

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

WILLIAM B. MCHENRY, JR.,

Debtor.

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

Plaintiff,

v.

WILLIAM B. MCHENRY, JR.,

Defendant.

CASE NO. 20-00268

Chapter 7

ADV. NO.

**ADVERSARY COMPLAINT TO DETERMINE DISCHARGEABILITY OF
DEBT PURSUANT TO 11 U.S.C. § 523 AND 11 U.S.C. § 727**

Alysson Mills, in her capacity as the court-appointed receiver for the estates of Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, files this Adversary Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. § 523 and 11 U.S.C. § 727 (the “Adversary Complaint”) against William B. McHenry, Jr. (“McHenry” or “Debtor”), stating as follows:

INTRODUCTION

For more than ten years, Arthur Lamar Adams (“Adams”), through his company Madison Timber Properties, LLC (“Madison Timber”), operated a \$100 million Ponzi scheme that defrauded hundreds of investors. Investors 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 avoid detection and collapse.

McHenry identified new investors and sold to them Madison Timber investments. For each investment made by an investor he personally recruited, McHenry received a cut of the investor’s payment to Madison Timber. Over time, McHenry received \$3,473,320 in Madison Timber “commissions.”

The Receiver filed suit against McHenry for return of these commissions. The district court entered a final judgment in favor of the Receiver and against McHenry in the amount of \$3,473,320 (the “District Court Judgment”). McHenry has not paid anything against the judgment.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action and its parties pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

PARTIES

2. The Receiver is a creditor and party-in-interest in this Chapter 7 bankruptcy. The Receiver stands in Madison Timber’s shoes for the express purpose of maximizing assets available to Adams’s victims.

3. Defendant William B. McHenry, Jr. is an individual debtor in this bankruptcy case.

PROCEDURAL HISTORY

The S.E.C.'s enforcement action

4. On April 20, 2018, the Securities and Exchange Commission instituted certain litigation against Arthur Lamar Adams and Madison Timber Company, LLC styled *Securities and Exchange Commission v. Arthur Lamar Adams, et al.*, Case No. 3:18-cv-00252-CWR-FKB (S.D. Miss.). In that civil action, the Securities & Exchange Commission (“S.E.C.”) alleges that “[b]eginning in approximately 2004,” Adams, through Madison Timber, “committed securities fraud by operating a Ponzi scheme” in violation of the Securities Act of 1933 and the Securities & Exchange Act of 1934.¹

5. The S.E.C. requested that the district court appoint a receiver for the estates of Adams and Madison Timber.² The Court granted the S.E.C.’s request and appointed the Receiver on June 22, 2018.³

The Receiver’s ancillary action

6. The district court’s order of appointment vests in the Receiver the power to, among other things:

investigate and . . . bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver.⁴

7. On October 1, 2018, the Receiver filed suit against some of Adams’s “bird dogs”—recruiters who induced persons to invest in Madison Timber—including McHenry and his company First South Investments, LLC, pursuant to the powers vested in her by the district court’s

¹ Doc. 3, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

² Docs. 11, 21, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

³ Doc. 33, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

⁴ Doc. 33, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

orders and applicable law.⁵ The Receiver's complaint alleged McHenry violated Mississippi's Fraudulent Transfer Act and, alternatively, asserted a claim for unjust enrichment.

8. On August 16, 2019, the district court granted the Receiver's motion for summary judgment⁶ and entered the District Court Judgment against McHenry and First South Investments and in favor of the Receiver in the amount of \$3,472,320.⁷ The District Court Judgment is now final.

9. McHenry has not satisfied any part of the District Court Judgment.

10. By order of the district court, McHenry has been enjoined from dissipating assets in his possession that are directly traceable to the Madison Timber Ponzi scheme.⁸

ADAMS AND MADISON TIMBER

11. For more than ten years, Adams, through Madison Timber, operated a Ponzi scheme that purported to purchase timber from Mississippi landowners and resell it to Mississippi lumber mills at higher prices.

12. Investors in Madison Timber delivered to Madison Timber large sums of money, typically in excess of \$100,000 dollars, in reliance on the promise that Madison Timber would repay them their principal plus interest of 13% per year. The promised interest invariably far exceeded the interest any investor might receive on any other asset-backed investment.

13. Investors believed that Madison Timber would use their money to acquire timber deeds and cutting agreements from Mississippi landowners; that Madison Timber would then sell

⁵ Doc. 1, *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss.). The Receiver filed an amended complaint on October 17, 2018. Doc. 15.

⁶ Doc. 62, *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss.).

⁷ Doc. 63, *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss.). The district court's order and the District Court Judgment are attached hereto as Exhibit A.

⁸ Doc. 45, *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss.).

the timber to Mississippi lumber mills at a higher price; and that with the proceeds of those sales Madison Timber would repay investors their principal and promised interest.

14. In exchange for their investments, investors in the Madison Timber Ponzi scheme received a promissory note in the amount of their investment, payable in twelve monthly installments together with the promised interest; twelve pre-dated checks, each in the amount of the installment due under the promissory note; a timber deed and cutting agreement by which a named landowner purported to grant to Madison Timber the rights to harvest timber on the land described in the deed; and a timber deed and cutting agreement by which Madison Timber purported to grant its own rights to the investor.

15. In fact, the timber deeds and cutting agreements were fake. Madison Timber had no rights to harvest timber and no timber to cut and sell. Because Madison Timber had no revenues whatsoever, investors were being repaid with new investors' money.

16. Each month, Madison Timber required more and more new investors to repay existing investors. Like any Ponzi scheme, Madison Timber had to continuously grow. To grow Madison Timber, Adams relied on recruiters, including McHenry, to attract new investors.

17. In 2011, Madison Timber took in approximately \$10 million from investors. By 2018 that number had grown by a factor of 16.

18. For each investment made by an investor he personally recruited, McHenry received a cut of the investor's payment to Madison Timber. Over time, McHenry received at least \$3,472,320 in Madison Timber "commissions."

19. In April 19, 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. In the one-year period prior to April 19, 2018, Madison Timber took in approximately \$164.5 million.

As of April 19, 2018, Madison Timber had 501 outstanding promissory notes, reflecting debts to investors of more than \$85 million.⁹

20. Adams pleaded guilty to the federal crime of wire fraud and “admit[ted] to all of the conduct of the entire scheme and artifice to defraud.”¹⁰ On October 30, 2018, he was sentenced to a term of imprisonment of 235 months.¹¹

21. The S.E.C. separately 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.”¹²

22. The promissory notes sold by Madison Timber to investors are “securities,” as that term is defined under 15 U.S.C.A. §78(c)(A)(10) and Miss. Code Ann. § 75-71-102(28).

