

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

IN RE:

WILLIAM B. MCHENRY, JR.,

Debtor.

CASE NO. 20-00268

Chapter 7

MOTION FOR SANCTIONS FOR CONTEMPT OF COURT ORDER

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, respectfully submits this brief in support of her motion for sanctions to be imposed upon William B. McHenry, Jr. (“McHenry” or “Debtor”) for his failure to comply with this Court’s order requiring him to disclose documents pertaining to his finances.

The Bankruptcy Code imposes a singular benefit on the honest and transparent debtor—discharge of most, if not all, of his debts. *See In re Adams*, No. 12-02569-NPO, 2015 WL 1876669, at *8 (Bankr. S.D. Miss. Apr. 22, 2015) (Olack, J.) (“The privilege of discharge is granted only to those debtors who make a good faith effort in producing a full picture of their financial affairs.”). The price of that relief is disclosure of all information relating to the debtor’s assets and liabilities. McHenry has refused to comply with that obligation, in direct violation of the law and the Court’s order, therefore sanctions are warranted.

In further support of her Motion, the Receiver states as follows:

1.

The Receiver holds a \$3,473,320 final judgment against McHenry and First South Investments.¹ The amount reflects “commissions” that McHenry, through First South Investments, received in exchange for McHenry’s recruitment of new investors to the Madison Timber Ponzi scheme.

2.

On January 24, 2020, McHenry filed a voluntary petition for bankruptcy pursuant to Chapter 7, thereby triggering an automatic stay of litigation against him. McHenry identified the Receiver as a creditor of his bankruptcy estate.

3.

McHenry and his counsel initially agreed with the Receiver’s request that he produce documents and sit for an examination pursuant to Rule 2004.² 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.³ The Receiver attached as Exhibit A to the Notice her requests for documents pursuant to Rule 2004, to which, by agreement of the parties, McHenry was to produce responsive documents to the Receiver on March 6, 2020.⁴

¹ Doc. 62, *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).

² 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. McHenry’s counsel has not responded to the Receiver’s numerous requests for dates to reset the examination.

³ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

⁴ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

4.

On March 5, 2020, in response to her Rule 2004 requests of McHenry, the Receiver received only 28 pages of documents, including bank statements from only four bank accounts for only the past three months. The documents evidenced other checking and PayPal accounts to which McHenry transferred money but which McHenry had not disclosed. A letter from McHenry's counsel accompanying this "production" objected to every one of the Receiver's requests for documents. After weeks of unsatisfactory back-and-forth, the Receiver was forced to file a motion to compel.⁵

5.

The Court held a hearing on the Receiver's motion to compel on May 4, 2020. The Receiver and McHenry submitted to the Court an agreed order under which McHenry was required to produce the exact documents the Receiver requested months before.⁶ The Court entered the agreed order on May 8, 2020.

6.

The Court's order required McHenry to produce by May 18 his 2017, 2018, and 2019 tax returns along with all supporting documentation. McHenry did not make this production until May 22, and only after calls and email correspondence to his counsel by the Receiver's counsel. McHenry was required to produce by June 3 documents responsive to the other 19 requests detailed in the Court's order. In another untimely response, McHenry produced incomplete responses to many requests and wholly ignored others. The Receiver's counsel granted McHenry an additional seven days to produce all the documents that this Court ordered him to produce. He has failed to do so.

⁵ Doc. 68, In re: William Byrd McHenry, Jr., No. 20-bk-00268 (Bankr. S.D. Miss.).

⁶ Doc. 83, In re: William Byrd McHenry, Jr., No. 20-bk-00268 (Bankr. S.D. Miss.).

7.

After these many months of evading his disclosure obligations, some sanction is warranted against McHenry.

WHEREFORE, the Receiver therefore requests that the Court sanction McHenry as follows:

1. finding McHenry in civil contempt;
2. requiring McHenry to pay an appropriate amount of sanctions plus the Receiver's reasonable attorneys' fees and expenses related to the Rule 2004 discovery in this proceeding; and
3. requiring McHenry to immediately produce, without objection, complete responses in compliance with the Court's May 8, 2020 order, sanctioning McHenry for each day that the responses are not filed.

June 26, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver's counsel

/s/ Kristen D. Amond

FISHMAN HAYGOOD, LLP
Admission pro hac vice forthcoming
Brent B. Barriere, *Primary Counsel*
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
Receiver's counsel

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.

