necessary to ensure the assets in question, which belong to the receivership estate, will still be there when the time comes to enforce any judgment entered against Billings and McHenry.

Both Mississippi and Texas Uniform Fraudulent Transfer Acts and case law governing federal equity receiverships authorize the order the Receiver requests. There is a substantial risk that the Receiver will be irreparably harmed if the Court does not grant this motion. The Receiver's primary objective is to maximize funds available for distribution to victims. If Billings

and McHenry are not restrained, there is a substantial risk that they will transfer, sell, encumber, or otherwise devalue assets in their possession that belong to the receivership estate, and diminish funds available for collection by the Receiver, for the benefit of victims.

Billings and McHenry cannot credibly contend that the harm to them if this motion is granted outweighs the harm to the Receiver if this motion is denied. The Receiver only asks the Court to restrain Billings's and McHenry's ability to transfer, sell, encumber, or otherwise devalue assets, and assets traceable to assets, that they received from Adams and Madison Timber. These assets do not belong to Billings and McHenry, but instead to the receivership estate.

BACKGROUND

Madison Timber

Adams, through Madison Timber, operated a Ponzi scheme that defrauded hundreds of investors. Investors in Madison Timber believed that Madison Timber used investors' money to purchase timber from Mississippi landowners; that Madison Timber sold the timber to Mississippi lumber mills at a higher price; and that Madison Timber repaid investors their principal and promised interest with the proceeds of those sales. Investors received timber deeds and cutting agreements that purported to secure their investments—but the documents were fake. There was no timber and no proceeds from sales of timber. The money used to repay existing investors came solely from new investors. Like any Ponzi scheme, Madison Timber required more and more new investors to continue.

Adams's recruiters, or "bird dogs," identified new investors and sold to them Madison Timber investments. For each investment made by an investor he personally recruited, each recruiter received a cut of the investor's payment to Madison Timber.

In April 2018, on the heels of investigations of him by the F.B.I. and the U.S. Attorney's Office for the Southern District of Mississippi, Adams turned himself in. The U.S. Attorney's Office for the Southern District of Mississippi charged Adams with two counts of wire fraud and one count of bank fraud in connection with a broader scheme to defraud. Among other things, the bill of information states that as "part of the scheme and artifice to defraud" Adams "paid commissions to recruiters who referred investors to [him]":

> The commissions were paid from investors' money. For example, ADAMS paid one recruiter approximately two million four hundred forty-five thousand four hundred and forty-nine dollars ($2,445,449) in commissions in 2017 alone. ADAMS paid another recruiter approximately one million six hundred twenty-eight thousand one hundred dollars ($1,628,100) in commissions in 2017 . . . .[1]

Separately, the S.E.C. charged Adams with violations of the Securities Act of 1933 and Securities & Exchange Act of 1934, alleging in its complaint that "[b]eginning in approximately 2004," Adams, through Madison Timber, "committed securities fraud by operating a Ponzi scheme."[2]

On May 9, 2018, Adams pleaded guilty to the federal crime of wire fraud and admitted "all of the conduct of the entire scheme and artifice to defraud as set forth" in the bill of information.[3] The fact that Madison Timber was a Ponzi scheme is not in dispute.

Billings

Billings became a recruiter for Madison Timber by no later than 2012, while he was employed by Butler Snow Business Advisory Services, LLC ("Butler Snow"). Madison Timber paid Butler Snow a monthly retainer for "strategic business development, strategic

[1] Doc. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss). The second recruiter referenced in this allegation was Michael Billings. *See* Exhibit A to Declaration of Les Alexander.

[2] Doc. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

[3] Doc. 11, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

financing/capital strategies and overall management advisory" services. Butler Snow and Billings introduced Madison Timber to potential investors and Madison Timber paid Butler Snow and Billings a "success fee" when an investor invested.

In December 2013, Billings left Butler Snow for the prospect of recruiting new investors to Madison Timber fulltime. Adams agreed to pay Billings 2%, and later 2.5%, of each dollar of each investment made by an investor that Billings personally recruited. In addition, Madison Timber paid Billings a fee of $10,000, and later $12,500, a month.[4] These agreements were honored until the collapse of the Ponzi scheme in April 2018.

