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.

BUTLER SNOW LLP; BUTLER SNOW ADVISORY SERVICES, LLC; MATT THORNTON; BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC; ALEXANDER SEAWRIGHT, LLC; BRENT ALEXANDER; and JON SEAWRIGHT,

Defendants.

Case No. 3:18-cv-866-CWR-BWR

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

Carlton W. Reeves, District Judge
Bradley W. Rath, Magistrate Judge

MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF JUDGMENT

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC, respectfully submits this memorandum in support of her motion for entry of judgment.

INTRODUCTION

The Receiver moves for entry of judgment consistent with arguments in this motion. The Court addressed similar arguments before entering judgment in *Pettway v. Asian Tire Factory Ltd.*, No. 3:20-cv-10-CWR-LGI, 2021 WL 5751793 (S.D. Miss. Dec. 2, 2021) (addressing offsets for prior settlements before entering judgment). Whether the Court addresses the arguments now or later, the Receiver is entitled to a judgment in her favor.[1]

[1] The Receiver does not intend to waive any right to move for judgment as a matter of law pursuant to Rule 50 or, separately, for relief pursuant to Rule 59, post-judgment. She makes arguments that she might otherwise properly

The jury found that Jon Seawright and Brent Alexander aided and abetted Lamar Adams; that they acted with Baker Donelson's apparent authority, such that the law firm is vicariously liable; and that Baker Donelson is separately directly liable for its own negligent supervision. The jury awarded the Receiver compensatory damages totaling $2.8 million.

Baker Donelson argued the Receiver had a duty to mitigate the Receivership Estate's damages by pursuing an alleged 293 unidentified net winners, and the jury found the Receiver would have recovered an additional $10,000,000 if she had. But Mississippi law requires "documentation" and a "clear methodology" for damages, and Baker Donelson provided neither. There is no accounting of net winners in evidence because Baker Donelson did not offer one as an exhibit at trial. Baker Donelson's mitigation damages, $10,000,000, are founded on speculation only; they are not "reasonably certain." The Receiver is entitled to judgment as a matter of law on Baker Donelson's failure to mitigate defense because Baker Donelson did not carry its burden of proof.

Even if Baker Donelson had proved $10,000,000 in mitigation damages, its liability for $2.8 million is not reduced by $10,000,000. Consistent with Mississippi law, the jury heard the Receiver pursued net winners if she had a reason, but it did not hear any values obtained from those pursuits. *Pettway*, 2021 WL 5751793, at *1 ("Consistent with Mississippi law, the jury was informed of the existence of the settlement, but not its amount.") (citing *Smith v. Payne*, 839 So. 2d 482, 486-87 (Miss. 2002)). Because there is no accounting of net winners in evidence, no one can determine from the record who Defendants' alleged 293 unidentified net winners are. But

make post-judgment here because nothing prevents their being made pre-judgment and they overlap with arguments the Court considered pre-judgment in *Pettway*.

accounting for the Receiver's known pursuits of persons who were net winners, Defendants' $10,000,000 mitigation damages must be reduced to **-$1,220,587.28**.

Even if any portion of Baker Donelson's mitigation damages remained, they would not reduce Baker Donelson's vicarious liability for Seawright and Alexander. A plaintiff's failure to mitigate is no defense to a defendant's liability for aiding and abetting, because aiding and abetting is an intentional tort.

Nothing else reduces Baker Donelson's liability for $2.8 million or Alexander and Seawright's liability for $1.4 million.

Baker Donelson contends the Receiver's success pursuing other third parties precludes her from recovering anything from Baker Donelson. It is notable that, on the one hand, Baker Donelson says the Receiver did not recover enough; on the other, it says she cannot recover more. The reality, however, is that there is no double recovery for the same claims here. The Receiver's settlements with other parties do not reduce the $2.8 million.

Baker Donelson contends the Receiver is not a prevailing party because she did not recover $300,000,000. The Receiver did not ask for $300,000,000; the Receiver asked for total net losses, $53.4 million, with the understanding that $53.4 million could be reduced post-trial. But the reason the Receiver is a prevailing party is because, after almost eight years of litigation, during which Baker Donelson denied all liability, she proved her claims.

The Receiver is entitled to a judgment in the amount of $2.8 million. Although the Court need not decide the issue now, because the Receiver prevailed on her claims, she is entitled to ask for interest and costs in amounts to be determined.

ARGUMENT

1. The Receiver is entitled to judgment as a matter of law on Baker Donelson's failure to mitigate defense pursuant to Rule 50.

At the close of evidence, the Receiver moved for judgment as a matter of law pursuant to Federal Rule of Procedure 50(a) on Baker Donelson's failure to mitigate defense, and the Court reserved ruling on it. [May 15, 2026 at p. 108 and p. 133]

Rule 50(b) provides that if a court does not grant a motion made under Rule 50(a), "the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." Post-verdict, "the movant may file a renewed motion for judgment as a matter of law." The Receiver renews her motion for judgment as a matter of law on Baker Donelson's failure to mitigate defense here.

"In Mississippi, the burden of producing 'facts which will operate to bring the mitigation into effect' rests on the defendant." *In re Evans*, 492 B.R. 480, 503 (Bankr. S.D. Miss. 2013) (citing *Poteete v. City of Water Valley*, 207 Miss. 173, 42 So.2d 112, 113 (1949) (citations omitted)). *See also Wall v. Swilley*, 562 So. 2d 1252, 1258 (Miss. 1990) ("Of course, mitigation is an affirmative defense and the Swilleys were burdened to charge and prove that the Walls had failed in their duty."). Baker Donelson argued the Receiver had a duty to mitigate the Receivership Estate's damages by pursuing net winners. Baker Donelson thus had the burden to prove both that the Receiver failed in her duty to mitigate and that the failure resulted in reasonably certain damages. Baker Donelson did not carry either burden.

a. Baker Donelson did not prove the Receiver failed in her duty to mitigate by not pursuing all net winners.