23. As alleged in the complaint in the action *Securities and Exchange Commission v. Arthur Lamar Adams et al.*, No. 3:18-cv-252 (S.D. Miss.), and in the bill of information filed against Adams in *U.S. v. Arthur Lamar Adams*, No. 3:18-c-188 (S.D. Miss.), Adams, Madison Timber, and their affiliates, including McHenry, facilitated sales of promissory notes to investors through material misstatements and omissions; employed a device, scheme, or artifice to defraud; and engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit, all in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(A); Section

⁹ The evidence at Adams’s sentencing established that of the \$164.5 million that Madison Timber received in its last year of operation, it paid back approximately \$79.5 million, leaving an \$85 million difference. The outstanding principal and interest owed to investors is necessarily higher.

¹⁰ Doc. 11, *United States v. Adams*, No. 3:18-cr-00088 (S.D. Miss.).

¹¹ Doc. 21, *United States v. Adams*, No. 3:18-cr-00088 (S.D. Miss.).

¹² Doc. 3, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.).

10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; as well as the Mississippi Securities Act, Miss. Code Ann. § 75-71-501.

24. The sales furthermore violated the Securities Act of 1933 and the Mississippi Securities Act because there were no registration statements for the promissory notes, *see* Section 5 of the Securities Act of 1933, 15 U.S.C § 77e, and Miss. Code Ann. § 75-71-301; and the promissory notes were not exempt from registration, *see* Section 5 of the Securities Act of 1933, 15 U.S.C § 77e, and Miss. Code Ann. §§ 75-71-201 through 75-71-203.

MCHENRY AND FIRST SOUTH

25. 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 an investor that McHenry 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.

26. 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.

27. McHenry promoted Madison Timber as a safe and fully secured investment that paid interest at rates that substantially exceeded market interest rates. In a typical presentation, McHenry told the investor that the investment was safe because Madison Timber had longstanding relationships with Mississippi lumber mills that would pay a premium to lock-down timber rights. McHenry explained that proceeds from the sale of timber would pay the investor monthly installments of one-twelfth of their principal investment, plus interest.

28. McHenry told the investor that a default was highly unlikely, but in the event of a default, the investor would be fully protected because his or her promissory note was secured by his or her own timber deed and cutting agreement that the investor could liquidate for whatever remaining amount Madison Timber owed. In fact, the timber deeds and cutting agreements were worthless.

29. A cursory inspection of Madison Timber's operations would have revealed Madison Timber to be a classic Ponzi scheme. Among other things, McHenry knew or should have been aware of each of the following—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.
30. 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.

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

32. Upon information and belief, between 2010 and April 2018, McHenry's Madison Timber "commissions" made up all or virtually all of First South's income. First South had no other business; it was funded solely with the proceeds of the Madison Timber Ponzi scheme. It had no operations and no employees. McHenry was First South's sole manager and member, and directed the disbursement of First South's income to himself.

MCHENRY'S BANKRUPTCY

33. On January 25, 2019, a federal grand jury indicted McHenry for securities and wire fraud.¹³

34. The Receiver did not examine McHenry regarding his assets while criminal proceedings were pending because he would have invoked his right to silence. Immediately upon the conclusion of those criminal proceedings, however, the Receiver obtained an order permitting

¹³ Doc. 3, United States v. McHenry, No. 3:19-cr-00020 (S.D. Miss).

her to examine McHenry under oath in open court regarding his ability to pay the \$3,473,320 District Court Judgment against him. The order instructed McHenry to appear for examination on February 10, 2020, and to produce documents relevant to his finances to the Receiver on or before January 27, 2020.¹⁴

35. Rather than comply with that order, on January 24, 2020, McHenry filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code, thereby triggering an automatic stay of litigation against him. McHenry identified the Receiver as a creditor of his bankruptcy estate.

36. McHenry agreed with the Receiver's request that he sit for an examination and produce documents pursuant to Rule 2004.¹⁵ As a result, and pursuant to Rule 2004 and this Court's Local Bankruptcy Rule 2004-1, the Receiver filed on February 18, 2020 a Notice of Intent to Take Rule 2004 Examination ("Notice"), which noticed McHenry's examination for March 18, 2020 at the offices of McHenry's counsel.¹⁶

37. The Receiver attached as Exhibit A to the Notice her requests for documents pursuant to Rule 2004.¹⁷ By agreement of the parties, McHenry was to produce responsive documents to the Receiver on March 6, 2020.

38. The meeting of McHenry's creditors pursuant to Section 341(a) was held on March 4, 2020. At the instruction of his attorney, McHenry refused to respond to multiple questions of the Receiver's counsel, claiming that those questions must be deferred to his Rule 2004 examination. McHenry is now apparently of the view that he never has to answer the Receiver's questions.

¹⁴ Doc. 67, *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).

¹⁵ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.). Faced with the COVID-19 pandemic, the parties agreed to continue McHenry's examination. Doc. 64.

¹⁶ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

¹⁷ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

39. On March 5, 2020, the Receiver received 28 pages of documents from McHenry, which included bank statements from only four bank accounts for only the past three months. In those bank statements were references to other checking and PayPal accounts to which McHenry transferred money, but about which McHenry made no disclosure. McHenry’s “production” was accompanied by a letter from McHenry’s counsel objecting to every one of the Receiver’s requests for documents.

40. McHenry refuses to produce any documents before January 2019 because “McHenry did not anticipate that he would be filing for the bankruptcy Court’s protection in 2018 or 2019.”

41. McHenry refuses to produce his state and federal income tax returns because, according to Mr. McHenry, they are “subject to certain privacy rights” and are “privileged.”

42. McHenry refuses to produce any documents related to First South Investments, LLC. McHenry is the single member and owner of First South Investments, LLC and he used (and may continue to use) First South Investments, LLC to house funds he received from the Madison Timber Ponzi scheme. All disbursements of First South Investments, LLC went directly to McHenry. The District Court Judgment is against both McHenry and First South Investments, LLC.

43. McHenry otherwise refuses to produce certain documents that he claims he previously provided to the Receiver in the context of her lawsuit against him arising from his involvement in the Madison Timber Ponzi scheme. Those financial disclosures were made on October 18, 2018—over 18 months ago.

44. McHenry’s persistent refusal to produce responsive documents in contrary to Rule 2004’s mandate that the Receiver be permitted to conduct “a broad investigation into the financial

affairs of the debtor for the purpose of the discovery of assets of the estate and the exposure of fraudulent conduct.” *In re Correria*, 589 B.R. 76, 108 (Bankr. N.D. Tex. 2018).