Among Adams's "bird dogs," Billings was a standout. On information and belief, when Adams met Billings in 2012, Madison Timber had annual investments of approximately $15,000,000. With Billings's help, the Ponzi scheme ballooned. Billings targeted large investors in Texas and California, often dropping certain investors' names to attract new investors.[5] On information and belief, Billings personally "booked" more than $80,000,000 in investments in 2017 alone. Billings was always hunting for "more, and more and more!!"[6]

Between 2013 and April 2018, Billings induced dozens of persons to invest in Madison Timber. In exchange, he and MDB Group received Madison Timber "commissions" of not less than $3,513,780.

McHenry

McHenry became a recruiter for Madison Timber by no later than 2010. McHenry demanded, and Adams agreed to pay to McHenry, 10% of each dollar of each investment made by

[4] Exhibit 2, Declaration of J. Lester Alexander, III at Exhibit A (showing monthly payments to MDB Group, LLC).

[5] Exhibit 3, May 19, 2015 email string from Lamar Adams to Wayne Kelly; Exhibit 4, February 19, 2016 email string from Michael Billings and Wayne Kelly.

[6] Exhibit 5, April 29, 2015 email string from Lamar Adams to Wayne Kelly; Exhibit 6, July 14, 2015 email string from Lamar Adams to Mike Billings ("we are on a roll – and looking for more!").

an investor that McHenry personally recruited. Upon information and belief, the agreement was not committed to writing but was honored until the collapse of the Ponzi scheme in April 2018.

Many of McHenry's investors were elderly retirees. On information and belief, he met some of them in older adult Sunday school classes. McHenry cultivated relationships with these individuals by visiting them, praying with them, bestowing gifts on them—even taking them hunting when they could no longer go by themselves. These individuals could not afford to risk their life savings on purported timber investments, but McHenry gained their trust and then took their money. It is alleged that in one instance, McHenry, after learning at church that one couple was suffering financial difficulties, presented himself as an answer to their prayers. Allegedly, he told the couple that God had led him to contact them. These individuals have been devastated by this Ponzi scheme. The stress has negatively impacted their health, and some struggle now to pay for basic necessities.

Between 2010 and April 2018, McHenry induced approximately twenty people to invest in Madison Timber. In exchange, he and First South received Madison Timber "commissions" of not less than $3,473,320.

LAW

I. The Mississippi Uniform Fraudulent Transfer Act authorizes preliminary injunctive relief.

The Mississippi Uniform Fraudulent Transfer Act (the "Act"), which is based on the Uniform Fraudulent Transfer Act ("UFTA"), specifically provides that a creditor may obtain "an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property."[7] The Act reflects the drafters' understanding that an asset transferred with

[7] The Receiver understands, and therefore represents, that all transfers to Billings and MDB Group were made or deemed to have been made in the State of Mississippi, such that they are subject to the Mississippi Uniform Fraudulent Transfer Act. If, however, the Court determines that the transfers to Billings and MDB were made or deemed to have

the intent to defraud is likely to be re-transferred such that it is "beyond the reach of creditors." *See Barbee v. Pigott*, 507 So. 2d 77, 84 (Miss. 1987) (The Act is "designed to prevent debtors from putting their property which is available for the payment of their debts beyond the reach of creditors."); *ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278, 389 (S.D. Tex. 2008) ("The UFTA was designed to protect unsecured creditors against debtors who make transfers out of . . . the debtor's estate in a manner adverse to creditor's rights.") (internal quotation marks and citation omitted).

Courts have "broad latitude to craft remedies in response to fraudulent transfers." *Crystallex Int'l Corp. v. Petroleos De Venezuela, S.A.*, 879 F.3d 79, 92 (3d Cir. 2018); *see also Biliouris v. Sundance Resources, Inc.*, 559 F. Supp. 2d 733, 739 (N.D. Tex. 2008) (UFTA was "enacted to provide swift, effective, and uniform remedies" and "should be construed broadly to effect [its] purpose"). Here, it is appropriate for the Court to enter an order restraining Billings and McHenry from "further disposition" of funds or other assets they received as part of the Madison Timber Ponzi scheme.

