

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS  
CIVIL DIVISION**

**STEVEN BOOTH  
and S3B, LLLP**

**PLAINTIFFS**

**v.**

**CASE NO. \_\_\_\_\_**

**JOSEPH REECE; LEE MOORE;  
RMP, LLP; and JOHN DOES 1 – 10**

**DEFENDANTS**

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**COMPLAINT**

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Come Plaintiffs, Steven Booth (“Booth”) and S3B, LLLP (“S3B”) (together “Plaintiffs”), through their attorneys, Patrick R. James and Kayla M. Applegate of James, House, Downing & Lueken, P.A., and for their Complaint against Defendants, Joseph Reece (“Reece”), Lee Moore (“Moore”) and RMP, LLP (“RMP”) (together “Defendants”) state:

**PARTIES**

1. Booth is an individual citizen and resident of Washington County, Arkansas.
2. S3B is a Delaware limited liability limited partnership, formed May 11, 2016, and has its principal place of business in Washington County, Arkansas. S3B Management, LLC is the general partner of S3B and Booth is the manager of S3B Management, LLC, which is owned by Booth and his wife. Booth and S3B are sometimes collectively referred to as Booth.
3. Reece recommended that Booth form S3B to make loans and investments described hereafter. Reece formed S3B for Booth. At all material times hereto, Reece was Booth’s personal attorney and business advisor.

4. Reece is an individual citizen and resident of Washington County, Arkansas and is a managing partner of RMP. Reece is a licensed attorney and holds a degree in accounting. At all material times hereto, Reece was one of two managing partners of RMP and was an employee and agent of RMP. At all material times hereto, Reece was Booth's personal attorney and business advisor.

5. Moore is an individual citizen and resident of Washington County, Arkansas and is a managing partner of RMP. Moore is a licensed attorney. At all material times hereto, Moore was one of two managing partners of RMP and was an employee and agent of RMP. At all material times hereto, Moore was providing legal services to Booth.

6. RMP is an Arkansas limited liability partnership, which has its principal place of business in Washington County, Arkansas. RMP is a law firm and also provided tax and accounting services for some of its clients.

7. John Does 1 – 10 are the pseudo-name of unknown tortfeasors who may be liable for some or all of the Plaintiffs' damages. Plaintiffs will amend their Complaint when the real names of the unknown tortfeasors are ascertained. The Affidavit of Plaintiffs' attorney verifying the identity of the tortfeasors to be unknown at this time, pursuant to Ark. Code Ann. § 16-56-125(c), is attached hereto as Exhibit "BB."

8. The acts and omissions of Reece, Moore and RMP are imputed to each other. Reece and Moore are the managing partners of RMP. At all material times, Defendants acted as Booth's and S3B's attorney, providing legal, financial, investment, tax and accounting advice. Knowledge and actions of one are imputed to the other.

9. Plaintiffs seek damages arising from negligence, fraud, conversion, breach of fiduciary duty, and other actions of Defendants in providing legal and other services to Plaintiffs, as are more particularly described hereinafter.

### **JURISDICTION AND VENUE**

10. This court has jurisdiction over the parties and subject matter of this case pursuant to Ark. Code Ann. § 16-13-201, and venue is proper pursuant to Ark. Code Ann. § 16-60-101. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

### **FACTS**

11. Reece and Moore are licensed Arkansas attorneys who run the law practice RMP, LLP.

12. Booth was a client of the Defendants from approximately 2010 through 2019. During the course of Defendants' representation of Plaintiffs, Defendants provided legal, business, tax and estate planning services to Booth. Defendants performed numerous legal services for Booth including wills, trust, funding trust, forming companies, and selling small family owned companies. In the process, Defendants became aware of Booth's personal financial information and his substantial net worth, as a result of inheritance and gifts. Defendants were aware of Booth's limited business experience. Booth had no experience, knowledge or training as a commercial lender. Booth relied entirely on the advice of Defendants.

13. Defendants claimed expertise in providing comprehensive legal, financial, tax and accounting services to high net worth individuals.

14. Steven Dale Smith ("S. Smith") and MS Industries II, LLC ("MSI") have been clients of Defendants since at least 2012. Various other clients of Defendants were involved with MSI.

Defendants introduced these clients to MSI, thereby creating conflicts with their representation of Booth.

15. MSI was formed in 2012. At all times since its formation, S. Smith and his wife, Misty Smith (“M. Smith”), have owned or controlled more than 50% of the voting membership interest in MSI.

16. MSI owned, operated and/or leased directly or through subsidiaries real estate in Lawrence, Colbert and Franklin Counties, Alabama; mining pits in Lawrence County; land in Franklin County; a smelter facility in Franklin County; processing plants in Lawrence and Franklin Counties; and mineral rights in Lawrence, Franklin and Colbert Counties.

17. Through wholly owned subsidiaries Russellville Holdings I, LLC, Russellville Holdings II, LLC and Russellville Holdings III, LLC, MSI acquired real property in Franklin County, Alabama including, but not limited to, a former bank building in Russellville, Alabama, which is occupied by MSI, as its headquarters.

18. S. Smith also owns an unencumbered large home with acreage in Alabama, which he values at \$800,000, through an entity known as Stone’s Landing, LLC. S. Smith’s Alabama home was acquired, maintained and improved with money withdrawn from MSI and with money that Booth loaned to MSI.

19. S. Smith also owns a home in Atlanta, Georgia, which he claims is unencumbered and which he values at \$2,000,000.00. S. Smith’s Atlanta home is maintained at great expense through money withdrawn from MSI and with money that Booth loaned to MSI.

20. At all times since its formation, S. Smith has served as manager of MSI.

### **The First Booth Loan, \$10,000,000**

21. In 2015, Reece solicited Booth to loan money to MSI. Reece falsely represented to Booth that S. Smith was a successful businessman who was the majority owner of MSI, a silica and precious metals mining company in north Alabama and that S. Smith and M. Smith would guarantee the loan and pledge their personal assets to secure payment of the loan.