Baker Donelson argued the Receiver had a duty to mitigate the Receivership Estate's damages by pursuing up to 293 unidentified investors who over the life of the Ponzi scheme came out ahead.

For most of this litigation, Baker Donelson argued the Receiver had a duty to file clawback lawsuits against all net winners, but the Receiver showed that other receivers have been criticized for wasteful litigation. *E.g.*, *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd*., 927 F.3d 830, 845 (5th Cir. 2019) (observing query as to "the benefits to be reaped, other than in the Receiver's legal fees, from these time-consuming suits against relatively poor former employees targeted by the Receiver"). Furthermore, "[t]he general rule is that 'injured parties need not ... institute and prosecute [law] suits' in order to mitigate damages." *Stone v. Satriana*, 41 P.3d 705, 712 (Colo. 2002) (quoting *Robinson v. Carney*, 632 A.2d 106, 108 (D.C. 1993) (alterations in original) (citing 2 Marilyn Minzer et al., Damages in Tort Actions § 16.22, at 16–34 & 35 (1992))). *See also Branch Banking & Tr. Co. v. Saiid Forouzan Rad*, No. 2:14-cv-01947, 2016 WL 4591749, at *5 (D. Nev. Sept. 1, 2016), *aff'd sub nom. Branch Banking & Tr. Co. v. Est. of Forouzan*, 727 F. App'x 239 (9th Cir. 2018) (same); *Stadheim v. Becking*, 290 N.W.2d 273, 274 (S.D. 1980) ("The law does not require a person to take affirmative legal action to prevent [the tortfeasor] from suffering the result of the tortious act.").

Apparently acknowledging the flaw in their argument, for the first time at trial Baker Donelson instead argued the Receiver should have sent a blanket letter to all alleged 293 unidentified net winners demanding they return their net winnings. There is no dispute that, yes, the Receiver could have sent a blanket letter to known net winners. But that does not mean she had a duty to do anything under the facts and circumstances of this case. If the Receiver had sent a blanket letter to known net winners, Baker Donelson would have said that sending a letter was not enough. They would have argued she had a duty to follow through with any threats of litigation, whatever the cost.

"Juries are not instructed in, nor do they engage in, consideration of the policy matters and the precedent which define the concept of duty." *Greer v. Key*, 428 So. 3d 333, 338 (Miss. 2026) (quoting *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 174 (Miss. 1999) (citing W. Page Keeton, Prosser and Keeton on Torts § 37 (5th ed. 1984)). "Whether a duty exists under a given set of facts and circumstances is essentially a question of law for the trial court." *Rodriguez v. Riddell Sports, Inc.*, 242 F.3d 567, 576 (5th Cir. 2001) (applying Texas law but Mississippi law is same). *See Doe ex rel. Doe v. Wright Sec. Servs., Inc.*, 950 So. 2d 1076, 1079 (Miss. Ct. App. 2007) ("Whether a duty is owed is a question of law.") (citing *Rein v. Benchmark Constr. Co.*, 865 So. 2d 1134, 1143 (Miss. 2004)).

In this case, especially, whether the Receiver had a duty to do anything is a question of law for this Court. *See Zacarias v. Stanford Int'l Bank, Ltd. (Zacarias)*, 945 F.3d 883, 896 (5th Cir. 2019) (a receiver "is an officer ... of the court") (quotations omitted). *See also Janvey v. GMAG, L.L.C*, 98 F.4th 127, 132–33 (5th Cir. 2024) ("A district court's actions in supervising an equity receivership are also reviewed for an abuse of discretion.") (quotation omitted).

Baker Donelson has never pointed to any legal authority for the proposition that the Receiver had a duty to indiscriminately pursue net winners, by blanket letter or otherwise. *E.g.*, *Archer v. Harlow's Casino Resort & Spa*, 395 So. 3d 71, 74 (Miss. Ct. App. 2024), *reh'g denied* (Oct. 15, 2024) ("Archer identified no statute, regulation, or other legal authority that would impose such a duty. …") (citing *Eli Invs. LLC v. Silver Slipper Casino Venture LLC*, 118 So. 3d 151, 154 (¶11) (Miss. 2013) ("The existence vel non of a legal duty is a question of law to be decided by the court.")).

In any event, any receiver's duty of care, like anyone's duty of care, requires careful consideration of policy matters. *E.g.*, *Fortner v. IMS Eng'rs, Inc.*, 422 So. 3d 22, 35 (Miss. Ct.

App.), *reh'g denied* (Sept. 2, 2025), *cert. denied*, 421 So. 3d 1260 (Miss. 2025) (citations omitted) (whether there exists a specific duty of care "requires the consideration of public policy matters and is a question of law for the court").

Under the given set of facts and circumstances, the Receiver did not have the specific duty, as a matter of law, to indiscriminately pursue all net winners, by blanket letter or otherwise. The Receiver had a duty to recover money and assets for the benefit of victims as cost effectively and neutrally as possible. The Court is independently aware that the Receiver successfully pursued claims against alleged "bird dogs" and aiders and abettors. The decision to focus on those claims, which likely will result in total recoveries that approximate total net losses, was cost effective and neutral. Any meaningful indiscriminate pursuit of up to 293 net winners would have been time-consuming and expensive. *E.g.*, *Stanford Int'l Bank, Ltd.*, 927 F.3d at 845 (criticizing receiver for pursuit of time-consuming and expensive litigation).