II. Principles of equity authorize preliminary injunctive relief.

Separately, a court may rely "on its [own] equitable powers" in granting injunctive relief "to preserve the status quo." *Janvey v. Alguire*, 647 F.3d 585, 594 (5th Cir. 2011). *See also* MISS. CODE ANN. § 15-3-111(A)(c) (a court may grant an injunction under the Act "subject to the applicable *principles of equity* and in accordance with applicable rules of civil procedure") (emphasis added).[8]

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been made in the State of Texas, they instead are subject to the Texas Uniform Fraudulent Transfer Act. Both acts are derived from the Uniform Fraudulent Transfer Act and the provisions relevant to the issuance of preliminary injunctive relief are nearly identical. *See* MISS. CODE ANN. § 15-3-111; TEX. BUS. & COM. CODE § 24.008(a)(3)(A).

[8] *See also* TEX. BUS. & COM. ANN. § 24.008(3)(A).

The prerequisites for preliminary injunctive relief in the Fifth Circuit are "long-established." *Libertarian Party of Tex. V. Fainter*, 741 F.2d 728, 729 (5th Cir. 1984). A plaintiff must demonstrate: "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Alguire*, 647 F.3d at 595 (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). The decision whether to grant preliminary injunctive relief lies within the sound discretion of the trial court. *Lake Charles Diesel, Inc. v. Gen. Motors Corp.*, 328 F.3d 192, 195 (5th Cir. 2003).

a. There is a substantial likelihood that the Receiver will succeed on the merits.

The Receiver is substantially likely to succeed on the merits of her fraudulent transfer claims against Billings and McHenry. To demonstrate a substantial likelihood of success on the merits, the Receiver need only make a prima facie case for Billings's and McHenry's liability; "the Receiver's evidence in the preliminary injunction proceeding 'is not required to prove [her] entitlement to summary judgment.'" *Alguire*, 647 F.3d at 595–96 (quoting *Byrum*, 566 F.3d at 446); *see also* 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948.3 (3d ed.) ("All courts agree that plaintiff must present a prima facie case but need not show a certainty of winning."). While the Receiver soon will prove her entitlement to summary judgment, here her burden is much lighter.

There can be no question that the Receiver makes a prima facie case for Billings's and McHenry's liability. Under the Act, a transfer made "by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation with the actual intent to hinder, delay or defraud any creditor of the debtor." MISS. CODE ANN. § 15-3-107(1). To establish intent to

defraud, it is enough for present purposes "that a Ponzi scheme existed." *Alguire*, 647 F.3d at 589. "[T]ransfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception." *Quilling v. Schonsky*, 247 Fed. App'x 583, 586 (5th Cir. 2007) (citing *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006)).

Madison Timber was a Ponzi scheme.

There is no dispute that Madison Timber was a Ponzi scheme. "[I]n a classic Ponzi scheme, as new investments [come] in . . . , some of the new money [is] used to pay earlier investors." *U.S. v. Setser*, 568 F.3d 482, 486 (5th Cir. 2009); *see also Schonsky*, 247 Fed. App'x at 586 (quoting BLACK'S LAW DICTIONARY 1180 (8th ed. 2004)) (A Ponzi scheme is "[a] fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors."). That is exactly how Madison Timber operated—as new investments came in, the money was used to pay earlier investors.