22. In fact, as of 2012, S. Smith had a history of failed businesses and questionable business practices including, but not limited to, the following:

- a. S. Smith filed Ch. 7 bankruptcy case in US Bankruptcy Court Northern District of Georgia No. 07-80457 on December 3, 2017. A copy of the docket sheet for the bankruptcy case is attached hereto as Exhibit "A" and incorporated herein.
- b. In Schedules D,E and F of his bankruptcy Petition, S. Smith lists secured debt of \$3,694,363.80 and general unsecured claims of \$4,762,721.97. Schedules D, E and F are collectively attached hereto as Exhibit "A-1".
- c. On October 24, 2008, Capital One, N. A. filed its Complaint against S. Smith to determine non-dischargeability of debt under 11 USC 523(a)(2) for debt incurred through false pretenses, false representation, actual fraud. See Ex. A, docket no. 60.
- d. By Judgment filed March 31, 2009, in Adversary Proceeding No. 08-06581, the bankruptcy court found S. Smith's indebtedness of \$8,111,651.40 to be non-dischargeable pursuant to 11 USC 523(a). A copy of the Judgment is attached hereto as Exhibit "A-2".

- e. On October 27, 2008, Stuart Title Guaranty Company filed its Complaint against S. Smith to deny dischargeability pursuant to 11 USC 523(a)(2) for debt incurred through false pretenses, false representation, and actual fraud. See Ex. A, docket no. 61.
- f. By stipulation of non-dischargeability, in the Adversary Proceeding No. 08-06583, S. Smith stipulated that his indebtedness to Stewart Title Guaranty Co. in the amount of \$9,684,490,00 was not dischargeable. A copy of the Stipulation of Nondischargeability is attached hereto as Exhibit "A-3".
- g. By Deed Under Power filed February 6, 2009 in Deed Record Book 47572, Page 646 in the Real Estate Records of Fulton County, Georgia, S. Smith's residence was sold at foreclosure sale.

23. Reece also knew that S. Smith had no prior mining experience. In meetings with Booth and his counsel in December of 2019, Reece stated that S. Smith was just a car salesman. This is different than what Reece told Booth in 2015.

24. Reece either negligently or intentionally misrepresented S. Smith to have been a successful businessman. Defendants knew or should have known that S. Smith had been subjected to numerous allegations of fraud and deceit prior to 2015.

25. Reece told Booth that MSI had discovered valuable precious metals in connection with its silica mining activities, had developed a methodology or process to extract the precious minerals and was completing the process. Reece represented to Booth that MSI stood to reap enormous profits from mineral extraction and recommended that Booth make the loan to MSI and that it was a safe business opportunity.

26. Reece also told Booth that even without precious mineral sales, MSI would generate more than sufficient net income from its silica/sand operations to service a loan from Booth and provided Booth with income projections to support his representations to Booth. Copies of silica sand income and expense projections provided to Booth in connection with the initial loan requests are attached hereto as Exhibit "B" and are incorporated herein.

27. Reece knew that there was no reasonable basis for the predictions of future MSI income presented to Booth and that the projections were pure speculation but failed to so inform Booth. In attachments to the 2017 federal gift tax return that Reece prepared for S. Smith, Reece stated that any projections would be almost complete speculations.

28. Reece told Booth that MSI needed a loan to pay off an existing \$3,700,000 loan to Centennial Bank to purchase equipment and machinery and for operating capital. Reece told Booth that his loan would be secured by a first priority lien on all MSI assets, and the assets of S. Smith and M. Smith, guarantors. Defendants told Booth that in the unlikely event of a default, Booth would be able to immediately step in and take over operations of MSI. Reece and RMP were acting as Booth's attorneys for drafting loan documents to protect Booth with a first priority lien on all MSI assets and unconditional guarantees from S. Smith and M. Smith, liens on S. Smith's and M. Smith's assets, and title insurance on the mortgaged real property. Reece did not disclose that other guarantors, including other clients of Defendants, had also guaranteed the \$3,700,000.00 Centennial Bank loan. Defendants failed to disclose that the loan was in default and that the Defendants were owed large amounts in legal fees that were past due. Defendants also failed to disclose that MSI had no income and that other clients of Defendants would benefit from the Booth loan.

29. Reece knew or should have known that his representations to Booth that in the event of default by MSI, Booth would be able to immediately step in and take over operations of MSI were inaccurate and misleading.

30. Reece arranged for Booth and S. Smith to speak by telephone. S. Smith repeated the statements that Reece had made to Booth about MSI's business and the proposed use of funds.

31. Booth agreed to fund a line of credit loan to MSI in the amount of \$10,000,000 to be secured by a first lien on all MSI assets and guaranteed by S. Smith and M. Smith and secured by a lien on their assets. Defendants agreed to prepare the loan documents to protect Booth.

32. Defendants prepared the loan documents for the Booth \$10,000,000 loan to MSI. Defendants told Booth that since they represented both Booth and MSI and the Smiths, that Reece would arrange for another lawyer to review the loan documents on behalf of Booth. Reece engaged Ted Drake ("Drake"), an attorney in Pine Bluff, Arkansas, to review the loan documents in behalf of Booth.

33. Booth had very limited contact with Drake. Instead, Reece told Booth that Drake had reviewed the loan documents and again assured Booth that Booth would have a first lien on all assets of MSI, all of the assets of guarantors, S. Smith and M. Smith, and in the unlikely event of a default, that Booth would be able to step in and immediately take over the operations of MSI.

34. Defendants recognized that as attorneys for Booth as Lender, MSI as Borrower, and S. Smith and M. Smith as Guarantors, that Defendants had conflicts. In an attempt to alleviate the conflict, Reece told Booth that anything he was told by S. Smith or MSI would be disclosed to Booth.

35. Reece did not obtain a written waiver of conflicts from Booth as required by the Arkansas Rules of Professional Conduct. Defendants prepared a plan to protect S. Smith's

personal assets from creditors, at the same time Defendants recommended Booth loan money to MSI, guaranteed by S. Smith and M. Smith. This asset protection planning for S. Smith was not disclosed to Booth.