There is no accounting or other documentation in the record that supports that there were or are 293 net winners to pursue. For that number, Baker Donelson relied solely on the testimony of their expert Donna Ingram. [May 15, 2026 at p. 76].

Likely Baker Donelson chose not to offer Ms. Ingram's accounting as an exhibit at trial because, in it, Ms. Ingram identified the Alexander Seawright Timber Fund 1, LLC as one of the Ponzi scheme's biggest net winners.[2] According to Ms. Ingram, the Alexander Seawright Timber Fund 1, LLC's net winnings were $633,564.09. If Baker Donelson is correct that the Receiver had a duty to indiscriminately pursue all net winners, then the Receiver breached her duty by failing to pursue Alexander Seawright Timber Fund 1, LLC itself—even though she has pursued Jon Seawright, Brent Alexander, and Alexander Seawright LLC, its owners and parent, for eight years.

[2] Ms. Ingram's accounting is not in evidence but was Exhibit 8 to her expert report.

Plainly the story Baker Donelson tells about net winners is not a straightforward one. The absence of any documentation to support it is fatal to their argument (as shown below), but the evidence at trial also contradicts it.

The evidence at trial was that the Receiver did pursue persons who were net winners if she had a reason. [May 11, 2026 at p. 222-223 ("There are net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something."); May 12, 2026 at p. 71 ("Like Pinnacle Trust, you calculated their net winnings. Well, we settled with Pinnacle Trust.")]

The evidence at trial was that even pursuits of persons who were net winners resulted in judgments that have not been paid. [May 11, 2026 at p. 222-23 ("I've gotten judgments that no one's paid."); May 12, 2026 at p. 71 ("Randy Shell, we ended up settling with him. He's never paid a dime, by the way.")]

The evidence is that many net winners are deceased. [May 11, 2026 at p. 221; May 12, 2026 at p. 68] Many were or are elderly and lived off the monthly checks that they received. [May 12, 2026 at p. 58-59] Many were "working folks," including "school teachers." [May 11, 2026 at p. 217, 221; May 12, 2026 at 60] Many "didn't actually keep the interest" from their investments because they reinvested it. [May 11, 2026 at p. 196]

The evidence at trial was that indiscriminately pursuing up to 293 net winners would not have been a good use of resources. The Receiver explained that, if she had sent a blanket letter to all net winners, even assuming that some might have paid their net winnings back, those with means would have fought over it. [May 12, 2026 at p. 71; see also May 11, 2026 at p. 221 ("[You] would put them in a position where they would have to litigate that, and [then] you would have to litigate. …")] She would have had to pursue everyone evenhandedly, which is to say with equal force and follow-through. It was not a good use of resources to pursue as many as 293 investors

that way. [May 11, 2026 at p. 221; May 11, 2026 at p. 217 (it was not "cost effective to chase everybody" and "in a lot of these instances, it just did not feel like the right thing to do")].

The evidence at trial was that even when the Receiver got money back from churches or the Ole Miss Athletic Foundation, "it wasn't as simple as asking." She threatened lawsuits; they hired lawyers; and "there was a lot of back and forth." [May 12, 2026 at p. 63] The Court's own record independently reflects that, even in these instances, the Receiver did not recover 100% of the amounts in question.

This is not to say a receiver may never have a duty to indiscriminately pursue all net winners in a Ponzi scheme case. It is simply to say that the facts and circumstances in each case are different, and the facts and circumstances in this case did not give rise to that specific duty here, as a matter of law. The Receiver is entitled to judgment as a matter of law on Baker Donelson's failure to mitigate defense.

b. Baker Donelson did not prove reasonably certain damages.

In any event, Baker Donelson did not prove reasonably certain damages.

Baker Donelson argued only that the Receiver should have sent a blanket letter to all net winners. [May 15, 2026 at p. 155 ("Now, Your Honor, we're not saying she had to file a lawsuit ….")] The notion that if the Receiver had only sent a blanket letter to all net winners she would have recovered $10,000,000 is fanciful. No evidence at trial supports it. Mississippi law requires documentation and a clear methodology to show reasonably certain damages, but there is neither.

There is no accounting of net winners in evidence because Baker Donelson chose not to offer Ms. Ingram's accounting as an exhibit at trial. Ms. Ingram testified she accounted for $15,235,089 in total net winnings over the entire life of the Madison Timber Ponzi scheme. She then testified that when she accounted solely for investors with net winnings over $100,000, the total net winnings were "about" $10,000,000. [May 15, 2026 at p. 73] From that alone, Baker

Donelson's counsel argued to the jury that the Receiver would have recovered an additional $10,000,000 if she had simply "asked."

Pretrial, the Court ordered that Ms. Ingram could not opine that the Receiver would have recovered any sum had she pursued net winners, because any such opinion was "unsupported, speculative." [342 at 5] That "unsupported, speculative" opinion did not become fact merely because Baker Donelson's counsel argued it. The jury nevertheless necessarily relied solely on Ms. Ingram's testimony and Baker Donelson's counsel's argument to conclude that the Receiver would have recovered an additional $10,000,000 if she had sent all net winners a blanket letter.