CAUSES OF ACTION

45. Under the Bankruptcy Code, not every debtor is afforded a fresh start; that opportunity is limited to the “honest but unfortunate debtor.” *Grogan v. Garner*, 498 U.S. 279, 287 (1991) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)). In allowing for the dischargeability of debt, Congress did not intend to favor “the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud.” *Id.* The Bankruptcy Code therefore excepts certain debts from discharge in Section 523(a).

COUNT I

NON-DISCHARGEABILITY UNDER SECTION 523(a)(2)(A) FOR DEBTS OBTAINED BY FALSE PRETENSES, FALSE REPRESENTATIONS, AND/OR ACTUAL FRAUD

46. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

47. Section 523(a)(2)(A) of the Bankruptcy Code creates a rule of nondischargeability for any debt for money to the extent that it was obtained “by false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A).

48. McHenry was one of Adams’s “bird dogs,” who agreed to assist Adams in growing Madison Timber by recruiting investors, many elderly retirees or people he met in Sunday school. 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 took their money.

49. Madison Timber was a Ponzi scheme; therefore McHenry and Adams's purpose was unlawful.

50. McHenry was essential to the growth of the Madison Timber Ponzi scheme. But for McHenry's encouragement and assistance, Madison Timber would not have continuously grown—it would have failed before ensnaring hundreds of new unwitting investors.

51. McHenry received “commissions,” fees, and other such payments paid by Adams or Madison Timber for his assistance in growing Madison Timber's business. Because Madison Timber was a Ponzi scheme, the funds that Madison Timber transferred to McHenry were made with the actual intent to hinder, delay, or defraud Madison Timber's creditors. The Receiver is entitled to avoid all “commissions,” fees, and other such payments paid by Adams or Madison Timber to McHenry.¹⁸

52. The Receiver obtained the District Court Judgment against McHenry and First South in the amount of \$3,473,320, reflecting the “commissions” Madison Timber paid to McHenry. McHenry has not satisfied any part of the judgment.

53. McHenry's indebtedness to the Receivership Estate, because it arises from McHenry's false pretenses, false representations, and/or actual fraud, is exempt from McHenry's Chapter 7 bankruptcy discharge.

COUNT II

NON-DISCHARGEABILITY UNDER SECTION 523(a)(4) FOR FRAUD OR DEFALCATION WHILE ACTING IN A FIDUCIARY CAPACITY

54. The Receiver re-alleges each of the foregoing paragraphs as though stated fully

¹⁸ See Amended Complaint, Exhibit B, at ¶¶ 45–50, Doc. 15, *Alysson Mills v. Michael Billings, et al.*, 3:18-cv-679 (S.D. Miss.).

herein.

55. Section 523(a)(4) of the Bankruptcy Code creates a rule of nondischargeability for any debt “for fraud or defalcation while acting in a fiduciary capacity.” 11 U.S.C. § 523(a)(4).

56. McHenry knew that Adams was manager of Madison Timber.

57. 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.

58. Therefore McHenry knew that Adams owed Madison Timber fiduciary duties of care. Mississippi law requires the manager of a limited liability company to discharge his duties in good faith and with fair dealing, with prudence, and in a manner that he reasonably believed was in the best interests of the company.¹⁹ Nevertheless, Adams misused Madison Timber to sustain a singular fraud over many years, and McHenry assisted him. *See Matter of Cowin*, 864 F.3d 344, 350 (5th Cir. 2017) (“[T]he intent and actions of [the debtor’s] co-conspirators is sufficient to support nondischargeability under § 523(a)(4).”).

59. Madison Timber’s debts are now the debts of the Receivership Estate. McHenry contributed to Madison Timber’s success over time, and therefore to the Receivership Estate’s liabilities today. McHenry’s substantial assistance and encouragement is a proximate cause of the debts of the Receivership Estate.

60. McHenry’s indebtedness to the Receivership Estate, because it arises from McHenry’s fraud or defalcation while acting in a fiduciary capacity, is exempt from McHenry’s Chapter 7 bankruptcy discharge.

¹⁹ MISS. CODE ANN. § 79-29-123(6)(a).

COUNT III
NON-DISCHARGEABILITY UNDER SECTION 523(a)(6)
FOR WILLFUL AND MALICIOUS INJURY
BY THE DEBTOR TO ANOTHER ENTITY OR ITS PROPERTY

61. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

62. Section 523(a)(6) of the Bankruptcy Code creates a rule of nondischargeability for any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6).

63. An injury is “willful and malicious” when the court finds “either an objective substantial certainty of harm or [the debtor’s] subjective motive to cause harm.” *Berry v. Vollbracht (In re Vollbracht)*, 276 F. App’x 360, 361 (5th Cir. 2007).

64. Adams misused Madison Timber to sustain a singular fraud over many years, and McHenry assisted him by recruiting new investors to Madison Timber.

65. A cursory inspection of Madison Timber’s operations would have revealed Madison Timber to be a classic Ponzi scheme.²⁰ Nonetheless, McHenry continued to lure innocent investors to Madison Timber, collecting commissions for each dollar of each investment he brought in.

66. The fraudulent scheme perpetrated by Adams, with McHenry’s assistance, created “an objective substantial certainty of harm” to the Receivership Estate and the defrauded investors of Madison Timber, who now hold claims against the Receivership Estate.

67. Madison Timber would not have grown without McHenry’s encouragement. McHenry’s assistance to Adams in perpetuating the Madison Timber Ponzi scheme demonstrates

²⁰ See Amended Complaint, Exhibit B, at ¶¶ 41, Doc. 15, *Alysson Mills v. Michael Billings, et al.*, 3:18-cv-679 (S.D. Miss.)

a “subjective motive to cause harm” to the Receivership Estate and to the defrauded investors of Madison Timber.

68. Madison Timber’s debts are now the Receivership Estate’s. McHenry contributed to Madison Timber’s success over time, and therefore to the Receivership Estate’s liabilities today. McHenry’s substantial assistance and encouragement is a proximate cause of the debts of the Receivership Estate.

69. McHenry’s indebtedness to the Receivership Estate, because it arises from McHenry’s willful and malicious injury to another, is exempt from McHenry’s Chapter 7 bankruptcy discharge.

COUNT IV

NON-DISCHARGEABILITY UNDER SECTION 727(a)(3)

FOR CONCEALING, FALSIFYING, OR FAILING TO KEEP INFORMATION FROM WHICH THE DEBTOR’S FINANCIAL CONDITION MIGHT BE ASCERTAINED

70. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

71. The Receiver, as a creditor of McHenry, “may object to the granting of a discharge under [Section 727(a)].” 11 U.S.C. § 727(c).

72. Section 727(a)(3) of the Bankruptcy Code creates a rule of nondischargeability for when the debtor has “concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information . . . from which the debtor’s financial condition or business transactions might be ascertained.” 11 U.S.C. § 727(a)(3).