36. S. Smith, C. Joseph Giroir, Jr., Richard H. Upton, Tony Gullo, Robert B. Wagner and Rosamond Sample Brown, Trustee of the 1998 Rosamond Sample Brown Revocable Trust, (collectively the “Centennial Guarantors”) claim to collectively hold 3% royalty interest in minerals taken from real property of MSI located in Lawrence County, Alabama pursuant to a Royalty Participation Agreement from MSI dated May 30, 2014. These rights were consideration for the purported guaranty of loans to MSI from Centennial Bank. Defendants failed to disclose to Booth that these individuals had this interest and would keep this interest, even though the Centennial loan was paid off by the proceeds of the Booth loan.

37. The Royalty Participation Agreement, through which the Centennial Guarantors claim an interest, is not filed in the real estate records of Lawrence County, Franklin County or Colbert County, Alabama. Defendants failed to disclose the 3% royalty interest of the Centennial Guarantors to Booth.

38. The 3% Centennial Guarantors’ royalty interest is a claim for 3% of gross mining revenue of MSI. This outstanding royalty interest is adverse to the interest of Booth, as a lender.

39. Defendants induced Booth to loan \$10,000,000 to MSI with representations that MSI had discovered valuable precious metals in connection with its silica mining activities and had a methodology to extract the precious metals. Reece and S. Smith represented that the loan from Booth would be used to pay off an existing \$3,700,000 loan from Centennial Bank to MSI and that the remaining balance would be used to purchase necessary processing equipment and machinery and to provide necessary working capital for MSI.

40. Defendants knew their representations were false when made. In fact, Defendants knew that the loan proceeds were needed to enable MSI to pay off the Centennial Bank loan which S. Smith had personally guaranteed, and that S. Smith intended to use the loan proceeds and other money of MSI to support S. Smith's personal and extravagant lifestyle and other personal business interests. Reece and RMP were aware of S. Smith's actual intended use of the Booth loan and company assets for S. Smith's personal use.

41. In reliance on representations of Defendants, Booth loaned Ten Million Dollars (\$10,000,000.00) to MSI on November 12, 2015.

42. On or about November 12, 2015, MSI, for valuable consideration, executed and delivered to Booth its promissory note ("Original Note") in the original amount of Ten Million Dollars (\$10,000,000, a copy of the Original Note is attached hereto as Exhibit "C" and incorporated herein by reference.

43. Concurrently with the execution and delivery of the Original Note and to induce Booth to make the loan to MSI evidenced by the Original Note, S. Smith and M. Smith, each executed and delivered a Guaranty dated November 12, 2015, to Booth. In their Guaranty Agreements, S. Smith and M. Smith each guaranteed payment of all amounts due under Original Note, and among other things, consented that the principal amount or interest rate may be increased or decreased, that the Original Note may be amended or modified in any respect and renewed. A true and correct copy of the guaranty executed by S. Smith ("S. Smith Guaranty 1") and the guaranty executed by M. Smith ("M. Smith Guaranty 1") are attached hereto as Exhibits "C-1" and "C-2" respectively and are incorporated herein by reference.

44. Concurrently with the execution and delivery of Original Note and for the purpose of securing its payment and "any and all future advances, extensions, modifications, substitutions,

replacements or renewals thereof . . .”, MSI executed and delivered to Booth a mortgage dated November 12, 2015 (hereinafter in the “Mortgage”), conveying the real property described therein in Lawrence County, Alabama.

45. The Mortgage was filed for record in the Office of the Judge of Probate of Lawrence County, Alabama on November 17, 2015. A true and correct copy of the Mortgage is attached hereto as Exhibit “D” and incorporated herein by reference.

46. At the time of the Booth loan, MSI owned or held long term leases on less than 2,500 acres (2433.50 acres +/-) in Lawrence County, Alabama and in Colbert County, Alabama. An itemization of the tracts owned and leased by MSI is attached hereto as Exhibit “E” and incorporated herein by reference.

47. The only real property tracts described in the Mortgage are Lawrence County Tracts 1, 2, 3, 4 and 6 on Ex. E. There should have been additional tracts included in the Mortgage.

48. Booth did not get liens on any property owned by S. Smith or M. Smith. At the time of the original \$10,000,000 loan and at all material times since, S. Smith and/or M. Smith have owned substantial assets, including a 50% membership interest in TMS Newco, LLC, which owns 1,539 acres in Lawrence and Colbert Counties in Alabama, a 100% membership interest in Stone’s Landing, LLC, which owned real property with market value of \$1,800,000 and mortgage debt of \$700,000 and an unencumbered residence in Atlanta, Georgia valued at \$2,000,000.

49. The Mortgage granted Booth a lien on real property in Lawrence County, Alabama, and purported to grant a security interest in all personal property of MSI.

50. However, the Mortgage, in which Mortgagor purports to grant Booth as Mortgagee a security interest in all of Mortgagor’s personal property, fails to adequately describe all MSI personal property.

51. The Mortgage describes personal property used on or with respect to the mortgaged real property in Lawrence County, Alabama.

52. In connection with the security interest granted in the Mortgage, Defendants prepared a UCC financing statement which was filed in the office of the Alabama Secretary of State on February 18, 2016, and is shown in the records of the Alabama Secretary of State as Instrument No. B 16-7057736 FS. A true and correct copy of the UCC financing statement is attached hereto as Exhibit “F” and is incorporated herein by reference.

53. The personal property description in the UCC financing statement, prepared by Defendants, contains a collateral description that is broader than the collateral described in the Mortgage. The proper way to document a security interest or lien on personal property is to use a document called “Security Agreement” pursuant to the Uniform Commercial Code. This is the best practice for commercial lenders and transactional attorneys. In the Security Agreement, all of the debtor’s or borrower’s tangible and intangible property should be described, using defined terms set forth in the Uniform Commercial Code. No such Security Agreement was prepared by Defendants.

54. The UCC financing statement also identifies S. Smith and M. Smith as debtors and states “this security agreement also includes any assets held in the Debtors’ self-settled revocable trust.” The language of the UCC financing statement confirms that property of S. Smith and M. Smith was to secure the Booth loan.