It was not the Receiver's burden to prove she would not have recovered net winnings. It was Baker Donelson's burden to prove that she would have recovered net winnings in a reasonably certain amount. *E.g.*, *Jackson v. Host Int'l, Inc.*, 426 F. App'x 215, 224 (5th Cir. 2011) ("the affirmative defense of failure to mitigate lies entirely with the defendant, including the burden to establish the amount …"); *Anderson v. City of McComb*, No. 5:13CV263TSL-MTP, 2015 WL 11439050, at *3 (S.D. Miss. Jan. 5, 2015), *aff'd sub nom. Anderson v. City of McComb Mississippi*, 623 F. App'x 705 (5th Cir. 2015) (same).

Under Mississippi law, a party has the burden to prove damages with "reasonable certainty." *Tupelo Redevelopment Agency v. Gray Corp.*, 972 So. 2d 495, 516 (Miss. 2007). Whatever the measure, they must exist outside "the realm of speculation":

> Whatever the measure of damages, they may be recovered only where and to the extent that the evidence removes their quantum from the realm of speculation and conjecture and transports it through the twilight zone and into the daylight of reasonable certainty.

Id. (quoting *Adams v. U.S. Homecrafters, Inc.*, 744 So.2d 736, 740 (Miss. 1999)). *See also Emergency Medicine Associates of Jackson, PLLC v. Glover*, 189 So.3d 1247 (Miss. App. 2016) (quoting *Frierson v. Delta Outdoor, Inc.*, 794 So.2d 220, 225 (¶ 14) (Miss. 2001) (quoting *Wall v.*

Swilley, 562 So.2d 1252, 1256 (Miss. 1990))). "If the damage is certain, the fact that its extent is uncertain does not prevent a recovery." *Tupelo Redevelopment Agency*, 972 So. 2d at 516 (quoting *Adams*, 744 So. 2d at 740). Nevertheless, "[i]t is absolutely incumbent upon the party seeking to prove damages to offer into evidence the best evidence available on each and every item of damage." *Emergency Medicine Associates of Jackson, PLLC v. Glover*, 189 So.3d 1247 (Miss. App. 2016) (quoting *Strickland v. Rossini*, 589 So.2d 1268, 1274–75 (Miss. 1991) (quoting *Eastland v. Gregory*, 530 So.2d 172, 174 (Miss. 1988))). The Mississippi Supreme Court's admonition that damages "must be shown by something more than mere speculation" is oft cited and clear. *Silver Dollar Sales, Inc. v. Battah*, 391 So. 3d 845, 852 (Miss. Ct. App.), *reh'g denied* (May 7, 2024), *cert. denied*, 391 So. 3d 819 (Miss. 2024) ("The Mississippi Supreme Court has 'clearly h[eld] that damages must be shown by something more than mere speculation.'") (quoting *Sports Page Inc. v. Punzo*, 900 So. 2d 1193, 1200 (¶22) (Miss. Ct. App. 2004)).

Baker Donelson's mitigation damages are not the kind of damages that are left to the discretion of the jury. *See ABL Mgmt., Inc. v. Rowell*, No. 2024-CA-01007-COA, 2026 WL 144095, at *14 (Miss. Ct. App. Jan. 20, 2026), *reh'g denied* (Apr. 14, 2026) ("[T]here are also some damages, such as pain and suffering, that are not susceptible of proof as to monetary value, and these items must be left to the discretion of the jury as long as the amount thereof, under all of the evidence, is just and reasonable.") (citations omitted). The net winnings which Baker Donelson argues the Receiver could have recovered are lost income, or lost profits, damages for which courts require reasonably certain proof, whatever the cause of action. *E.g., J & B Ent. v. City of Jackson, Miss.*, 720 F. Supp. 2d 757, 764 (S.D. Miss. 2010) (for damages for civil rights violation, "opinions of estimated lost profits must, at a minimum, be based on objective facts, figures, or data from which the amount of lost profits can be ascertained"); *Warren v. Derivaux*, 996 So. 2d 729, 737

(Miss. 2008) (for violation of easement, lost profit "damages may be awarded if the evidence lays 'a foundation which will enable the trier of fact to make a fair and reasonable estimate of the amount of damage'") (citation omitted). *See also, e.g.*, *Matter of 3 Star Props., L.L.C.*, 6 F.4th 595, 612 (5th Cir. 2021) (lost profits for fraud and civil conspiracy were unsupported; "at a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data from which the amount of lost profits can be ascertained").

In *Healy v. AT&T Services, Inc.*, 362 So.3d 14, 21 (Miss. 2023), the Mississippi Supreme Court explained that sufficient evidence for lost profits damages requires at least "two things": First, a "clear methodology" that explains how an alleged breach caused the alleged damages. Second, "documentation" that will establish and provide an underlying basis to support the award.

Here, even if Baker Donelson purported to offer a clear methodology, it did not support it with any documentation, because Ms. Ingram's accounting is not in evidence. Baker Donelson did not offer it as an exhibit (as shown, likely Baker Donelson chose not to offer Ms. Ingram's accounting as an exhibit because, in it, Ms. Ingram identified the Alexander Seawright Timber Fund 1, LLC as one of the Ponzi scheme's biggest net winners) and no other exhibit at trial accounted for net winners.

But even if Ms. Ingram's accounting were in evidence, still Baker Donelson offered no methodology at all to explain how the Receiver would have recovered an additional $10,000,000 simply by sending a blanket letter to 293 alleged but unidentified net winners.