73. McHenry refuses to produce documents relating to all bank accounts used by him. The Receiver discovered checking and PayPal accounts to which McHenry evidently transferred

money in the course of her review of bank statements that McHenry provided as part of his scant “production.” These accounts are not included in McHenry’s bankruptcy schedules.

74. McHenry refuses to produce any responsive documents before January 2019, his state and federal income tax returns, and any documents related to First South Investments, LLC, the single-member LLC that McHenry used (and may continue to use) to house funds he received from the Madison Timber Ponzi scheme.

75. McHenry’s failure to keep and produce records from which his financial condition can be ascertained bars the discharge of all of his assets to any creditor under 11 U.S.C. § 727(a)(3).

COUNT V

NON-DISCHARGEABILITY UNDER SECTION 727(a)(4) FOR KNOWINGLY AND FRAUDULENTLY MAKING A FALSE OATH OR ACCOUNT

76. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

77. Section 727(a)(4) of the Bankruptcy Code creates a rule of nondischargeability for when the debtor “knowingly and fraudulently . . . makes a false oath or account.” 11 U.S.C. § 727(a)(4).

78. Under penalty of perjury, McHenry certified that the bankruptcy schedules filed in his bankruptcy case were true and accurate.

79. Yet McHenry did not disclose on his schedules all bank accounts used by him. The Receiver discovered checking and PayPal accounts to which McHenry evidently transferred money in the course of her review of bank statements that McHenry provided as part of his scant “production.”

80. McHenry's misstatements or omissions in his schedules constitute the making of a false oath or statement, which bars the discharge of all of his assets to any creditor under 11 U.S.C. § 727(a)(4).

COUNT VI
NON-DISCHARGEABILITY UNDER SECTION 727(a)(5)
FOR KNOWINGLY AND FRAUDULENTLY MAKING A FALSE ACCOUNT

81. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

82. Section 727(a)(5) of the Bankruptcy Code creates a rule of nondischargeability for when the debtor has "failed to explain satisfactorily . . . any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. § 727(a)(5).

83. McHenry received \$3,473,320 in Madison Timber "commissions," but he provides no explanation for if and how those assets have been dissipated.

84. McHenry further provides no information to support his assertion that he has no assets with which to pay the District Court Judgment.

85. McHenry's failure to explain his loss of \$3,473,320 of Madison Timber "commissions" and his deficiency of assets to meet his liability to the Receiver bars the discharge of all of his assets to any creditor under 11 U.S.C. § 727(a)(5).

WHEREFORE, the Receiver respectfully requests that the Court:

1. determine that McHenry's debt to the Receivership Estate is not dischargeable pursuant to 11 U.S.C. § 523;
2. determine that McHenry's debts to all creditors are not dischargeable pursuant to 11 U.S.C. § 727;
3. award any and all attorney's fees, costs, and interest allowed by contract or law; and
4. awarding any and all other relief as may be just and equitable.

April 23, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALYSSON MILLS, *in her Capacity as
Receiver for Arthur Lamar Adams and
Madison Timber Properties, LLC*

PLAINTIFF

V.

CAUSE NO. 3:18-CV-679-CWR-FKB

**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

ORDER

Before the Court is the Receiver's motion for summary judgment on the fraudulent transfer claim (Count I) against Defendants William B. McHenry, Jr. and First South Investments, LLC.¹ After considering the record evidence, briefing, and applicable law, the motion will be granted.

The relevant facts can be summarized quite succinctly. McHenry and his company, First South, received \$3,473,320 in commissions from 2010 to April 2018 in exchange for recruiting new investors to Madison Timber, a Ponzi scheme operated by Arthur Lamar Adams. Because these commissions were proceeds of a Ponzi scheme, the Receiver alleges that they were fraudulent transfers irrespective of McHenry's good or bad faith.

¹ On December 21, 2018, the Court approved a settlement and consent judgment with Defendant Terry Kelly, Jr. and Kelly Management, LLC. *See* Docket No. 56. Today, on August 16, 2019, the Court did the same with Defendant Michael D. Billings and MDB Group, LLC. *See* Docket No. 61. Thus, Billings' pending motion to dismiss Count IV of the Complaint, Docket No. 23, is moot.

The familiar summary judgment standard applies. *See* Fed. R. Civ. P. 56(a) (“The court shall grant summary judgment if the movant shows there is no genuine issue of any material fact and the movant is entitled to judgment as a matter of law.”).

Adams explained the operations of Madison Timber during his sentencing hearing. It operated as a classic Ponzi scheme from 2009 to 2018, using money from new investors to pay amounts due on preexisting notes. The Receiver confirmed that all of Madison Timber’s income came from defrauded investors. *See* Docket No. 31-1. Madison Timber never had legitimate operations or income. The Receiver and J. Lester Alexander, III (a forensic accountant and Certified Fraud Examiner) also confirmed that First South’s primary or sole source of income was commissions from Madison Timber. *See* Docket Nos. 31-1, 31-2.

Mississippi’s Uniform Fraudulent Transfer Act (“MUFTA”) makes voidable any transfers made with “actual intent to hinder, delay or defraud any creditor.” Miss. Code Ann. § 15-3-107(1). Madison Timber’s operation as a Ponzi scheme is sufficient to establish the fraudulent intent behind any transfers it made. *See Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011); *Quilling v. Schonsky*, 247 F. App’x 583, 586 (5th Cir. 2007) (“[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.”). McHenry’s “knowing participation is irrelevant . . . for purposes of establishing the premise . . . for a fraudulent transfer.” *Janvey*, 647 F.3d at 598 (citations omitted).

McHenry’s commissions are not voidable, however, under MUFTA if he proves he “took in good faith *and* for a reasonably equivalent value.” Miss. Code Ann. § 15-3-113(1). But McHenry does not qualify for this exception. The Fifth Circuit has held that a recruiter who

induces new investors to invest in a Ponzi scheme cannot, as a matter of law, provide reasonably equivalent value in exchange for commissions.

The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved. It takes cheek to contend that in exchange for the payments he received, the RDI Ponzi scheme benefited from his efforts to extend the fraud by securing new investments.