Date: June 26, 2020

/s/ Lilli Evans Bass

MC GEE TAX LAW, PLLC

ATTORNEYS AT LAW

914 Grove Street
Vance-Bonner Building, Suite B
Vicksburg, Mississippi 39183
(601) 965-6157 FAX: (601) 965-6166

125 South Congress Street
Capital Towers, Suite 1240
Jackson, Mississippi 39201
(601) 965-6155 FAX: (601) 965-6166
www.mcgeetaxlaw.com

2510 14th Street, Suite 810
Hancock Whitney Plaza Building
Gulfport, Mississippi 39501
(228) 867-1594 FAX: (228) 867-1595

June 23, 2020

VIA: U.S. MAIL & EMAIL

Fishman Haygood, LLP
Kristen Amond
Brent Barriere
201 St. Charles Avenue, Suite 4600
New Orleans, LA 70170

***Re: United States Bankruptcy Southern District of Mississippi Chapter 7;
William B. McHenry, Jr; Case No. 20-00268***

Dear Ms. Amond and Mr. Barriere:

Pursuant to your request and in response to the Agreed Order on the Motion to Compel, Mr. McHenry has provided me with the following responses:

1. Previously provided
2. Previously provided
3. Previously provided
4. Previously provided
5. I do not have any of the items listed
6. Not available
7. Previously provided
8. Title copies delayed due to COVID-19 issues. Applications for title previously submitted.
9. None
10. See Deed of Trust previously provided
11. Not available

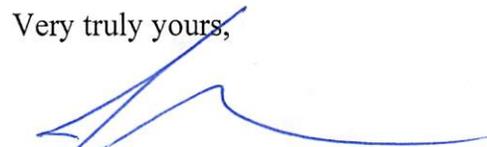
June 23, 2020

- 12. None
- 13. Previously provided
- 14. Previously provided, see Deed of Trust
- 15. None
- 16. None
- 17. None
- 18. None
- 19. Previously provided

With regard to your inquiry as to whether we represent First South Investments, LLC; we would advise that we represent Mr. McHenry in the Chapter 7 Bankruptcy only. We have not been engaged to represent First South Investments, LLC; or Mr. McHenry in any other matters pending before the Bankruptcy Court.

Please feel free to contact me at (601) 965-6155 if you have any questions or concerns. If you feel that any documents were omitted here; or, if you understood the production of these documents differently than I have set out herein, please let me know so that we can correct our understanding regarding the treatment of such. Thank you for your continued cooperation.

Very truly yours,



James G. McGee, Jr.
Attorney at Law

JGM,Jr./mel
Enclosure: Agreed Order on Motion to Compel
cc: Lilli Evans Bass
William McHenry
MTL 06200100



SO ORDERED,

Neil P. Olack
Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: May 8, 2020

The Order of the Court is set forth below. The docket reflects the date entered.

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

IN RE:

WILLIAM BYRD MCHENRY, JR.,
Debtor,

CASE NO. 20-00268-NPO
Chapter 7

AGREED ORDER ON MOTION TO COMPEL

Before the Court is a Motion to Compel filed by Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), which asks the Court to compel Debtor William B. McHenry, Jr. to produce certain documents pursuant to Bankruptcy Rule 2004. Dkt. #68. The Receiver's motion came before the Court for hearing on May 4, 2020. The Court being advised that the Debtor has agreed to the Receiver's Motion and being fully advised that the parties agree as follows:

IT IS ORDERED THAT the Receiver's Motion to Compel is GRANTED.

The Debtor must produce to the Receiver by May 18, 2020 copies of all federal and state income tax returns filed by McHenry or First South Investments, LLC for the calendar years 2017,

2018, and 2019, together with all schedules and other information filed therewith. If the 2019 income tax return has not been filed or is incomplete, then all records that will be used in formulating the 2019 income tax return.