Because Ms. Ingram's accounting is not in evidence, no one can determine who Ms. Ingram's alleged net winners are. But the evidence at trial was that many net winners are deceased [May 11, 2026 at p. 221; May 12, 2026 at p. 68]; many were or are elderly and lived off the monthly checks that they received. [May 12, 2026 at p. 58-59]; many were "working folks,"

including "school teachers." [May 11, 2026 at p. 217, 221; May 12, 2026 at p. 60]; and many "didn't actually keep the interest" from their investments because they reinvested it [May 11, 2026 at p. 196]. Ms. Ingram admitted that she merely counted total net winnings over the life of the Ponzi scheme; she did nothing to confirm whether a net winner was dead or alive or bankrupt or judgment proof or otherwise had any means to repay net winnings to the Receivership Estate. Nothing, not even Ms. Ingram's testimony, supports that the Receiver would have recovered an additional $10,000,000 from 293 alleged but unidentified net winners if only the Receiver had sent a blanket letter.

Baker Donelson pointed to Techwood LLC, a net winner that repaid its net winnings because the Receiver asked. But the fact that Techwood LLC repaid its net winnings only proves that the Receiver did deal with some net winners separately. Ms. Ingram did not account for value the Receiver obtained from net winners with whom she dealt separately.

Baker Donelson also pointed to Baker Donelson shareholder Bill Reed, who said he would have repaid his net winnings if the Receiver would have asked. But Reed's testimony does not establish that any other, much less every other, net winner, dead or alive, would have agreed to or had the means to voluntarily repay 100% of any net winnings accounted to them. The evidence at trial was that the Receiver's pursuits of net winners resulted in judgments that have not been paid. [May 11, 2026 at 222-23 ("There are net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something. ... I've gotten judgments that no one's paid."); May 12, 2026 at p. 71 ("Like Pinnacle Trust, you calculated their net winnings. Well, we settled with Pinnacle Trust. Randy Shell, we ended up settling with him. He's never paid a dime, by the way.")]. Even when the Receiver got money back from churches or the Ole Miss Athletic Foundation, "it wasn't as simple as asking." She threatened lawsuits; they hired lawyers; and "there was a lot of back

and forth." [May 12, 2026 at 63] The Court's own record independently reflects that, even in these instances, the Receiver did not recover 100% of the amounts in question. Ms. Ingram did not account for the reality that no amount of effort would have resulted in a recovery of 100% of net winnings.

To summarize: Ms. Ingram merely counted total net winnings over the life of the Ponzi scheme, but there is no documentation of it, and she did not account for whether a net winner was dead or alive or bankrupt or judgment proof or otherwise had any means to repay net winnings to the Receivership Estate; did not account for any value the Receiver obtained from net winners with whom she dealt separately; and did not account for the reality that no amount of effort would have resulted in a recovery of 100% of the amounts in question.

There is no documentation or methodology to support that the Receiver would have recovered $10,000,000 from 293 alleged but unidentified net winners if the Receiver had simply "asked." Baker Donelson did not carry its burden to prove damages with reasonably certainty. For this additional reason the Receiver is entitled to judgment as a matter of law on Baker Donelson's failure to mitigate defense.

2. The Receiver is entitled to relief pursuant to Rule 59 because $10,000,000 is clearly excessive.

Separately, the Receiver is entitled to relief pursuant to Rule 59 because $10,000,000 is contrary to right reason and entirely disproportionate.

Speculation was baked into Baker Donelson's mitigation damages argument. Because Baker Donelson did not provide a supportable amount of mitigation damages, it is entitled, at best, to nominal mitigation damages only.

In any event, accounting for the Receiver's known pursuits of persons who were net winners, $10,000,000 must be reduced to **-$1,220,587.28**.

a. $10,000,000 is contrary to right reason and entirely disproportionate.

Fifth Circuit and Mississippi law require relief when a jury's finding is "contrary to right reason" and "entirely disproportionate."

Under Fifth Circuit law, "[w]hen 'defects in the award are readily identifiable and measurable,' remittitur ordinarily is appropriate." *Wantou v. Wal-Mart Stores Texas, L.L.C.*, 23 (quoting *Brunnemann v. Terra Int'l, Inc.*, 975 F.2d 175, 179 (5th Cir. 1992))). If a verdict is "contrary to right reason," it is not entitled to deference:

> "There is a strong presumption in favor of affirming a jury award of damages." *Eiland v. Westinghouse Elec. Corp.*, 58 F.3d 176, 183 (5th Cir. 1995). "The damage award may be overturned only upon a clear showing of excessiveness or upon a showing that the jury was influenced by passion or prejudice." *Id.* "However, when this court is left with the perception that the verdict is clearly excessive, deference must be abandoned." *Id.* "A verdict is excessive if it is 'contrary to right reason' or 'entirely disproportionate to the injury sustained.' " *Id.*

Harris v. FedEx Corp. Servs., Inc., 92 F.4th 286, 298–99 (5th Cir.), *cert. denied*, 145 S. Ct. 168, 220 L. Ed. 2d 27 (2024).

Under Mississippi law, "[w]hether a jury award is excessive is determined on a case-by-case basis." *Robinson v. Corr*, 188 So. 3d 560, 572 (Miss. 2016) (citing *Purdon v. Locke*, 807 So.2d 373, 376 (Miss. 2001)). "[A] court must consider whether the award 'is entirely disproportionate to the injury sustained.'" *Papin v. Univ. of Mississippi Med. Ctr.*, 673 F. Supp. 3d 829, 846 (S.D. Miss. 2023), *aff'd*, 109 F.4th 354 (5th Cir. 2024) (quoting *Robinson*, 188 So. 3d at 572 (quoting *Est. of Jones v. Phillips ex rel. Phillips*, 992 So. 2d 1131, 1150 (Miss. 2008))). *See* Miss. Code Ann. § 11-1-55 (a court should remit damages "if the court finds that the damages are excessive or inadequate for the reason that the jury or trier of the facts was influenced by bias, prejudice, or passion, or that the damages awarded were contrary to the overwhelming weight of credible evidence").