Adams's plea establishes that Madison Timber was a Ponzi scheme. *See Alguire*, 647 F.3d at 597 (considering a guilty plea of a Chief Financial Officer in determining whether there existed a substantial likelihood of success on the merits that a Ponzi scheme existed). Adams was the founder and president of Madison Timber and the person best positioned to provide information about its operations. When he pleaded guilty to wire fraud, he admitted "all of the conduct of the entire scheme and artifice to defraud as forth" in the bill of information filed against him.[9] Adams admitted that Madison Timber was "a sophisticated Ponzi scheme" and that "[i]n furtherance of the Ponzi scheme," he created fake timber deeds and cutting agreements for the purpose of defrauding investors.[10] Adams used the proceeds from new investors to "mak[e] payments due and

[9] Doc. 11, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

[10] Doc. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

owing to other investors" and to pay "commissions to recruiters who referred investors" to him.[11] These admissions establish that Madison Timber was a Ponzi scheme.[12]

Madison Timber's records further establish that Madison Timber was a Ponzi scheme. Madison Timber never generated any meaningful profits from timber sales; virtually all of its income came from defrauded investors.[13] Madison Timber used new investors' money to pay "returns" to earlier investors and to pay "commissions" to recruiters, including Billings and McHenry.[14]

Billings's and McHenry's knowledge is irrelevant.

It matters not whether Billings and McHenry knew the "commissions" were fraudulent. Billings's and McHenry's knowledge—whether they knew Madison Timber was a Ponzi scheme—is irrelevant to the Receiver's claims. In the Fifth Circuit, "proving that a transferor operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made," and "*the transferee's knowing participation is irrelevant.*" *Alguire*, 647 F.3d at 598 (emphasis added) (internal quotation marks and citations removed); *see also Schonsky*, 247 Fed. App'x at 586 ("[A] transferee's knowledge [is] irrelevant to the determination of whether the transfer was made with intent to delay or defraud a debtor. For this reason, Schonsky's claim that he did not know the gifts came from a Ponzi scheme fails.") (internal citations omitted). Proof of a Ponzi scheme "obviat[es] the need to prove fraudulent intent of the *transferees*"—it is enough "that each individual received transfers of money from the Ponzi scheme." *Alguire*, 647 F.3d at 599 (emphasis added).

[11] Doc. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

[12] *See also* Exhibit 1, Declaration of Alysson Mills.

[13] Exhibit 1, Declaration of Alysson Mills.

[14] Exhibit 1, Declaration of Alysson Mills.

Because the "commissions," or transfers, paid to Billings and McHenry "were made from a Ponzi scheme,"[15] they were "presumptively made with the intent to defraud," *Schonsky*, 247 Fed. App'x at 586 ("Under the UFTA, transfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception."); *Warfield*, 436 F.3d at 558 ("The Receiver's proof that [the debtor] operated a Ponzi scheme established the fraudulent intent behind the transfers made by [the debtor]."), and the Receiver is substantially like to succeed on the merits of her claims.

Billings and McHenry have no defense to liability.

A defendant may avoid liability for a fraudulent transfer if he proves that he accepted the transfers in objective good faith *and* provided reasonably equivalent value in exchange for the transfers. MISS. CODE ANN. § 15-3-113 ("A transfer or obligation is not voidable under Section 15-3-107(1) against a person who took in good faith *and* for a reasonably equivalent value or against any subsequent transferee or obligee.") (emphasis added). Billings and McHenry must establish *both* good faith *and* reasonably equivalent value to avoid liability for the "commissions" they received from Madison Timber. Billings and McHenry cannot establish either.

As a matter of law, Billings and McHenry cannot establish that they provided reasonably equivalent value in exchange for their "commissions." The law rejects the proposition that the recruitment of new investors to a Ponzi scheme constitutes reasonably equivalent value justifying the payment of salaries or commissions to a Ponzi scheme recruiter. *See Warfield*, 436 F.3d at 560 ("It takes cheek to contend that in exchange for the payments [a broker] received, the . . . Ponzi scheme benefited from his efforts to extend the fraud by securing new investments."); *see also Hoffman v. Markowitz*, No. 16-01972, 2017 WL 6940501 (C.D. Cal. July 26, 2017), at *5

[15] Exhibit 1, Declaration of Alysson Mills; Exhibit 2, Declaration of J. Lester Alexander, III.