55. Defendants neglected to prepare a Security Agreement from S. Smith and M. Smith to Booth.

56. In meetings between Booth and his attorneys with Reece in December of 2019, Reece stated that the loans from Booth and S3B were secured by the assets of the Smiths, as guarantors.

57. The Original Note, Mortgage and UCC Financing Statement referenced above were all prepared by Defendants.

58. Prior to the filing of the Mortgage, the following instruments had previously been filed:

- a. Royalty Agreement from MSI to W. Ray Wallace filed November 12, 2014 in OILGAS BK 6 PG 195 in the office of Mike Praytor, Judge of Probate, Lawrence County Alabama;
- b. Assignment of Royalty Agreement from W. Ray Wallace to B-Ray, LP a Texas limited partnership filed November 12, 2014 in MISC BK 124, PG 994 in the office of Mike Praytor, Judge of Probate, Lawrence County Alabama; and,
- c. First Amended Royalty Agreement between MSI, W. Ray Wallace and B-Ray, LP, filed January 23, 2015 in MISC BK 125, PG 484 in the office of Mike Praytor, Judge of Probate, Lawrence County Alabama.

Collectively, the “Royalty Agreement.”

59. The royalties described in the preceding paragraph are superior to the interest in real property granted to Booth in the Mortgage. Notwithstanding the prior recorded royalties against MSI property, including property described in the Mortgage, Reece represented to Booth that his loan to MSI would be secured by a first priority lien, on all assets of MSI and assets of the Smiths.

60. In the Royalty Agreement, MSI purported to grant W. Ray Wallace (“Wallace”) a royalty in the amount of 2.5% of MSI’s gross revenues from its operations in Alabama. Gross revenues for the purpose of the Royalty Agreement means gross proceeds received by MSI from the sales of oil, ores or minerals mined on or from any and all property owned or leased by MSI.

61. The 2.5% royalties in MSI granted to Wallace and assigned to B-Ray, the 3% royalties granted by MSI to the Centennial Guarantors and resulted in 5.5% of MSI gross revenues

being payable to royalty owners prior to the Booth loan and is detrimental to the interest of MSI, as an operating entity, and to Booth, as lender.

62. Reece did not inform Booth that 5.5% of MSI gross revenue was owed to royalty holders prior to the Booth \$10,000,000 loan.

63. In connection with the original \$10,000,000 loan, a commitment for title insurance from Stewart Title Guaranty Company (“Stewart”) was issued for Booth as lender (the “Commitment”). Defendants had the Commitment. The Commitment did not exclude or except coverage for mineral interests. See Schedule B, Part II. A copy of the Commitment is attached hereto as Exhibit “G” and is incorporated herein.

64. After the \$10,000,000 loan from Booth to MSI closed, Stewart issued a title insurance policy to Booth as Lender (the “Title Policy”). The Title Policy excluded coverage for minerals in Schedule B, Part I, ¶ 7. A copy of Stewart Title Guaranty Company Mortgagee Policy M-9302-000016664 issued November 17, 2015, is attached hereto as Exhibit “H” and incorporated herein.

65. Reece failed to notify Booth that the Title Policy excluded coverage for minerals.

66. Although the touted value of MSI was the prospect of precious minerals in the MSI property, Defendants failed to obtain a title policy covering all of the mineral rights.

67. Although the Mortgage in ¶¶ 8.2 and 8.3 prohibited MSI, as mortgagor, from transferring an interest in the mortgaged property without Booth’s prior written consent, S. Smith as manager of MSI, caused MSI to grant S. Smith a 3% overriding royalty interest in MSI mineral and other revenue as consideration for his guaranty on the Booth \$10,000,000 loan (the “Booth Guaranty Royalty”).

68. S. Smith and MSI did not get written consent of Booth for the grant of royalty interest to S. Smith and did not inform Booth of the overriding royalty grant to S. Smith.

69. Defendants knew that MSI was granting S. Smith a 3% royalty in MSI and knew that the royalty grant violated the provisions of the Mortgage but failed to disclose the royalty grant to Booth. Immediately after the \$10,000,000 loan, on November 12, 2015, there were outstanding royalties equal to 8.5% of MSI gross mining revenue, which was not disclosed to Booth.

70. The royalty grants referenced above would consume 8.5% of MSI's gross revenue from its mining activities and was adverse to the interest of MSI, as an operating entity, and adverse to the interest of Booth, as a lender.

71. Reece knew that S. Smith, as manager of MSI, had granted S. Smith a 3% royalty interest as consideration for his guaranty of MSI's loan from Booth. As drafters of the Mortgage, Defendants knew that the royalty grant to S. Smith was in violation of the Mortgage but failed to inform Booth.

72. S. Smith claims to have assigned portions of the Booth Guaranty Royalty in exchange for indemnities. The names of the persons who agreed to indemnify S. Smith (the "S. Smith Indemnitors") and the amount of their indemnities are as follows:

<b>GUARANTOR</b>	<b>MEMBER UNITS</b>	<b>ROYALTY PARTICIPATION PERCENTAGE</b>	<b>TOTAL ROYALTY</b>	<b>AMOUNT NOT INDEMNIFIED</b>
Steven Smith	5107.5	71.651527%	2.149546%	\$7,165,152.74
<b>INDEMNIFYING MEMBERS</b>	<b>MEMBER UNITS</b>	<b>ROYALTY PARTICIPATION PERCENTAGES</b>	<b>TOTAL ROYALTIES</b>	<b>INDEMNIFICATION AMOUNTS</b>
Roger B. Wagner	100	1.402869%	0.042086%	\$140,286.89
Willis L. Stowers	196.5	2.756637%	0.082699%	\$275,663.73
John Michael Banks	11.666667	0.163668%	0.004910%	\$16,366.80
Melissa Banks Cherry	11.666666	0.163668%	0.004910%	\$16,366.80
Billie Sunday Banks	11.666667	0.163668%	0.004910%	\$16,366.80
Iqbal Quadir	62.5	0.876793%	0.026304%	\$87,679.30
John Christmas	500	7.014344%	0.210430%	\$701,434.43
WOC Minerals	216.5625	3.038088%	0.091143%	\$303,808.79
Bernice Pool	5	0.070143%	0.002104%	\$7,014.34
Two JJ Ranch	250	3.507172%	0.105215%	\$350,717.22
Mosley Trust	125	1.753586%	0.052608%	\$175,358.61
Seigel Trust	125	1.753586%	0.052608%	\$175,358.61
Upton Children's Irrevocable Trust	65	0.911865%	0.027356%	\$91,186.48
Patricia Jordan Upton Irrevocable Trust	17.630175	0.247328%	0.007420%	\$24,732.82
Martha Ruffin Upton Irrevocable Trust	17.630175	0.247328%	0.007420%	\$24,732.82