The jury's finding that the Receiver could have recovered an additional $10,000,000 from 293 alleged but unidentified net winners is "contrary to right reason" and "entirely disproportionate" for the reasons already explained: Baker Donelson argued only that the Receiver should have sent a blanket letter to all net winners. [May 15, 2026 at p. 155 ("Now, Your Honor, we're not saying she had to file a lawsuit ….")] The notion that if the Receiver had only sent a blanket letter she would have recovered an additional $10,000,000 is fanciful. No evidence in the record supports it. Baker Donelson's expert, Ms. Ingram, merely counted total net winnings over the life of the Ponzi scheme, but there is no documentation of that accounting in evidence, and in any event she did not account for whether a net winner was dead or alive or bankrupt or judgment proof or otherwise had any means to repay net winnings to the Receivership Estate; did not account for any value the Receiver obtained from net winners with whom she dealt separately; and did not account for the reality that no amount of effort would have resulted in a recovery of 100% of the amounts in question.

The jury relied for the number on Baker Donelson's counsel's argument only. There is no credible evidence to support it, and Baker Donelson did not otherwise offer an alternative, supported, amount.

Speculation was baked into Baker Donelson's mitigation damages argument. Because Defendants did not offer an alternative, supported, amount for their mitigation damages, under Mississippi law they are entitled to nominal damages only. *Healy*, 362 So.3d at 22 (affirming $500 nominal damages award where party "did not provide any explanation of how [it] was damaged, the amount of damage or any documentation to support the award of damages"); *Int'l Assoc. of Certified Home Inspectors v. Homesafe Inspection, Inc.*, 335 So. 3d 583 (Miss. Ct. App.

2022) (reversing awards for breach of contract and conversion where "speculation [was] baked into the damages model" and remanding for an award of nominal damages only).

b. When $10,000,000 is reduced by known pursuits of or values obtained from net winners, Defendants' mitigation damages are -$1,220,587.28.

Ms. Ingram did not account for any known pursuits of, or values obtained from, persons who were net winners with whom the Receiver dealt separately. The evidence is that the Receiver pursued such persons if she had a reason. [May 11, 2026 at p. 222-223 ("There are net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something.)]. Consistent with Mississippi law, the jury was informed of the existence of those efforts, but not the value obtained. *Pettway*, 2021 WL 5751793, at *1.

No one can determine from the record at trial who Ms. Ingram's alleged net winners are. But in the accounting that formed the basis for her expert report, Ms. Ingram identified Investor no. 2, Alexander Seawright Timber Fund 1, LLC as one of the Ponzi scheme's biggest net winners. According to Ms. Ingram, it had net winnings of $633,564.09. For reasons that ought to be obvious to everyone, the Receiver did not pursue those net winnings from Alexander Seawright Timber Fund 1, LLC, but she has pursued Jon Seawright, Brent Alexander, and Alexander Seawright LLC for the past eight years. The $10,000,000 must be reduced by $633,564.09.

Ms. Ingram also identified Investor nos. 168 and 168A as two of the Ponzi scheme's biggest net winners. According to Ms. Ingram, they had net winnings of $763,873 and $698,956. Investor nos. 168 and 168A are both Randy Shell. The Receiver sued and obtained a judgment against Randy Shell. The $10,000,000 must be reduced by and additional $763,873 and $698,956.

Ms. Ingram also identified Investor no. 168B as a net winner with net winnings of $274,350. Investor no. 168B is Pinnacle Trust. The Receiver settled with Pinnacle Trust for $500,000. The $10,000,000 must be reduced by an additional $500,000.

Ms. Ingram also identified Investor no. PPP as a net winner with net winnings of $239,416.64. Investor no. PPP is Pat Sands. The Receiver settled with Pat Sands in exchange for his interest in the property known as Oxford Springs, which she sold for $5,540,000. The $10,000,000 must be reduced by an additional $5,540,000.

Ms. Ingram also identified Investor no. OOO as a net winner with net winnings of $128,435.64. Investor no. OOO is Jimmy or Eloise (Gee Gee) Patridge. The Receiver sued Gee Gee Patridge as part of her lawsuit against BankPlus, which she favorably settled. The $10,000,000 must be reduced by, at minimum, an additional $128,435.64.

Ms. Ingram also identified Investor no. 184 as a net winner with net winnings of $123,717.94. Investor no. 184 is Frank Zito. The Receiver settled with Frank Zito for $200,000. The $10,000,000 must be reduced by an additional $200,000.

Ms. Ingram also identified Investor no. 104 as a net winner with net winnings of $98,124.98. Investor no. 104 is Wayne Kelly. The Receiver has received from Wayne Kelly $2,055,758.55 in cash to date (he continues to send the Receivership Estate money), and she obtained from him his interest in the property known as KAPA Breeze, which she sold for $700,000. The $10,000,000 must be reduced by an additional $2,055,758.55 and $700,000.

There may be other instances, but after just these reductions for known pursuits of, or values obtained from, net winners, Baker Donelson's mitigation damages are **-$1,220,587.28.**

Whether the Court addresses Baker Donelson's mitigation damages under Rule 50 or Rule 59, the takeaway is the same: Nothing reduces its liability for $2.8 million.

3. There is no duty to mitigate an intentional tort.

Even if any portion of the mitigation damages remained, they would not reduce Defendants' collective liability for $1.4 million. A plaintiff's failure to mitigate is no defense to a defendant's liability for aiding and abetting, because aiding and abetting is an intentional tort.