Additionally, the Debtor shall produce to the Receiver the following documents by June 3, 2020:

1. All cash in McHenry's possession and documentary evidence of cash at his disposal and on deposit at financial institutions, the name of the financial institutions and the address of the branch location usually banked at, and the account number for each account in which McHenry presently has any interest or has had any interest since April 19, 2018;
2. Documentary evidence of any savings, money market, credit union, passbooks, or other financial institution accounts, used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018;
3. Documentary evidence of any IRA, Keogh, SEP, or other tax-deferred account used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018;
4. The checkbook for each checking account used by McHenry, or in which McHenry has any interest, together with the complete monthly statements, cancelled checks, deposit and debit slips since April 19, 2018 for each account;
5. Documentary evidence of all certificates of deposit, bonds, mutual funds, coupons, and securities in which McHenry has any interest;
6. All pay stubs and any and all income received by McHenry since April 19, 2018, including, but not limited to, health plans, employment, rents, royalties, and proceeds from sales of assets;
7. Copies of all titles to real estate, automobiles, trailers, and other registered movables owned by McHenry individually, as marital community, or business ventures, as of the date this motion is served on him;
8. Motor Vehicle Certificate of Title (registration) on all vehicles titled in the name of McHenry, together with documentary evidence of all mortgages encumbering said vehicles, and all payment books setting forth the monthly amount due on said mortgage and the current balance;
9. Books, papers, documents, and records reflecting any present garnishment or judgment proceedings against McHenry;

10. Copies of all mortgages encumbering the real estate, furniture, electronic equipment, or any other movable property owned or possessed by McHenry individually, as marital community, or business ventures, including all documents setting forth the monthly amount due on said mortgages and the current balance;
11. All of McHenry's utility and telephone bills, credit card statements, rent receipts, and insurance premium notices since April 19, 2018;
12. All books, papers, documents, and records pertaining to or evidencing loans or other installment debts owed by McHenry, and reflecting the name and address of each creditor, the monthly amount due and the current balance;
13. All stock certificates (and/or other evidences of stock ownership) owned or possessed by, or in the name of McHenry in any corporation;
14. A list of all assets owned by McHenry individually, as marital community, or business ventures;
15. Documentary evidence of all assets owned by corporations, partnerships, or businesses in which McHenry has any interest;
16. Copies of transfers of all assets from McHenry to any other person or entity since April 19, 2018;
17. All deeds, acts of donation, bills of sale, and/or other instruments of conveyance pertaining to any real or movable property transferred, donated, conveyed, or otherwise alienated by McHenry individually, as marital community, or business ventures since April 19, 2018;
18. All deeds, titles, leases, liens, contracts, and records pertaining to any property, real or movable, in which McHenry has any interest, or held by another for the benefit or use of McHenry, together with the documents evidencing McHenry's ownership interest; and
19. All records identifying all other assets owned by McHenry individually, as marital community, or business ventures.

##END OF ORDER##

Submitted by:

Lilli Evans Bass
BROWN BASS & JETER, PLLC
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934

bass@bbjlawyers.com

*Attorney for Creditor Alysson Mills,
in her capacity as Receiver for
Arthur Lamar Adams and Madison Timber Properties*

James G. McGee, Jr.
McGee Tax Law, PLLC
125 So. Congress Street
Suite 1240
Jackson, Mississippi 39201
Phone: 601-965-6155
Fax: 601-965-6166

Attorney for Debtor William Byrd McHenry, Jr.

**EXHIBIT 2 IN SUPPORT OF MOTION FOR SANCTIONS
FOR CONTEMPT OF COURT ORDER**

Receiver's request	McHenry's response ¹	Deficiency currently known to the Receiver
Tax returns from 2017, 2018, and 2019, together with all schedules and other information filed therewith. If the 2019 income tax return has not been filed or is incomplete, then all records that will be used in formulating the 2019 income tax return	McHenry did not specifically respond to this request.	McHenry failed to produce Schedule Cs for LLCs other than First South Investments, LLC that will be used in formulating his 2019 income tax return.
1. All cash in McHenry's possession and documentary evidence of cash at his disposal and on deposit at financial institutions, the name of the financial institutions and the address of the branch location usually banked at, and the account number for each account in which McHenry presently has any interest or has had any interest since April 19, 2018	"Previously provided"	<p>McHenry made certain financial disclosures to the Receiver on October 18, 2018 in the context of her lawsuit against him arising from his involvement in the Madison Timber Ponzi scheme. Those disclosures have not been supplemented.</p> <p>The Court's order expressly requires McHenry to produce documents that reflect his current financial status and his financial history from April 19, 2018 to present.</p>
2. Documentary evidence of any savings, money market, credit union, passbooks, or other financial institution accounts, used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018	"Previously provided"	<p>McHenry failed to produce records for the following accounts for the listed dates:</p> <ol style="list-style-type: none"> 1. Magnolia Federal Credit Union (#1887) [Bill McHenry]: April 19, 2018 to December 31, 2018 2. First Commercial Bank (#7011) [Bill McHenry]: December 17, 2018 to December 16, 2019 3. First Bank and Trust (#1302) [Bill McHenry]: January 1, 2020 to January 30, 2020

¹ McHenry's response per the June 23, 2020 letter from James McGee to the Receiver's counsel, attached to the Receiver's motion as Exhibit 1.