June Elizabeth Upton Irrevocable Trust	17.630175	0.247328%	0.007420%	\$24,732.82
James Peyton Upton, Jr. Irrevocable Trust	17.630175	0.247328%	0.007420%	\$24,732.82
Upton Family Investments LLC	79.1668	1.110606%	0.033318%	\$111,060.64
Red Apple Enterprises LP	12.5	0.175359%	0.005261%	\$17,535.86
Uarda G. Coley Family LP	15	0.210430%	0.006313%	\$21,043.03
Majala Investments	6	0.084172%	0.002525%	\$8,417.21
Kamal Quadir	12.5	0.175359%	0.005261%	\$17,535.86
Finis St. John	10	0.140287%	0.004209%	\$14,028.69
Jerrel Smith	11	0.154316%	0.004629%	\$15,431.56
Mark Lewis	5	0.070143%	0.002104%	\$7,014.34
Danny Franke	15	0.210430%	0.006313%	\$21,043.03
Roberson Trust	50	0.701434%	0.021043%	\$70,143.44
Goss Trust	25	0.350717%	0.010522%	\$35,071.72
Toni Thrash Trust	10	0.140287%	0.004209%	\$14,028.69
Jerrel Smith IRA	9	0.126258%	0.003788%	\$12,625.82
McKinney Properties	3.5	0.049100%	0.001473%	\$4,910.04
Paul Lombardi	6	0.084172%	0.002525%	\$8,417.21
<b>TOTAL</b>	7128.25	100.000000%	3.000000%	\$10,000,000.00

73. Defendants should have sought and secured guarantees of MSI's \$10,000,000 loan from Booth and from the Smith Indemnitors but failed to do so. Defendants should have also sought guarantees from the Centennial Bank Guarantors, who were relieved of that guaranty by the Booth loan.

74. The real estate records of Lawrence County, Franklin County and Colbert County, Alabama do not contain a document evidencing the grant of the Booth Guaranty Royalty or the assignment by S. Smith of an interest in the Booth Guaranty Royalty to the S. Smith Indemnitors.

75. Reece is Trustee of the A1A 15 Trust dated December 15, 2015 ("A1A Trust"). The beneficiaries of the A1A Trust are Reece and members of Reece's family. The A1A Trust was formed to receive compensation to Reece and RMP from S. Smith and MSI for finding lenders to MSI, such as Booth, and investors in MSI.

76. Reece is Trustee of the B1B 15 Trust dated December 15, 2015 ("B1B Trust"). The beneficiaries of the B1B Trust are Moore and members of Moore's family. The B1B Trust was

formed to receive compensation to Moore and RMP from S. Smith and MSI for finding lenders to MSI, such as Booth, and investors in MSI.

77. Reece, Moore and RMP did not disclose to Booth that they were to be compensated for assisting RMP in obtaining loans from Booth.

78. For tax year 2015, MSI reported gross receipts or sales in the amount of \$57,273 and a loss of \$6,598,032 on its federal income tax return.

79. On March 1, 2016, MSI paid \$10,000 to RMP.

80. On March 29, 2016, MSI paid \$57,545.16 to RMP.

**The Second Booth Loan, \$15,000,000, total \$25,000,000**

81. In the Spring of 2016, MSI was again running short on money and Reece again approached Booth for an additional loan to MSI.

82. Reece again represented to Booth that MSI was developing a means of extracting precious metals from its silica mining and that the new loan from Booth would be used to purchase necessary processing equipment and machinery and to provide necessary working capital. Reece again told Booth that the additional loan would be secured by a first priority lien on all MSI assets, would be guaranteed by S. Smith, secured by S. Smith assets, and in the unlikely event of default, Booth would be able to step in and take over operations and the collateral value would pay off the loan.

83. Defendants knew that the loan proceeds were needed to ensure that MSI had sufficient funds to support S. Smith's lavish lifestyle and other business interests and to pay RMP legal fees.

84. As of May 9, 2016, S. Smith owed MSI \$635,850 for withdrawals since January 1, 2016.

85. In reliance on Reece, Booth agreed to loan an additional Fifteen Million Dollars (\$15,000,000.00) to MSI pursuant to the Loan Modification Agreement (“LMA 1”) dated May 15, 2016, and an Amended and Restated Promissory Note dated May 15, 2016, which increased the Original Note from Ten Million Dollars (\$10,000,000.00) to Twenty-Five Million Dollars (\$25,000,000.00) (“Note 2”). True and correct copies of LMA 1 and Note 2 are attached hereto as Exhibits “I-1” and “I-2” respectively and are incorporated herein. This is an additional \$15,000,000 loaned by Booth based on recommendations of Reece.

86. All loan documents for the second \$15,000,000 loan were prepared by the Defendants.

87. LMA 1 in ¶ 4.02 obligated MSI to execute such security interest as Lender may require to perfect and grant a security interest in the property described therein. Although Reece represented to Booth that Note 2 was secured by a first priority security interest in and lien on all MSI property and S. Smith property and although Reece and RMP were Booth’s attorneys in connection with Note 2 and LMA 1, no Security Agreement was prepared or signed by MSI in accordance with LMA 1.

88. LMA 1 in ¶ 2.11 states “. . . Revolving Credit Advances shall be used by Borrower for working capital in the ordinary course of business.”