Mississippi courts have not addressed whether failure to mitigate is an affirmative defense to an intentional tort, but other states' courts have held it is not. *Werking v. Werking*, No. 1:19-cv-276, 2020 WL 13555255, at *4 (W.D. Mich. Nov. 10, 2020) (applying Michigan law: "The record does not support a failure to mitigate defense. And, even if it did, failure to mitigate 'does not apply, where the invasion of [ ] property rights is due to defendant's intentional or positive and continuous tort.' ") (citing cases); *DZ Bank AG Deutsche Zentral-Genossenschaftsbank v. Connect Ins. Agency, Inc.*, No. C14-5880JLR, 2016 WL 631574, at *23 (W.D. Wash. Feb. 16, 2016) ("Under Washington law, a plaintiff has no duty to mitigate damages in cases of intentional tort.") (citing cases); *S.C. Johnson & Son, Inc. v. Morris*, 779 N.W.2d 19, 29 (Wis. App. 2010) ("there is no duty to mitigate an intentional tort")**;** *In re Smithson*, 372 B.R. 913, 919 n.1 (Bankr. E.D. Mo. 2007) "The Court notes that a plaintiff's duty to mitigate its damages is lessened when the defendant's actions constitute an intentional tort.") (citing Restatement (Second) of Torts § 918(2)).

Consistent with those other states' courts' holdings, the Mississippi Supreme Court has held another's contributory or comparative negligence has no application in intentional tort cases:

> Where the defendant's conduct is actually intended to inflict harm upon the plaintiff, there is a difference, not merely in degree but in the kind of fault; and the defense never has been extended to such intentional torts. Thus [contributory negligence] is no defense to assault or battery.

Graves v. Graves, 531 So. 2d 817, 820 (Miss. 1988) (quoting Prosser & Keeton, The Law of Torts, 462 (5th ed. 1984), and citing *Jackson v. Brantley*, 378 So.2d 1109, 1112 (Ala. App. 1979) ("It is elementary that contributory negligence is no defense to an intentional wrong.")).

Applying the same principles here, to the extent there remain any mitigation damages, they have no effect on Defendants' liability for aiding and abetting.

4. Nothing else reduces the $2.8 million.

Baker Donelson contends the Receiver's success pursuing other third parties precludes her from recovering anything from Baker Donelson. It is notable that, on the one hand, Baker Donelson says the Receiver did not recover enough; on the other, it says she cannot recover more.

As a preliminary matter, there is no offset to liability for intentional torts. For intentional torts, a defendant is entitled to contribution from a joint tortfeasor, but even contribution requires a judgment. *Coleman Powermate, Inc. v. Rheem Mfg. Co.*, 880 So. 2d 329, 336 (Miss. 2004) ("Mississippi law now explicitly confers a right of contribution in tort to a defendant that is jointly liable with another party. This is contingent on there being a joint judgment against the defendants.") (quoting *Estate of Hunter v. General Motors Corp.*, 729 So.2d 1264, 1275–76 (Miss. 1999) ("At first blush, § 85–5–7(4) appears to permit contribution... However, a closer reading of § 85–5–7 indicates that the Legislature did not intend to alter the old law set forth in § 85–5–5 (repealed) which provided for no contribution absent a joint judgment.")).

There also is no offset to liability for negligent supervision because liability for negligent supervision is not joint and several. *See Krieser v. Hobbs*, 166 F.3d 736, 743 (5th Cir. 1999) (under Mississippi law "where liability is not joint-and-several, and each defendant instead bears liability for damages only proportionate to his own fault, there is no assessment of liability for damages common to the settling and non-settling defendants"); *see also id.* (observing that a

settlement from one defendant and a judgment against another each "flows from a distinct source and is footed on a distinct basis").

To the extent a defendant is entitled to an offset, it is because generally there can be no double recovery. "Double recovery is a tort doctrine that prevents unjust enrichment by precluding a recovery of the same damages multiple times or beyond 100% of the judgment." *R.K. v. J.K.*, 946 So. 2d 764, 777 (Miss. 2007). But double recovery only applies to recovery for the same claim. *Cascio v. Cascio Invs., LLC*, 327 So. 3d 59, 74 (Miss. 2021) (addressing argument that damages constitute double recovery: "a claimant cannot receive actual and nominal damages from the same claim"). All other recoveries are collateral. *Wright v. Royal Carpet Servs.*, 29 So. 3d 109, 113 (Miss. Ct. App. 2010) ("[A] defendant tortfeasor is not entitled to have damages for which he is liable reduced by reason of the fact that the plaintiff has received compensation for his injury by and through a totally independent source, separate and apart from the defendant tortfeasor.").

Even indulging the argument that Baker Donelson is entitled to an offset because the Receiver pursued the same claims against other third parties, the unrebutted evidence is that the Receivership Estate's total net losses were $53.4 million. The total recovered from defendants in the Receiver's four aiding and abetting lawsuits is only $28.7 million. There is no risk of double recovery by the Receivership Estate for the same claims.

Furthermore, Baker Donelson's vicarious liability for Seawright and Alexander's intentional tort and Baker Donelson's direct liability for its own negligent supervision do not offset each other. Instead, for each claim, the jury was asked "what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by the liable Defendant(s)' wrongful conduct" and "what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by Baker Donelson's negligent supervision of Brent

Alexander and Jon Seawright." The two claims are not the same, and the jury awarded separate damages, $1.4 million, for each.