("[Defendant] acted as a third-party referring agent, whose only admitted task was to directly recruit new investors. On these facts, the Court concludes that the Referral Fees received by Defendant do not constitute 'reasonably equivalent value' and are thus subject to disgorgement.") (internal citations omitted); *Wing v. Dockstader*, No. 2:08 cv 776, 2010 WL 5020959, at a*5 (D. Utah Dec. 3, 2010) ("The payout of these fictitious profits to the defendants in this case did not benefit [the Ponzi scheme] and instead simply depleted the scheme's resources faster. Accordingly, the payments were not for reasonably equivalent value and, therefore, were fraudulent transfers.") (internal citations omitted).

Because Billings and McHenry cannot establish that they provided reasonably equivalent value in exchange for their "commissions," they cannot avoid liability for fraudulent transfers. End of story.

But even if Billings and McHenry could establish that they provided reasonably equivalent value in exchange for their "commissions," they cannot establish that they accepted the "commissions" in objective good faith. Given their proximity to Madison Timber, Billings and McHenry knew or should have known that it was a Ponzi scheme. As alleged in the complaint, and further established by Adams's guilty plea, Billings and McHenry knew or should have been aware of each of the following facts—any one of which is suspicious standing alone, but taken together clearly evidence a fraud:

a) The timber deeds and cutting agreements between landowners and Madison Timber were fake. Indeed the landowners' signatures, forged by Adams, often looked the same. *A call to any one of the hundreds of purported landowners, or a simple check of the title for any one of the hundreds of purported tracts of land, would have confirmed the truth.*

b) Madison Timber had no contracts with lumber mills. *A call to any one of the lumber mills for which Madison Timber purported to have supply agreements would have confirmed the truth.*

c) Madison Timber required that an investor agree that he or she would not record the deed by which Madison Timber purported to grant its own rights to the investor unless and until Madison Timber failed to make a payment due under the promissory note.

d) The interest rate that Madison Timber paid was typically 300% to 400% of that payable by any other fully collateralized investment.

e) Madison Timber purported to have identified lumber mills with insatiable demand for timber and at uniform prices. *The market price for timber is readily available from multiple sources, and any one of those sources would have confirmed that the market price for timber rises and falls, sometimes dramatically, over short periods of time.*

f) In October 2016, Madison Timber abruptly changed banks, and each recruiter was responsible for collecting within a short period of time all outstanding pre-dated checks from his individual investors and then reissuing new pre-dated checks drawn from Madison Timber's new account at a different bank. *Billings's investors transacted their business via wires. Billings told his investors that "[o]ur banker of some twenty plus years left Trustmark Bank, and we of course went with him."*

Moreover, Billings was paid to understand Madison Timber's business. At Butler Snow, Billings provided "strategic business development, strategic financing/capital strategies and overall management advisory" services to Madison Timber. Billings knew or should have known that Madison Timber was a Ponzi scheme. At a bare minimum, in inducing persons to invest, Billings was reckless and indifferent as to the existence of the Ponzi scheme.

McHenry, in fact, shared a small office with Adams and so would have observed Adams fabricating timber deeds and cutting agreements. Certainly he would have observed the stacks of fake documents that littered the office. McHenry knew or should have known that Madison Timber was a Ponzi scheme. At a bare minimum, in inducing persons to invest, McHenry was reckless and indifferent as to the existence of the Ponzi scheme.

Billings's and McHenry's "failure to inquire about [Madison Timber] more closely, in light of the abundant suspicious information [they] possessed about the people [and] the scheme . .

. raises serious questions about [any] good faith defense." *Warfield*, 436 F.3d at 560. Even if it mattered—and because they cannot prove reasonably equivalent value, it does not—Billings and McHenry could not establish that they that they accepted the "commissions" in objective good faith. *See S.E.C. v. Cook*, No. 3:00-cv-272-R, 2001 WL 256172, at *4 (N.D. Tex. Mar. 8, 2001) (quoting *In re Cohen*, 199 B.R. 709, 719 (B.A.P. 9th Cir. 1996)) ("One lacks the good faith that is essential to the [UFTA affirmative] defense to avoidability if [he] possessed of enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction.").