		<ol style="list-style-type: none"> 4. First Commercial Bank (#3214) [First South Investments, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 5. First Commercial Bank (#3529) [Wildlife Property Management, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 6. First Commercial Bank (#0441) [Wings West, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 7. First Commercial Bank (#8767) [Daybreak Planting Co, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 8. First Commercial Bank (#2694) [Silverthorn Capital Management, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 9. First Commercial Bank (#2744) [Silverthorn Holdings, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 10. First Commercial Bank (#2736) [Silverthorn, LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 11. First Bank and Trust (#2453) [Timbercorp South LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 12. First Bank and Trust (#2440) [First South Investments LLC]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present 13. Southern Ag Credit (#4610) [Wildlife Property Management LOAN]: April 19, 2018 to December 31, 2018 and January 1, 2020 to present
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3. Documentary evidence of any IRA, Keogh, SEP, or other tax-deferred account used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018	"Previously provided"	McHenry's bankruptcy schedules list a Merrill Lynch IRA account. McHenry has produced to the Receiver no information about this account.
4. The checkbook for each checking account used by McHenry, or in which McHenry has any interest, together with the complete monthly statements, cancelled checks, deposit and debit slips since April 19, 2018 for each account	"Previously provided"	Same deficiencies as for Request Nos. 1 and 2.
6. All pay stubs and any and all income received by McHenry since April 19, 2018, including, but not limited to, health plans, employment, rents, royalties, and proceeds from sales of assets	"Not available"	McHenry does not explain or provide information as to why documents regarding his income are "not available."
7. Copies of all titles to real estate, automobiles, trailers, and other registered movables owned by McHenry individually, as marital community, or business ventures, as of the date this motion is served on him	"Previously provided"	<p>Same deficiencies as for Request No. 1.</p> <p>McHenry does not disclose information about equipment owned by First South Investments, LLC, as referenced in the company's bank statements.</p> <p>McHenry does not disclose information about three trailers for which he apparently has insurance policies: 2012 16' utility trailer; 2010 16' utility trailer; and 2014 18' cargo trailer.</p>
10. Copies of all mortgages encumbering the real estate, furniture, electronic equipment, or any other movable property owned or possessed by McHenry individually, as marital community, or business ventures, including all documents setting forth the	"See Deed of Trust previously provided."	<p>Same deficiencies as for Request No. 1.</p> <p>McHenry does not disclose information about equipment owned or possessed by First South Investments, LLC, as referenced in the company's bank statements.</p>

monthly amount due on said mortgages and the current balance		McHenry does not disclose information about three trailers that he apparently owns or possesses, for which he purchases insurance coverage: 2012 16' utility trailer; 2010 16' utility trailer; and 2014 18' cargo trailer.
11. All of McHenry's utility and telephone bills, credit card statements, rent receipts, and insurance premium notices since April 19, 2018	"Not available"	<p>It is simply impossible that McHenry's utility and telephone bills are "not available."</p> <p>McHenry fails to identify and produce credit card statements for the numerous credit cards that he lists on his bankruptcy schedules or for which he makes ACH payments through First South Investment, LLC's First Commercial Bank account, including:</p> <ul style="list-style-type: none"> • American Express • Chase Credit Card • Bank of America • Visa • Citi Card • First Bankcard • Wells Fargo • Merrick Bank • Discover • BP Mastercard • Fidelity <p>First South Investments, LLC's bank statements indicate monthly payments of \$1,700 to "742 Magnolia." Upon information and belief, 742 Magnolia is rented office space. McHenry did not disclose any information about 742 Magnolia.</p>