Warfield v. Byron, 436 F.3d 551, 560 (5th Cir. 2006) (citations omitted). McHenry spends some time describing why the Mississippi Supreme Court would not necessarily follow this Fifth Circuit precedent—essentially because the Fifth Circuit was not analyzing Mississippi law. Nevertheless, he concedes that he cannot, as a matter of law, establish a reasonable equivalent value defense. *See* Docket No. 57 at ¶ 8 (“Without the benefit of a definitive decision from the Mississippi Supreme Court, the current Fifth Circuit law appears to establish a Ponzi scheme presumption of insolvency for which there can be no reasonable equivalent value defense”). McHenry's services furthered the Madison Timber Ponzi scheme, so the services could not have been for reasonably equivalent value.²

McHenry's remaining argument against the motion focuses on the change in Madison Timber's corporate name in 2012. In August 2012, Madison Timber Company, Inc. changed its name to Madison Timber Properties, LLC. The Receivership Estate does not include the former. Thus, McHenry contends that the Receiver should not be able to avoid commission payments he received from Madison Timber Company, Inc., a non-receivership entity, from 2010 to August 2012.³ McHenry further argues that “[e]ven if the Court disregards the different entity, there has

² The Court need not draw a conclusion on good faith, as McHenry's defense would still fail as a matter of law because he did not receive commissions from Madison Timber in exchange for reasonably equivalent value.

³ Prior to the name change, McHenry purports that First South received a total of \$393,570 in commissions, including \$10,000 received on August 17, 2012, from Adams. McHenry argues that these amounts are not subject to the Ponzi scheme presumption. *See* Docket No. 57 at ¶ 7. In the alternative, McHenry states that if the Court accepts Adams' statement at his sentencing that the Ponzi scheme started in 2011, that does not cover 2010. He alleges First South received a total of \$108,470 from Adams in 2010.

been no showing nor confession by Adams of insolvency by Madison Timber Company, Inc. in 2010” and that there is a factual dispute regarding Adams’ solvency during this earlier time period. *Id.* at ¶ 4.

Notably, McHenry does not dispute that all of the payments originated from Adams. *Id.* at ¶ 7. The Receivership Estate includes Adams. Adams formed and was the sole owner of Madison Timber Fund, LLC (formed in 2009), Madison Timber Company, Inc. (formed in 2011)⁴, and Madison Timber Properties, LLC (formed in 2012). The Madison Timber Ponzi scheme never changed through all of these name changes. As made clear by the declarations and during Adams’ sentencing testimony, each Madison Timber entity received its revenue from defrauded investors. McHenry’s commissions from each entity were proceeds of the Ponzi scheme. The Court finds no actual controversy here as to the fraudulent source of McHenry’s commissions. As such, summary judgment is granted against McHenry and First South Investments, LLC in the amount of \$3,473,320. A Final Judgment shall issue.⁵

SO ORDERED, this the 16th day of August, 2019.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

⁴ The Court uses the name “Madison Timber Company, Inc.” because the parties do so in their briefings. But, according to the Bill of Information in Adams’ criminal case, it was called “Madison Timber, LLC.” *See* Docket No. 1, *United States v. Adams*, No. 3:18-CR-88-CWR-LRA-1 (S.D. Miss. 2018). There is no mention of “Madison Timber Company, Inc.” in the Information.

⁵ The remaining charges in the Complaint are either asserted in the alternative of the fraudulent transfer claim or against a dismissed party.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALYSSON MILLS, *in her Capacity as
Receiver for Arthur Lamar Adams and
Madison Timber Properties, LLC*

PLAINTIFF

V.

CAUSE NO. 3:18-CV-679-CWR-FKB

**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

FINAL JUDGMENT

Having granted the Receiver's motion for summary judgment, Docket No. 62, this Court finds that this cause should be dismissed and closed on the Court's docket.

SO ORDERED AND ADJUDGED, this the 16th day of August, 2019.

s/ Carlton W. Reeves _____
UNITED STATES DISTRICT JUDGE

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

AMENDED COMPLAINT

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, files this Amended Complaint against Defendants 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 (collectively “Defendants”), stating as follows:

INTRODUCTION

Arthur Lamar Adams (“Adams”), through his company Madison Timber Properties, LLC (“Madison Timber”), operated a \$100 million Ponzi scheme that defrauded hundreds of investors. Investors 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.

Defendants identified new investors and sold to them Madison Timber investments. For each investment made by an investor he personally recruited, each Defendant received a cut of the investor’s payment to Madison Timber. Over time, Defendants received more than \$16,000,000 in Madison Timber “commissions.” By this complaint the Receiver seeks to return that money to the receivership estate, to maximize funds available for distribution to victims.

The Receiver desires to resolve the Receiver’s claims against Defendants efficiently, to minimize time and expense to the receivership estate. Prior to the filing of the original complaint, the Receiver invited each Defendant to join her in the filing of a motion that proposes terms by which the parties might attempt to negotiate a settlement: The Receiver agreed to suspend further litigation against a Defendant if the Defendant waived certain procedural objections and agreed to 1) make a full and complete financial disclosure, 2) commit to negotiate in good faith, and 3) preserve assets pending negotiations. The parties acknowledged that if they did not reach a settlement, the Receiver could amend the original complaint within 21 days as a matter of course,

and thereafter with this Court's permission, to state further factual allegations against the Defendant.

Defendants Michael D. Billings and MDB Group, LLC did not join the Receiver's motion.

Defendants Terry Wayne Kelly, Jr. and Kelly Management, LLC and William B. McHenry, Jr. and First South Investments, LLC joined the Receiver's motion, but the Receiver and Defendants William B. McHenry, Jr. and First South Investments, LLC have concluded that they are unable to reach a settlement at this point in time.

The Receiver thus now amends the original complaint to state further factual allegations against Defendants William B. McHenry, Jr. and First South Investments, LLC.

JURISDICTION AND VENUE

1.

The Court has jurisdiction over this action and its parties, and venue is proper in this Court, pursuant to the Securities Act of 1933, 15 U.S.C. § 77v(a); the Securities & Exchange Act of 1934, 15 U.S.C. § 78aa; 28 U.S.C. § 1692; and 28 U.S.C. § 754.

2.

This action arises in connection with and is ancillary to the civil action already pending in this Court styled *Securities & Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*, No. 3:18-cv-252-CWR-FKB. In that civil action, the Securities & Exchange Commission ("S.E.C.") alleges that "[b]eginning in approximately 2004," Adams, through Madison Timber, "committed securities fraud by operating a Ponzi scheme" in violation of the Securities Act of 1933 and Securities & Exchange Act of 1934.¹

¹ Doc. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

3.

The S.E.C. requested that the Court appoint a receiver for the estates of Adams and Madison Timber.² As the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in the execution of her duties. “[I]t is well-settled that when an initial suit results in the appointment of the receiver, any suit that the receiver thereafter brings in the appointment court in order to execute h[er] duties is ancillary to the main suit.” *U.S. Small Bus. Admin. v. Integrated Env'tl. Sols., Inc.*, No. 05-cv-3041, 2006 WL 2336446, at *2 (S.D. Tex. Aug. 10, 2006) (citing *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 822 (6th Cir. 1981)). *See also* 28 U.S.C. § 1692 (“In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district . . .”).