Given the foregoing, there is a substantial likelihood that the Receiver will succeed on the merits of her fraudulent transfer claims.

b. There is a substantial threat of irreparable injury if the Court does not grant this motion.

There is a substantial threat of irreparable injury to the Receiver if the Court does not grant this motion. If Billings and McHenry are not restrained, it is substantially likely that they will transfer, sell, encumber, or otherwise devalue assets in their possession that belong to the receivership estate, and diminish funds available for collection by the Receiver, for the benefit of victims.

Although generally there can be no irreparable harm where there exists an adequate remedy in the form of money damages, the rules change where "any judgment ultimately obtained . . . would be unenforceable." *Productos Carnic, S.A. v. Central Am. Beef and Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980). "[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Alguire*, 647 F.3d at 600.

The Fifth Circuit has held that, where the threat of dissipation of assets exists, such that "a meaningful decision on the merits would be impossible without an injunction, the district court may maintain the status quo and issue a preliminary injunction to protect a remedy, including a damages remedy, when the freezing of the assets is limited to the property in dispute or its direct, traceable proceeds." *Alguire*, 647 F.3d at 599. By this motion the Receiver seeks to restrain the disposition of only those assets in Billings's and McHenry's possessions that are directly traceable to the Madison Timber Ponzi scheme. If Billings and McHenry dissipate those assets, the Receiver might never recover them.

The risk of dissipation is not speculative. The mere showing that Madison Timber was a Ponzi scheme "is sufficient to prove the likelihood" that the recipient of a fraudulent transfer from Madison Timber would "remov[e] or dissipate[e] the frozen assets but for the preliminary injunction." *Id.* at 601; *see also In re Focus Media*, 387 F.3d 1077, 1087 (9th Cir. 2004) (history of fraudulent transfer "raises the specter of irreparable harm to the bankruptcy estate if these funds are not frozen"). Moreover, it is relevant that neither Billings or McHenry are employed; that Billings previously declined to join an order proposed by the Receiver that would have temporarily restrained him from dissipating his assets pending settlement negotiations; and that, while McHenry did join the order proposed by the Receiver, the order expired after settlement negotiations ceased. Nothing currently protects assets belonging to the receivership estate in Billings's and McHenry's possession from dissipation. There is a substantial threat of irreparable injury if the Court does not grant this motion.

c. The threatened injury if the injunction is denied outweighs any harm to Billings and McHenry if the Court grants this motion.

The threatened injury to the Receiver outweighs any harm to Billings or McHenry if this motion is granted. The Receiver seeks an order restraining Billings and McHenry from dissipating only those assets, and assets traceable to assets, that they received from Madison Timber. The order will ensure that the Receiver collects something from Billings and McHenry for Madison Timber victims. Without it, there is a substantial risk that Billings and McHenry will transfer, sell, encumber, or otherwise devalue assets in their possession that belong to the receivership estate, and diminish funds available for collection by the Receiver, for the benefit of victims. The injury to the receivership estate will be great.

On the other hand, the harm to Billings and McHenry is nonexistent, because Billings and McHenry have no right to the assets in question in the first place. The order the Receiver seeks will not restrain Billings and McHenry from dissipating assets in their possession that they did *not* receive from Madison Timber. To the extent Billings and McHenry have untainted assets, they may do with them as they wish.

d. Public interest favors granting this motion.

Finally, public interest favors restraining Billings and McHenry from dissipating assets fraudulent transferred to them by Madison Timber. These assets do not belong to Billings and McHenry; they belong to the receivership estate, for the benefit of defrauded victims. The order the Receiver seeks will maximize funds available to distribute to victims.

CONCLUSION

The Receiver is legally and equitably entitled to the order she seeks. She respectfully requests that this motion be set for hearing on an expedited basis.

October 17, 2018

Respectfully submitted,

/s/ LaToya T. Jeter

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

In addition, I have separately emailed a copy of the foregoing to:

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Date: October 17, 2018

/s/ LaToya T. Jeter

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