89. LMA 1 in ¶ 6.02, in relevant part, states:

6.02 Negative covenants. Borrower does hereby covenant and agree with Lender that, so long as any liabilities remain unsatisfied, it will not, without first obtaining written consent of Lender:

(f) Make any loans or advances or sell any of its accounts receivable with or without recourse.

90. LMA 1 in ¶ 6.03, in relevant part, states:

6.03 Additional Covenants. Borrower further covenants and agrees as follows:

g) Neither Borrower nor any of the Guarantors, will, without prior written consent of Lender pay out of any funds advanced under this agreement any salary, wages, fees, or compensation to any officer, director, member, stockholder, trustee or partner of Borrower or any Guarantor.

j) Borrower further agrees to utilize all advances by Lender only for items for which requisitions are permitted under this Agreement for reimbursement of expenditures all remade for items for which requisition are so permitted. Borrower agrees to hold all advances by Lender as a trust fund for the purposes of payment of costs and expenses permitted under this Agreement.

91. On June 16, 2016, MSI paid RMP \$80,398.08.

92. Defendants failed to disclose to Booth that MSI needed Booth's loan to make payments to RMP.

93. On August 3, 2016, Booth advanced an additional Three-Million Five-Hundred Thousand (\$3,500,000) to MSI. On August 4, 2016, MSI wired One-Million Two-Hundred Thousand (\$1,200,000) to Stone's Landing, LLC ("Stone's Landing"), a company owned by S. Smith.

94. Stone's Landing used \$1,115,000 of the \$1,200,000 funds for the benefit of Wil-Ree LLC ("Wil-Ree"). Wil-Ree used the Booth loan proceeds to purchase a residence at 254 Elden Drive, Sandy Springs, Georgia.

95. Wil-Ree is a Georgia limited liability company organized by Reece on June 22, 2016. Real estate tax bills for the Sandy Springs, Georgia property are sent to Wil-Ree, LLC, P.O. Box 1788, Fayetteville, Arkansas, the mailing address of RMP.

96. Reece did not disclose to Booth and S3B that Defendants intended to use Booth loan proceeds for the benefit of Reece and/or Reece's company, Wil-Ree.

97. Upon information and belief, the name Wil-Ree is derived from the name of Barbara Willis and Joseph Reece.

98. Between May 16, 2016 and September 14, 2016, Booth advanced the additional \$15,000,000 to MSI which was represented to be used for working capital and equipment purposes. As of September 14, 2016, the entire \$25,000,000 of the loan evidenced by Note 2, had been advanced to MSI.

99. On September 8, 2016, MSI paid RMP \$50,000.00.

100. From January 1, 2016 through September 9, 2016, S. Smith had caused Three Million Seven Hundred Thirty-Two Thousand Six Hundred Seventy Dollars (\$3,732,670.00) belonging to MSI to be transferred to or for S. Smith's personal benefit, primarily to or for the benefit of S. Smith's entities or fictitious names, Stone's Landing, LLC ("Stone's Landing") and Celebrity Rides, LLC in violation of the loan documents and without Booth's consent.

101. On October 13, 2016, MSI paid RMP \$50,000.

**The Third Booth Loan, \$1,500,000 Loan, total \$26,500,000**

102. After all of the \$15,000,000 was advanced under Note 2, Reece again solicited an additional loan from Booth. Reece made the same representations to Booth that were made in connection with Note 1 and Note 2.

103. After Reece's loan solicitation, S. Smith also solicited Booth for an additional loan to MSI and confirmed the same representations that had been made by Reece.

104. Defendants again falsely represented to Booth that additional funds were needed for MSI operating capital and would be used for that purpose. Defendants failed to disclose that more than Three Million Seven Hundred Thousand Dollars (\$3,700,000.00) of prior loan proceeds were used for unrelated business and personal use of S. Smith and that S. Smith intended to continue to

use MSI money for S. Smith personal uses. Reece was aware of S. Smith's misuse of loan proceeds and failed to disclose this to Booth.

105. In reliance on Reece's representations, Reece's failure to disclose S. Smith's personal use of millions of dollars of loan proceeds, and Reece's failure to disclose use of MSI funds for Reece's company, Wil-Ree, Booth agreed to loan MSI an additional One Million Five Hundred Thousand Dollars (\$1,500,000.00).

106. On or about November 17, 2016, MSI, for valuable consideration, executed and delivered to Booth its Promissory Note (the "Additional Note") in the original amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00), all of which was advanced to MSI by Booth. A copy of the Additional Note is attached hereto as Exhibit "J" and incorporated herein.

107. Stone's Landing is an entity owned and controlled by S. Smith. Stone's Landing owns real property, principally, the real property upon which S. Smith's personal residence, that is located in Lawrence County, Alabama.

108. Celebrity Rides, LLC ("Celebrity Rides") does not exist and is merely a name attached to a bank account used by S. Smith to conceal his use of money.

109. On November 9, 2016, S. Smith caused MSI to send Fifty Thousand Dollars (\$50,000) to Stone's Landing. Between November 22, 2016 and December 23, 2016, S. Smith caused MSI to send a total of Three Hundred Thousand Dollars (\$300,000) to or for the benefit of Stone's Landing and Celebrity Rides.

110. On December 29, 2016, MSI paid RMP \$50,000.

111. For tax year 2016, MSI reported gross receipts or sales in the amount of \$46,415 and a loss of \$7,585,733 on its federal income tax return.

112. As of December 31, 2016, MSI general ledger (“GL”) account no. 145 shows loans to members in the amount of \$4,207,466.78. All of the loans in GL account no. 145 were to S. Smith. A copy of the MSI GL account no. 145 is attached hereto as Exhibit “K” and incorporated herein.

113. LMA 1, prepared by RMP, in ¶ 2.11 required that “Revolving Credit Advance shall be used by Borrower of working capital in the ordinary course of business.” See Ex. I-1.

114. LMA 1, in ¶ 6.02(f) prohibited loans by MSI without first obtaining Booth’s prior written consent.

115. MSI 2016 loans to S. Smith violated LMA 1 and were not disclosed to Booth by Defendants.

116. LMA 1 in ¶ 6.01(b) obligated MSI to provide Booth with copies of federal tax returns for the preceding year within 120 days, after the close of the preceding calendar year.