4.

Consistent with that precedent, Chief U.S. District Judge Daniel P. Jordan III has ordered that all “cases filed by the duly appointed Receiver . . . which . . . arise out of or relate to [*Securities & Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*, No. 3:18-cv-252-CWR-FKB] shall be directly assigned by the Clerk of Court to U.S. District Judge Carlton W. Reeves and U.S. Magistrate Judge F. Keith Ball.”³ In compliance with Chief Judge Jordan’s order, the Receiver shall separately file, contemporaneously with this complaint, a notice of relatedness.

5.

Within ten days of her appointment, the Receiver filed notices of receivership in every federal district court in the United States, thus ensuring complete jurisdiction and control of any

² Docs. 11, 21, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

³ Doc. 45, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

real or personal property owned by Adams or Madison Timber in the United States pursuant to 28 U.S.C. § 754.

PARTIES

6.

Plaintiff Alysson Mills is the Court-appointed Receiver for the estates of Adams and Madison Timber. The Court’s order of appointment vests in her the power to, among other things:

investigate and . . . bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver.⁴

The Receiver brings this civil action in her capacity as Receiver and pursuant to the powers vested in her by the Court’s orders and applicable law.

7.

Defendant Michael D. Billings (“Billings”) is an adult resident of Dallas, Texas.

8.

Defendant MDB Group, LLC (“MDB Group”) is a Texas limited liability company. On information and belief, Billings is the sole member and manager of MDB Group. On information and belief, Madison Timber “commissions” were MDB Group’s sole source of income.

9.

Defendant Terry Wayne Kelly, Jr. (“Kelly”) is an adult resident of Madison, Mississippi.

⁴ Doc. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss). By order dated August 22, 2018, the Court eliminated the requirement that the Receiver obtain “prior approval of this Court upon ex parte request” before bringing any legal action. Doc. 38, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

10.

Defendant Kelly Management, LLC (“Kelly Management”) is a Mississippi limited liability company. On information and belief, Kelly is the sole member and manager of Kelly Management.

11.

Defendant William B. McHenry, Jr. (“McHenry”) is an adult resident of Madison, Mississippi.

12.

Defendant First South Investments, LLC (“First South”) is a Mississippi limited liability company. On information and belief, McHenry is the sole member and manager of First South.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

13.

Beginning in approximately 2004, Adams, through Madison Timber, operated a Ponzi scheme that purported to purchase timber from Mississippi landowners and resell it to Mississippi lumber mills at higher prices.

14.

Investors in Madison Timber delivered to Madison Timber large sums of money, typically in excess of \$100,000 dollars, in reliance on the promise that Madison Timber would repay them their principal plus interest of not less than 12% per annum, and sometimes as much as 20% per annum. The promised interest invariably far exceeded the interest any investor might receive on any other collateralized investment.

15.

Investors believed that Madison Timber would use their money to acquire timber deeds and cutting agreements from Mississippi landowners; that Madison Timber would then sell the timber to Mississippi lumber mills at a higher price; and that with the proceeds of those sales Madison Timber would repay investors their principal and promised interest.

16.

In exchange for their investments, investors in the Madison Timber Ponzi scheme received a promissory note in the amount of their investment, payable in twelve monthly installments together with the promised interest; twelve pre-dated checks, each in the amount of the installment due under the promissory note; a timber deed and cutting agreement by which a named landowner purported to grant to Madison Timber the rights to harvest timber on the land described in the deed; and a timber deed and cutting agreement by which Madison Timber purported to grant its own rights to the investor.

17.

Investors did not know that, in fact, the timber deeds and cutting agreements that they received were fake.

18.

Investors did not know that because Madison Timber had no, or virtually no, revenues whatsoever, investors were being repaid with new investors' money.

19.

Each month, Madison Timber required more and more new investors to repay existing investors. Defendants identified new investors and sold to them Madison Timber investments.

20.

For each investment made by an investor he personally recruited, each Defendant received a cut of the investor's payment to Madison Timber. Over time, Defendants received more than \$16,000,000 in Madison Timber "commissions."

21.

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.

22.

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 . . .⁵

23.

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."⁶

⁵ Doc. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

⁶ Doc. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

24.

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.⁷ The fact that Madison Timber was a Ponzi scheme is not in dispute.

FACTUAL ALLEGATIONS RELEVANT TO BILLINGS AND MDB GROUP

25.

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 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.

26.

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. These agreements were honored until the collapse of the Ponzi scheme in April 2018.

27.

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

⁷ Doc. 11, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

in Texas and California, often dropping certain investors' names to attract new investors. 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!!"

28.

Billings promoted Madison Timber as a safe and secured investment that paid interest at rates that substantially exceeded market interest rates. In a typical presentation, Billings told the investor that the investment was safe because Madison Timber had longstanding relationships with Mississippi lumber mills that would pay a premium to lock-down timber rights. Billings explained that proceeds from the sale of timber would pay the investor monthly installments of one-twelfth of their principal investment, plus interest.

29.

Billings told the investor that a default was highly unlikely, but in the event of a default, the investor would be fully protected because his or her promissory note was secured by his or her own timber deed and cutting agreement that the investor could liquidate for whatever remaining amount Madison Timber owed. In fact, the timber deeds and cutting agreements were worthless.

30.

A cursory inspection of Madison Timber's operations would have revealed Madison Timber to be a classic Ponzi scheme. Among other things, Billings knew or should have been aware of each of the following—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."*

31.

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.

32.

In August 2017, Billings celebrated his "fifth anniversary" with Madison Timber. He thanked Adams for the "exceptional association and collaboration" and said "it is truly amazing what we have accomplished together." He reflected: "I can't decide whether 'The Odd Couple',

Grumpy Old Men’ . . . or at this point perhaps just ‘Big’ would be the best title to describe us. . . .
I can only conclude that it is ‘A God Thing’!!”

33.

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.

34.

On information and belief, between 2013 and April 2018, Billings’s Madison Timber “commissions” made up all or virtually all of MDB Group’s income. MDB Group had no other business; it was funded solely with proceeds of the Madison Timber Ponzi scheme. It had no operations and no employees. Billings was MDB Group’s sole manager and member, and directed the disbursement of MDB Group’s income to himself.

FACTUAL ALLEGATIONS RELEVANT TO KELLY AND KELLY MANAGEMENT

35.

Kelly sold Madison Timber investments as early as 2010. Madison Timber paid Kelly 3% to 3.5% of each dollar of each investment made by an investor that Kelly personally recruited, and 1% to 1.5% of each dollar of each investment made by an investor that Billings personally recruited. On information and belief, the agreement was not committed to writing but was honored until the collapse of the Ponzi scheme in April 2018.