		<p>McHenry did not disclose any information regarding insurance premiums or policies. His bankruptcy schedules list four policies: New York Life Term Policy; Mutual of Omaha Term Policy; Physician Mutual Term Policy; and Securian Accidental Death Policy. First South Investments, LLC's bank statements, however, show that McHenry makes monthly premium payments for many other insurance policies, including:</p> <ul style="list-style-type: none"> • Globe Life Insurance • Safeco Insurance (multiple payments per month) • Physicians Mutual Insurance (multiple payments per month) • American National Insurance • United HealthOne Insurance • New York Life AARP Insurance • NRA Life Insurance • Fireman's Fund • Aetna Life Insurance • Allianz
13. All stock certificates (and/or other evidences of stock ownership) owned or possessed by, or in the name of McHenry in any corporation	"Previously provided"	Same deficiencies as for Request No. 1.
14. A list of all assets owned by McHenry individually, as marital community, or business ventures	"Previously provided"	<p>Same deficiencies as for Request No. 1 as it relates to McHenry's personal assets.</p> <p>McHenry has never produced to the Receiver a list of assets owned by any of his business ventures, including the assets of any one of McHenry's (at least) ten companies. The companies in which McHenry has an</p>

		<p>interest, as currently known to the Receiver, are the following:</p> <ul style="list-style-type: none"> • First South Investments, LLC • Wildlife Property Management, LLC • Wings West, LLC • Daybreak Planting Co., LLC • Silverthorn Capital Management, LLC • Silverthorn Holdings, LLC • Silverthorn, LLC • Timbercorp South, LLC
15. Documentary evidence of all assets owned by corporations, partnerships, or businesses in which McHenry has any interest	"None"	It is seemingly impossible that "none" of the (at least) ten companies in which McHenry has any interest have any assets.
18. All deeds, titles, leases, liens, contracts, and records pertaining to any property, real or movable, in which McHenry has any interest, or held by another for the benefit or use of McHenry, together with the documents evidencing McHenry's ownership interest	"None"	<p>The Receiver is aware of at least one, and possibly two, tracts of land that McHenry leases. McHenry did not disclose these leases to the Receiver.</p> <p>McHenry claims as exempt 124 Trace Timber Lane, Canton, MS 39046, in his bankruptcy schedules, but has not disclosed to the Receiver any information about this property.</p>
19. All records identifying all other assets owned by McHenry individually, as marital community, or business ventures	"Previously provided"	<p>Same deficiencies as for Request No. 1 as it relates to McHenry's personal assets.</p> <p>McHenry has never produced to the Receiver records identifying all other assets owned by any of his business ventures, including the assets of any one of McHenry's (at least) ten companies.</p>

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

IN RE:

WILLIAM B. MCHENRY, JR.,

Debtor.

CASE NO. 20-00268

Chapter 7

**MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS
FOR CONTEMPT OF COURT ORDER**

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, respectfully submits this brief in support of her motion for sanctions to be imposed upon William B. McHenry, Jr. (“McHenry” or “Debtor”) for his failure to comply with this Court’s order requiring him to disclose documents pertaining to his finances.

INTRODUCTION

In April the Receiver filed a motion that asked this Court to compel McHenry to produce documents requested of him pursuant to Rule 2004. At a hearing on the motion, McHenry’s counsel agreed that McHenry would produce the documents requested of him, and on May 8, 2020, the Court entered an order that gave McHenry until June 3 to do so.

It is June 26, 2020, and McHenry still has not complied with the Court’s order.

To call McHenry’s response to the requests of him a disappointment would be an understatement. What little McHenry has produced since this Court’s hearing raises even more questions about McHenry’s finances and whether he has been forthright with the Court, the U.S. Trustee, and the Receiver.

The Bankruptcy Code imposes a singular benefit on the honest and transparent debtor—discharge of most, if not all, of his debts. *See In re Adams*, No. 12-02569-NPO, 2015 WL 1876669, at *8 (Bankr. S.D. Miss. Apr. 22, 2015) (Olack, J.) (“The privilege of discharge is granted only to those debtors who make a good faith effort in producing a full picture of their financial affairs.”). The price of that relief is disclosure of all information relating to the debtor’s assets and liabilities. McHenry has refused to comply with that obligation, in direct violation of the law and the Court’s order, therefore sanctions are warranted.