Finally, Seawright and Alexander's restitution payments (which in any event do not total $1.4 million) do not offset Baker Donelson's vicarious liability for Seawright and Alexander's intentional tort. Seawright and Alexander's restitution payments compensate investors in the Alexander Seawright Timber Fund for specific injuries to them (which Seawright and Alexander contended throughout trial are distinct). The $1.4 million will compensate the Receivership Estate for separate injuries to it caused by their aiding and abetting Lamar Adams, different wrongful conduct.

In summary, nothing reduces Baker Donelson's liability for $2.8 million.

5. The Receiver is entitled to ask for interest, costs, and attorney fees.

Baker Donelson contends the Receiver is not a prevailing party because she did not recover $300,000,000. The Receiver did not ask for $300,000,000; the Receiver asked for total net losses, $53.4 million, with the understanding that $53.4 million could be reduced post-trial. But the reason the Receiver is a prevailing party is because, after almost eight years of litigation, during which Baker Donelson denied all liability, the Receiver proved her claims.

The Court need not address the issue now, but after entry of a judgment in her favor, the Receiver is entitled to ask for interest, costs, and attorney fees.

Mississippi statutory law authorizes prejudgment interest, in a court's discretion. Miss. Code § 75–17–7 ("All other judgments or decrees shall bear interest at a per annum rate set by the judge. . ."); *Aetna Casualty & Surety Co. v. Doleac Elec. Co.*, 471 So. 2d 325, 331 (Miss. 1985); *Dunn v. Koehring Co., Dunn v. Koehring Co.*, 546 F.2d 1193, 1201 (5th Cir. 1977) ("[U]nder Mississippi law the award of prejudgment interest rest[s] in the discretion of the awarding judge"); *see also In re Guardianship of Duckett*, 991 So. 2d 1165, 1182 (Miss. 2008) (affirming trial court's

award of compound prejudgment interest, because compound interest fully compensates a party for the time value of overdue money).

Mississippi case law additionally authorizes prejudgment interest in this case because of the availability of punitive damages. *Aetna Cas. & Sur. Co. v. Hood*, 68 F.3d 467 (5th Cir. 1995) (citing *Moss Point v. Miller*, 608 So. 2d 1332, 1336 n. 4 (Miss. 1992) ("Prejudgment interest may be granted (1) pursuant to a statute, (2) if a provision in a contract provides or (3) where the proof is sufficient to support an award of punitive damages")). The jury did not award monetary punitive damages, but it did find the Receiver proved her punitive damages claims. [404]

Rule 54(d) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party," and "it is unnecessary for a party to prevail on every issue in order to be entitled," *DHI Grp., Inc. v. Kent*, No. 21-20274, 2022 WL 3755782, at *6 (5th Cir. Aug. 30, 2022) (quoting *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 713 F.2d 128, 131 (5th Cir. 1983) and *Fogleman v. ARAMCO*, 920 F.2d 278, 285 (5th Cir. 1991) (cleaned up)); *see also* Black's Law Dictionary (12th ed. 2024) (defining "prevailing party" as the party in whose favor a judgment is rendered, regardless of the amount of damages awarded); *Tempest Publ'g, Inc. v. Hacienda Recs. & Recording Studio, Inc.*, 141 F. Supp. 3d 712, 718 (S.D. Tex. 2015) ("Cases from this and other circuits consistently support shifting costs if the prevailing party obtains judgment on even a fraction of the claims advanced."); *Farrar v. Hobby*, 506 U.S. 103, 113 (1992) (holding that plaintiff was prevailing party because even nominal damages award modified defendant's behavior for plaintiff's benefit).

Finally, attorney fees may be awarded if punitive damages are "proper." *Greenlee v. Mitchell*, 607 So. 2d 97, 108 (Miss. 1992). A factfinder may find that:

> [A]lthough the conduct of a defendant in a given case is such that the awarding of punitive damages would be appropriate, the actual awarding of additional monetary

> damages above the compensatory damages would serve no purpose or otherwise be inappropriate. Nevertheless, the trial judge may also validly find that the plaintiff should not have to suffer the expense of litigation forced upon it by the defendant's conduct, and therefore determine that attorney fees should be awarded. A trial judge should be granted the flexibility to find that, although the actual awarding of punitive damages is inappropriate, the conduct of the defendant is so extreme and outrageous that he, rather than the plaintiff, should bear the expense of litigation.

Aqua-Culture Tech. Ltd. v. Holly, 677 So. 2d 171, 184 (Miss. 1996). Thus, "an actual awarding of punitive damages is not a prerequisite for the awarding of attorneys fees." *Id.* at 185 (affirming trial court's award of attorney's fees where punitive damages were not awarded but the defendants' conduct was "of a nature such as to make the awarding of punitive damages appropriate even though the trial judge chose not to do so"); *see also West Implement Co., Inc. v. Deere & Co.*, 185 F. App'x 363, 364 (5th Cir. 2006) (citing *Aqua-Culture*, *supra*) (affirming district court's award of attorney's fees where jury could have awarded punitive damages but declined to do so). The jury did not award monetary punitive damages, but it did find the Receiver proved her punitive damages claims.

CONCLUSION

The Receiver does not ask for a "press release" judgment.[3] The Receiver only asks that the Court, consistent with its own precedent, and pursuant to Mississippi and federal law, account for yet-unresolved matters prior to its judgment's entry. The Receiver asks that, after accounting for those yet-unresolved matters, the Court enter a judgment for $2.8 million in her favor.

[signatures on following page]

[3] The Receiver did propose to Defendants a form of judgment that she believes would be appropriate. [*See* 412-2] The Receiver, however, is not wedded to a particular form of judgment, and simply asks the Court to consider law presented herein in crafting the judgment.

Respectfully submitted,

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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.

June 5, 2026 */s/ Kaja S. Elmer*