117. Moore of RMP was charged with preparing and filing 2016 federal income tax returns of MSI, which were due by April 15, 2017.

118. Reece, Moore and RMP were aware of purported 2016 loans from MSI to S. Smith prior to April 15, 2017, when federal income tax returns were due.

119. Reece, Moore and RMP knew that loans to S. Smith, as a member of MSI, were required to be shown on the federal income tax return of MSI.

120. Reece, Moore and RMP did not file MSI’s 2016 federal income tax returns until after September 17, 2018 to conceal improper use of MSI money by S. Smith and MSI.

121. Reece, Moore and RMP delayed filing 2016 federal income tax returns to assist S. Smith in evading federal income taxes on \$4,207,466.78 withdrawn by S. Smith from MSI in 2016.

122. The 2016 loans from MSI to S. Smith were required to be shown in Schedule L, line 7a of MSI's 2016 federal income tax return.

123. To conceal MSI's violations of LMI 1 and to assist S. Smith in evading federal income taxes, Reece, Moore and RMP (as well as possible others working with or for Defendants, including John Does 1 – 10) failed to disclose MSI's 2016 loans to S. Smith on Schedule L, line 7a of MSI's 2016 federal income tax return, a copy of which is attached hereto as Exhibit "L" and is incorporated herein.

124. To conceal MSI's violations of LMI 1 and to assist S. Smith in evading federal income taxes, Reece, Moore and RMP (as well as possible others working with or for Defendants, including John Does 1 – 10) labeled \$4,207,467 of loans to S. Smith as investments with no reference to S. Smith on Schedule L, line 8 of its 2016 federal income tax return.

125. On January 1, 2017, Reece and RMP prepared and MSI entered into an Overriding Royalty Purchase Agreement (the "ORPA") with S. Smith in which MSI agreed to sell S. Smith a 2.5% gross overriding royalty. A copy of the ORPA is attached hereto as Exhibit "M" and incorporated herein. The ORPA was not disclosed to Booth. Booth did not approve of or consent to this ORPA.

126. The ORPA in paragraph 1.3.2 states:

The "Purchase Price" for the Overriding Royalty will be Twenty Million Dollars (\$20,000,000). Seller and Purchaser Agree that this consideration for the Overriding Royalty will be paid to Seller by Purchaser guarantees of one or more loans past and future made to Seller by third parties in various amounts according to the terms of the applicable loan documents. Seller and Purchaser agree that the value of the making of such loans by Purchaser is equal to the Purchaser [sic] Price.

127. The 2.5% overriding royalty referenced in the preceding paragraph is 2.5% of gross revenue of MSI with potential to impact the ability of MSI to repay indebtedness to Booth.

128. S. Smith had previously received royalties as compensation for his guaranty of a Centennial Bank loan which had been paid off with proceeds of the Original Note from MSI to Booth. S. Smith had previously caused MSI to grant S. Smith 3% royalties as compensation for S. Smith Guaranty 1 of the Original Note. S. Smith had no obligation to guaranty future loans to MSI. The purported consideration for the ORPA is illusory. S. Smith gave no consideration for the ORPA.

129. The ORPA was entered into to provide a mechanism for compensating Reece and Moore for convincing Booth to loan money to MSI and to enable S. Smith to acquire interest in property of MSI for no consideration and to the detriment of Booth.

130. Reece and RMP, and upon information and belief Moore, had actual knowledge of the ORPA but failed to disclose its existence to Booth. Reece and RMP, and upon information and belief Moore, knew MSI's grant of royalty interest to S. Smith without Booth's written consent violated provisions of loan documents between Booth and MSI. Reece and RMP prepared the OPRA in violation of their duty to Booth.

131. In the first quarter of 2017, RMP had in its employ a certified public accountant and became MSI's outside accountant. Prior to end of the first quarter of 2017, RMP's in house accountant had access to and had reviewed the financial records of MSI, which as of December 31, 2016, showed 2016 withdrawals from MSI to S. Smith in the amount of \$4,207,466.78, which were classified as loans to S. Smith on MSI's financial records. Reece failed to disclose S. Smith's misuse of MSI funds and knew that loans from MSI to S. Smith were prohibited by LMA 1.

132. By the end of the first quarter of 2017, S. Smith had withdrawn an additional \$821,403.14 from MSI. Said \$821,403.14 was classified as a loan on the financial records of MSI.

133. Booth was not notified of and did not consent to the loans from MSI to S. Smith described in the paragraphs described above. Defendants knew of S. Smith's illegal withdrawals and had a duty to inform Booth but failed to do so.

**The Fourth Booth Loan, \$500,000, total \$27,000,000**

134. In the Spring of 2017 and after all the funds available to MSI pursuant to the \$1,500,000 additional loan had been advanced, Reece again solicited an additional loan for MSI from Booth for \$500,000. Reece made the same misrepresentations to Booth that he made in connection with the Original Note, Note 2 and the Additional Loan.

135. Reece again made false or misleading representations about MSI and S. Smith. In soliciting additional loans from Booth to MSI, Reece again represented the business was progressing, that S. Smith was operating the company correctly. Reece continued to assure Booth that Booth had a valid first lien on all MSI and S. Smith/M. Smith assets.

136. Reece knew his representations were not true when made. In fact, Reece knew that the loan proceeds were needed to ensure that MSI had sufficient funds to support S. Smith's lifestyle and other business interests.

137. Although LMA 1 prohibited loans from MSI to S. Smith and prohibited payment of compensation to S. Smith, the MSI general ledger as of March 31, 2017 shows that S. Smith had made personal withdrawals from MSI between January 1, 2017 and March 31, 2017 in the amount of Seven Hundred Ninety Eight Thousand One Hundred Thirty and 94/100 Dollars (\$798,130.94) and that S. Smith had outstanding loans from MSI in in 2016 the amount of Four Million Two Hundred Seven Thousand Four Hundred Sixty Six and 78/100 Dollars. (\$4,207,466.78).