36.

Between 2010 and April 2018, Kelly sold investments in Madison Timber to dozens of investors. In exchange, he and Kelly Management received Madison Timber “commissions” of not less than \$9,674,615. On information and belief, out of the “commissions” Kelly Management

received, Kelly Management paid a total of \$1,456,811 in “commissions” to sub-recruiters during the same time period. Accounting for “commissions” paid to sub-recruiters, Kelly and Kelly Management received net “commissions” of \$8,217,804.

FACTUAL ALLEGATIONS RELEVANT TO MCHENRY AND FIRST SOUTH

37.

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 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.

38.

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.

39.

McHenry promoted Madison Timber as a safe and secured investment that paid interest at rates that substantially exceeded market interest rates. In a typical presentation, McHenry told the

investor that the investment was safe because Madison Timber had longstanding relationships with Mississippi lumber mills that would pay a premium to lock-down timber rights. McHenry explained that proceeds from the sale of timber would pay the investor monthly installments of one-twelfth of their principal investment, plus interest.

40.

McHenry told the investor that a default was highly unlikely, but in the event of a default, the investor would be fully protected because his or her promissory note was secured by his or her own timber deed and cutting agreement that the investor could liquidate for whatever remaining amount Madison Timber owed. In fact, the timber deeds and cutting agreements were worthless.

41.

A cursory inspection of Madison Timber's operations would have revealed Madison Timber to be a classic Ponzi scheme. Among other things, McHenry knew or should have been aware of each of the following—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.

42.

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.

43.

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.

44.

Upon information and belief, between 2010 and April 2018, McHenry's Madison Timber "commissions" made up all or virtually all of First South's income. First South had no other business; it was funded solely with the proceeds of the Madison Timber Ponzi scheme. It had no operations and no employees. McHenry was First South's sole manager and member, and directed the disbursement of First South's income to himself.

CAUSES OF ACTION

COUNT I

AGAINST ALL DEFENDANTS

**FOR THE RETURN OF COMMISSIONS AND FEES
PURSUANT TO THE MISSISSIPPI FRAUDULENT TRANSFER ACT**

45.

The Receiver re-alleges paragraphs 1 through 44 as though stated fully herein.

46.

The Receiver may avoid any transfer made in violation of the Mississippi Uniform Fraudulent Transfer Act (the “Act”), Mississippi Code Ann. §15-3-101, *et seq.*

47.

Pursuant to § 107 of the Act, the Receiver may recover from any party any funds that Madison Timber transferred with the actual intent to hinder, delay, or defraud any of its creditors. Because Madison Timber was a Ponzi scheme, by definition all transfers by Madison Timber were made with the actual intent to hinder, delay, or defraud its creditors.

48.

The Receiver is entitled to avoid all “commissions,” fees, and other such payments paid by Madison Timber to Billings and MDB Group and to the entry of a judgment against Billings and MDB Group, jointly and severally, for the amount of all such monies received by them, estimated by the Receiver to be not less than \$3,513,780.

49.

The Receiver is entitled to avoid all “commissions,” fees, and other such payments paid by Madison Timber to Kelly and Kelly Management and to the entry of a judgment against Kelly and

Kelly Management, jointly and severally, for the amount of all such monies received by them, estimated by the Receiver to be not less than \$8,217,804.

50.

The Receiver is entitled to avoid all “commissions,” fees, and other such payments paid by Madison Timber to McHenry and First South and to the entry of a judgment against McHenry and First South, jointly and severally, for the amount of all such monies received by them, estimated by the Receiver to be not less than \$3,473,320.

COUNT II
AGAINST DEFENDANTS BILLINGS AND MDB GROUP
FOR THE RETURN OF COMMISSIONS AND FEES
PURSUANT TO THE TEXAS FRAUDULENT TRANSFER ACT

51.

The Receiver re-alleges paragraphs 1 through 50 as though stated fully herein.

52.

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 (the “Act”), Mississippi Code Ann. §15-3-101, *et seq.*

53.

If, however, the Court determines that the transfers to Billings and MDB were made or deemed to have been made in the State of Texas, they instead are subject to the Texas Uniform Fraudulent Transfer Act, Texas Business and Commerce Code §24.001, *et seq.* (the “Texas Act”). Under the Texas Act, the Receiver is entitled to avoid “commissions,” fees, or other such payments to Billings and MDB Group.

54.

The Receiver is entitled to avoid all “commissions,” fees, and other such payments paid by Madison Timber to Billings and MDB Group and to the entry of a judgment against Billings and MDB Group, jointly and severally, for the amount of all such monies received by them, estimated by the Receiver to be not less than \$3,513,780.

55.

In addition, pursuant to § 24.01 of the Texas Act, the Receiver is entitled to an award of her attorney’s fees and all costs.

**COUNT III
AGAINST ALL DEFENDANTS
FOR UNJUST ENRICHMENT**

56.

The Receiver re-alleges paragraphs 1 through 55 as though stated fully herein.

57.

In the alternative, each of the Defendants has been unjustly enriched at the expense of Madison Timber and its innocent investors. At all relevant times, Madison Timber was a Ponzi scheme, and Defendants provided no legally cognizable consideration for the “commissions,” fees, and other such payments paid to them. Accordingly, the Receiver is entitled to the entry of a judgment against each of the Defendants in the amount of the “commissions,” fees, and other such payments they received.

58.

The Receiver is entitled the entry of a judgment against Billings and MDB Group stating that they have been unjustly enriched and are liable, jointly and severally, for an amount equal to

the “commissions,” fees, and other such payments they received, estimated by the Receiver to be not less than \$3,513,780.

59.

The Receiver is entitled the entry of a judgment against Kelly and Kelly Management stating that they have been unjustly enriched and are liable, jointly and severally, for an amount equal to the “commissions,” fees, and other such payments they received, estimated by the Receiver to be not less than \$8,217,804.

60.

The Receiver is entitled to the entry of a judgment against McHenry and First South stating that they have been unjustly enriched and are liable, jointly and severally, for an amount equal to the “commissions,” fees, and other such payments they received, estimated by the Receiver to be not less than \$3,473,320.

**ALTERNATIVE COUNT IV
AGAINST BILLINGS, MDB GROUP, MCHENRY, AND FIRST SOUTH
FOR DISGORGEMENT OF COMMISSIONS EARNED
IN VIOLATION OF 15 U.S.C. § 77e AND MISS. CODE. ANN. § 75-71-301**

61.

The Receiver re-alleges paragraphs 1 through 60 as though stated fully herein.

62.

In the alternative, Receiver is entitled to disgorgement of “commissions” Billings, MDB Group, McHenry, and First South received in exchange for the sale of unregistered securities in violation of 15 U.S.C. §77e and Mississippi Code Ann. § 75-71-301.