The Receiver now requests that the Court sanction McHenry by (1) finding him in civil contempt; (2) requiring him to pay an appropriate amount of sanctions plus the Receiver’s reasonable attorneys’ fees and expenses related to the Rule 2004 discovery in this proceeding; and (3) requiring him to immediately produce, without objection, complete responses in compliance with the Court’s May 8, 2020 order, sanctioning McHenry for each day that the responses are not filed.

BACKGROUND

The Receiver holds a \$3,473,320 final judgment against McHenry and First South Investments.¹ The amount reflects “commissions” that McHenry, through First South Investments, received in exchange for McHenry’s recruitment of new investors to the Madison Timber Ponzi scheme.

On January 25, 2019, a federal grand jury indicted McHenry for securities and wire fraud.² 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

¹ Doc. 62, *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).

² Doc. 3, *United States v. McHenry*, No. 3:19-cr-00020 (S.D. Miss).

those criminal proceedings, however, the Receiver obtained an order permitting her to examine McHenry under oath in open court regarding his ability to pay the \$3,473,320 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, 2020.³

In a transparent attempt to evade examination, on January 24, 2020, McHenry filed a voluntary petition for bankruptcy pursuant to Chapter 7, thereby triggering an automatic stay of litigation against him. McHenry identified the Receiver as a creditor of his bankruptcy estate.

The law expects honesty and transparency of a debtor who files for bankruptcy, but McHenry has used these proceedings instead to continue to avoid real examination of his finances. McHenry and his counsel initially agreed with the Receiver's request that he produce documents and sit for an examination pursuant to Rule 2004.⁴ 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.⁵ The Receiver attached as Exhibit A to the Notice her requests for documents pursuant to Rule 2004, to which, by agreement of the parties, McHenry was to produce responsive documents to the Receiver on March 6, 2020.⁶

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

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

⁴ 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. McHenry's counsel has not responded to the Receiver's numerous requests for dates to reset the examination.

⁵ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

⁶ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

Receiver's counsel, insisting the questions be asked instead during McHenry's Rule 2004 examination.

The next day, on March 5, 2020, in response to her Rule 2004 requests of McHenry, the Receiver received only 28 pages of documents, including bank statements from only four bank accounts for only the past three months. The documents evidenced other checking and PayPal accounts to which McHenry transferred money but which McHenry had not disclosed. A letter from McHenry's counsel accompanying this "production" objected to every one of the Receiver's requests for documents.

After weeks of unsatisfactory back-and-forth, the Receiver was forced to file a motion to compel.⁷

The Court held a hearing on the Receiver's motion on May 4, 2020. Incredibly, and despite that McHenry's counsel had written two letters to the Receiver's counsel objecting to the requests for production and also had filed an opposition to the Receiver's motion to compel, at the hearing McHenry's counsel informed everyone that he had absolutely no objection to any of the Receiver's requests. The Receiver and McHenry submitted to the Court an agreed order under which McHenry was required to produce the exact documents the Receiver requested months before.⁸ The Court entered the agreed order on May 8, 2020. This needless exercise cost the Court and the Receivership Estate valuable time and expense.

The Court's order required McHenry to produce by May 18 his 2017, 2018, and 2019 tax returns along with all supporting documentation. McHenry did not make this production until May 22, and only after calls and email correspondence to his counsel by the Receiver's counsel.

⁷ Doc. 68, In re: William Byrd McHenry, Jr., No. 20-bk-00268 (Bankr. S.D. Miss.).

⁸ Doc. 83, In re: William Byrd McHenry, Jr., No. 20-bk-00268 (Bankr. S.D. Miss.).

McHenry was required to produce by June 3 documents responsive to the other 19 requests detailed in the Court's order. In another untimely response, McHenry produced incomplete responses to many requests and wholly ignored others. The Receiver's counsel granted McHenry an additional seven days to produce all the documents that this Court ordered him to produce. He has failed to do so.