63.

The promissory notes sold by Madison Timber to investors were “securities,” as that term is defined under 15 U.S.C.A. §78(c)(A)(10) and Miss. Code Ann. § 75-71-102(28).

64.

As alleged throughout this complaint, in the complaint in the underlying action *SEC v. Arthur Lamar Adams et al.*, No. 3:18-cv-252 (S.D. Miss.), and in the bill of information filed against Adams in *U.S. v. Arthur Lamar Adams*, No. 3:18-c-188 (S.D. Miss.), Adams and his associates facilitated sales of these promissory notes to investors through material misstatements and omissions; employed a device, scheme, or artifice to defraud; and engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit, all in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(A); Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; as well as the Mississippi Securities Act, Miss. Code Ann. § 75-71-501.

65.

The sales violated Section 12(a)(1) of the Securities Act of 1933, 15 U.S.C. § 77l, because there were no registration statements for the promissory notes, as required by Section 5 of the Securities Act of 1933, 15 U.S.C § 77e, and the promissory notes were not exempt from registration under Section 5. Further, Adams and his associates used methods of interstate commerce, including intrastate telephone calls, to facilitate the sales of the promissory notes.

66.

The sales violated the Mississippi Securities Act because there were no registration statements for the promissory notes, as required by Miss. Code Ann. § 75-71-301, and the

promissory notes were not exempt from registration under Miss. Code Ann. §§ 75-71-201 through 75-71-203.

COUNT V
AGAINST BILLINGS, MDB GROUP, MCHENRY, AND FIRST SOUTH
FOR ENTRY OF PRELIMINARY AND PERMANENT INJUNCTION

67.

The Receiver re-alleges paragraphs 1 through 66 as though stated fully herein.

68.

On information and belief, Madison Timber “commissions” were MDB Group’s sole source of income—that is, MDB Group was funded solely through the proceeds of the Madison Timber Ponzi scheme. On information and belief, MDB Group’s disbursements of money received from Madison Timber were Billings’s sole source of income for several years.

69.

On information and belief, Billings and MDB Group will be unable to pay any judgment against them in the Receiver’s favor, for the benefit of the receivership estate and victims, if Billings transfers, sells, encumbers, or otherwise devalues any asset in his possession, or if MDB Group disburses whatever money remains in its accounts.

70.

On information and belief, Madison Timber “commissions” were First South’s sole source of income—that is, First South was funded solely through the proceeds of the Madison Timber Ponzi scheme. On information and belief, First South’s disbursements of money received from Madison Timber were McHenry’s sole source of income for several years.

71.

On information and belief, McHenry and First South will be unable to pay any judgment against them in the Receiver's favor, for the benefit of the receivership estate and victims, if McHenry transfers, sells, encumbers, or otherwise devalues any asset in his possession, or if First South disburses whatever money remains in its accounts.

72.

The Receiver is entitled to preliminary injunctive relief in the form of an order restraining Billings, MDB Group, McHenry, and First South, and any persons or entities acting in concert with them, from transferring, selling, encumbering, or otherwise devaluing assets, and assets traceable to assets, that they received from Adams and Madison Timber.

73.

There is a substantial likelihood that the Receiver will prevail on the merits of her claims against Billings, MDB Group, McHenry, and First South.

74.

There is a substantial likelihood that the Receiver, whose primary objective is to maximize funds available to distribute to victims, will be irreparably harmed in the absence of preliminary injunctive relief. The Receiver's primary objective is to maximize funds available for distribution to victims. If Billings, MDB Group, McHenry, and First South 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.

75.

Billings, MDB Group, McHenry, and First South will not be unjustly affected by the preliminary injunctive relief. The Receiver only asks the Court to restrain their 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 them, but instead to the receivership estate.

76.

The preliminary injunctive relief requested will serve the public interest by maximizing funds available to distribute to victims.

77.

The preliminary injunctive relief requested does not require a bond, but should the Court determine that it does, the Receiver respectfully suggests that the bond should be in a nominal amount.

78.

The Receiver further requests that, after due proceedings, the preliminary injunctive relief requested should be made permanent.

WHEREFORE, the Receiver respectfully requests that, after due proceedings, the Court enter judgments:

1. awarding damages in her favor and against Michael D. Billings and MDB Group, LLC, jointly and severally, for an amount equal to the “commissions,” fees, and other such payments they received from Madison Timber, estimated by the Receiver to be not less than \$3,513,780;

2. awarding damages in her favor and against Terry Wayne Kelly, Jr. and Kelly Management, LLC, jointly and severally, for an amount equal to the “commissions,” fees, and other such payments they received from Madison Timber, estimated by the Receiver to be not less than \$8,217,804;
3. awarding damages in her favor and against William B. McHenry, Jr. and First South Investments, LLC, jointly and severally, for an amount equal to the “commissions,” fees, and other such payments they received from Madison Timber, estimated by the Receiver to be not less than \$3,473,320;
4. granting the preliminary injunctive relief requested against Michael D. Billings and MDB Group, LLC, and William B. McHenry, Jr. and First South Investments, LLC, and, after due proceedings, making the relief permanent;
5. awarding any and all attorney’s fees, costs, and interest allowed by contract or law; and
6. awarding any and all other relief as may be just and equitable.

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

LaToya T. Jeter, Miss. Bar No. 102213

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS Alysson Mills, In Her Capacity as Receiver for Arthur Lamar Adams and Madison Timber, LLC		DEFENDANTS William B. McHenry, Jr.	
ATTORNEYS (Firm Name, Address, and Telephone No.) <small> Lili Evans Bass Brown Bass & Jeter, PLLC Post Office Box 22989 Jackson, Mississippi 39225 Telephone 601-487-8448 </small> <small> Brent B. Barriere Kristen D. Amund Fishman Haygood, LLP 201 St. Charles Avenue, Suite 4500 New Orleans, Louisiana 70170 Tel: 504-588-5253 </small> <div style="text-align: right; font-size: small;">+</div>		ATTORNEYS (If Known) <small> James G. McGee, Jr. McGee Tax Law, PLLC 2500 14th Street, 8th Floor Gulfport, Mississippi 39501 </small>	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Adversary Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. 523			
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)			
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input checked="" type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input checked="" type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$	
Other Relief Sought			

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR William B. McHenry, Jr.		BANKRUPTCY CASE NO. 20-00268
DISTRICT IN WHICH CASE IS PENDING United States Bankruptcy Court for the Southern District of Mississippi	DIVISION OFFICE	NAME OF JUDGE Judge Olack
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/Lilli Evans Bass		
DATE 04/23/2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Lilli Evans Bass	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet. When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.