ARGUMENT

This Court has the power to hold a party in civil contempt and to impose sanctions pursuant to 28 U.S.C. § 157 and 11 U.S.C. § 105(a). *See also In re McKenzie*, No. 08-51929-NPO, 2010 WL 917262, at *3 (Bankr. S.D. Miss. Mar. 10, 2010) (Olack, J.) (“The Court has authority under § 105(a) to issue sanctions pursuant to its civil contempt power.”); *In re Harris*, 297 B.R. 61, 70 (Bankr. N.D. Miss. 2003) (“[Section] 105 provides a bankruptcy court with statutory contempt powers, in addition to whatever inherent contempt powers the court may have.”). The Court's power under Section 105 of the Bankruptcy Code is broad:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The Fifth Circuit has held that “[t]he language of [Section 105] is unambiguous. Reading it under its plain meaning, we conclude that a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the bankruptcy code.” *Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997). Sanctions orders may compensate a party for damages suffered as a result of another's violation if the damages were “both necessary and appropriate to carry out the provisions of the bankruptcy code.” *Id.*; *see also In re Augustus*, No. 05-83177, 2007 WL 172525, at *2 (Bankr. S.D. Tex. Jan. 18, 2007) (“A court

may impose fines in civil contempt proceedings to compensate a party for unnecessary injuries suffered and costs incurred because of contemptuous conduct.”).

“A movant seeking sanctions for contempt must establish by ‘clear and convincing evidence’ that 1) there was a court order in effect, 2) the order required specific conduct by the respondent, and 3) the respondent failed to comply with the court order.” *In re Brown*, 511 B.R. 843, 848–49 (Bankr. S.D. Tex. 2014) (citing *United States v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004)).

1. There was a court order in effect.

The Court’s May 8, 2020 order is in effect.

2. The order required specific conduct by McHenry.

The Court’s order required McHenry to produce numerous financial documents for specific periods of time. It lists 19 specific categories of documents to be produced, each of which is described in painstaking detail. McHenry provided incomplete responses to many requests and wholly ignored others.

3. McHenry failed to comply with the order.

Although McHenry (untimely) produced to the Receiver certain documents in response to the Court’s order, his productions do not come close to satisfying his obligations. McHenry contends he need not comply with the Court’s order because for each of the requests, he has “previously provided” documents to the Receiver, documents are “not available,” or no responsive documents exist. *See* June 23, 2020 letter from McHenry’s counsel to the Receiver’s counsel, attached hereto as Exhibit 1.

McHenry’s failures to comply with the Court’s order are too numerous to list in this brief, and no doubt the Court is loath to conduct a line-by-line inspection of her requests and McHenry’s

responses. To carry her burden of establishing that McHenry's responses are deficient, the Receiver attaches as Exhibit 2 a table that summarizes, side-by-side, the Receiver's requests, McHenry's responses, and notable deficiencies currently known to the Receiver. For example, for the very simple request for "utility and telephone bills, credit card statements, rent receipts, and insurance premium notices," McHenry has responded "not available." This, of course, cannot be true. Indeed, McHenry's own bank statements prove otherwise. It is also clear that McHenry uses First South Investments, LLC's account at First Commercial Bank to pay most or all of his insurance premiums, credit card bills, and personal expenses, but McHenry has not disclosed the source of the multiple deposits of thousands of dollars—always in round numbers—that are paid into First South Investments, LLC's account each month to cover those expenses.

The Receiver's counsel has discussed these blatant deficiencies on numerous occasions with McHenry's counsel, James McGee, and his personnel. For whatever reason, they have been unable or unwilling to compel McHenry's compliance with the Court's order to which Mr. McGee himself agreed.

McHenry invited the Receiver's inquiry by filing for bankruptcy. The Receiver has objected to the discharge of McHenry's debts on the basis that he is not entitled to this Court's protections because, *inter alia*, he resists disclosure of his true financial condition. If he wants this Court to discharge his debts, he must be willing to disclose the true nature of his financial affairs. He also must comply with this Court's orders. He refuses to do so.

After these many months of evading his disclosure obligations, some sanction is warranted.

CONCLUSION

The Receiver therefore requests that the Court sanction McHenry as follows:

1. finding McHenry in civil contempt;
2. requiring McHenry to pay an appropriate amount of sanctions plus the Receiver's reasonable attorneys' fees and expenses related to the Rule 2004 discovery in this proceeding; and
3. requiring McHenry to immediately produce, without objection, complete responses in compliance with the Court's May 8, 2020 order, sanctioning McHenry for each day that the responses are not filed.

June 26, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver's counsel

/s/ Kristen D. Amond

FISHMAN HAYGOOD, LLP
Admission pro hac vice forthcoming
Brent B. Barriere, *Primary Counsel*
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
Receiver's counsel

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.

Date: June 26, 2020

/s/ Lilli Evans Bass