138. Defendants knew of S. Smith's 2016 loans and 2017 withdrawals prior to May 16, 2017, but failed to notify Booth.

139. In reliance on the representations of Reece, and the failure of Defendants to disclose S. Smith's misuse of MSI money, Booth agreed to increase his prior loans to MSI.

140. On or about May 16, 2017, Reece and RMP prepared and MSI executed and delivered, for valuable consideration, its Amended And Restated Promissory Note ("Note 3") in the amount of Twenty-Five Million Dollars (\$25,000,000.00) and Five Hundred Thousand Dollars (\$500,000.00) to Booth. Note 3 modified Note 2, and the Original Note to provide an additional Five Hundred Thousand Dollar (\$500,000.00) loan to MSI. A true and correct copy of Note 3 is attached hereto as Exhibit "N" and incorporated herein by reference.

141. Reece and RMP prepared Note 3 and represented Booth as Lender and MSI as Borrower in connection with Note 3.

142. Although RMP maintained the accounting records of MSI at the time Note 3 was executed, Reece did not inform Booth that S. Smith had taken in excess of \$5,000,000 in loans and withdrawals from MSI since January 1, 2016. Again, Reece had previously assured Booth that because of its dual representation, it would disclose to Booth anything it he was told by S. Smith or MSI.

143. From May 16, 2017 until October 2, 2017, S. Smith caused MSI to disburse One Hundred Fifty Thousand Eight Dollars (\$150,008) to S. Smith's company, Stone's Landing and One Hundred Twenty-Nine Thousand Dollars (\$129,000) to Celebrity Rides, *i.e.*, S. Smith's bank account.

144. A Second Amended Royalty Agreement from MSI to B-Ray, LP amending the Royalty Agreement to increase the royalty from MSI operations from 2.5% to 3%, was filed on December 13, 2016, and upon information and belief, it was also filed in Franklin County and Colbert County, Alabama.

145. The Mortgage, in ¶ 8.3, prohibited the transfer of an interest in mortgaged property without Booth's prior written consent. The Second Amended Royalty Agreement increased royalties from minerals produced on mortgaged property without notice to Booth and without his prior written consent. Defendants were aware of the Second Amended Royalty Agreement but failed to notify Booth.

146. A Third Amended Royalty Agreement from MSI to B-Ray, LP dated June 7, 2017, amending the Royalty Agreement was filed on June 29, 2017, in Lawrence County, Alabama, and, upon information and belief was also filed in Franklin County and Colbert County, Alabama.

147. The original Royalty Agreement held by B-Ray, LP granted royalties on gross revenues from oil, ores and minerals. The Third Amended Royalty Agreement prepared by Reece and RMP purported to change Gross Revenues to mean the gross proceeds received by MSI from the sales of any and all subsurface minerals, sands, stones, ores, materials and metals, both precious and non-precious, including oil, gas, and related hydrocarbons on or from any and all property owned or leased by MSI. This Third Amended Royalty Agreement was intended to give B-Ray, LP priority in payment over Booth/S3B as a lender. This agreement is in direct conflict with Booth's and S3B's rights. This agreement was a violation of the duty Reece had to Booth and S3B.

148. The Third Amended Royalty Agreement also called for royalties to be paid on production in paying quantities under any lease and increased the royalty amount from 3% to 3.25% of gross revenues from MSI operations.

149. The Third Amended Royalty Agreement was granted without notice to Booth, without Booth's approval and was in violation of Mortgage ¶ 8.3.

150. The Third Amended Royalty Agreement recites that consideration was given, S3B disputes and denies that consideration was given.

151. In ¶¶ 9 and 9.1 of the Mortgage, MSI warranted title to the mortgaged property stating: “. . . Mortgagor has good title to the property, free and clear of liens and encumbrances[.]”

152. A Fourth Amended Royalty Agreement from MSI, dated June 7, 2017, increased the royalty due pursuant to the Royalty Agreement to 4.5% and was filed on July 14, 2017, in MISC BK 132 PG 864 in the office of Mike Praytor, Judge of Probate, Lawrence County, Alabama, and upon information and belief, it was also filed in Franklin County and Colbert County, Alabama.

153. The Fourth Amended Royalty Agreement and its acknowledgment by a notary public are illegal. Although the Fourth Amended Royalty Agreement was signed and notarized on June 7, 2017, its recitals reference events on June 29, 2017, and on June 30, 2017, subsequent to the date of execution. A copy of the Fourth Amended Royalty Agreement is attached hereto as Exhibit “O” and is incorporated herein by reference.

154. As a result of the Second, Third and Fourth Amended Royalty Agreements, the purported royalty interest held through assignment by B-Ray LP increased from 2.5% to 4.5% and expanded to cover revenues from all sources, other than minerals on real property owned or leased by MSI.

155. MSI breached ¶ 8.3 of the Mortgage in granting the Second, Third and Fourth Amended Royalty Agreements. Booth was not given notice of and did not give prior written consent for the Second, Third and Fourth Amended Royalty Agreements as required by Mortgage paragraph 8.3.

156. At or near the time that the Third and Fourth Amended Royalty Agreements were executed and filed, Reece again approached Booth stating that additional funds were needed for

operations. Reece told Booth that additional new funds could be raised through the sale of royalty interests to MSI members but to do so, Booth's consent to the grant of royalties would be required and the liens of the Mortgage would have to be released for that purpose.

157. Defendants had actual knowledge of withdrawals by S. Smith from MSI by S. Smith as of March 31, 2017, prior to July 19, 2017.

158. Defendants also had actual knowledge, prior to July 19, 2017, that LMA 1 prohibited loans by MSI and prohibited payment of compensation to S. Smith, who was manager of MSI and a guarantor of loans from Booth.

159. Defendants failed to notify Booth of MSI's 2016 loans to S. Smith and S. Smith's first quarter 2017 withdrawals of money from MSI prior to Booth signing a Permission And Release Agreement on July 19, 2017.

160. In reliance on Reece's and S. Smith's representations, Booth, without knowledge of MSI's violations of LMA 1 as alleged above, signed the Permission And Release Agreement, dated July 19, 2017, a copy of which is attached hereto as Exhibit "P" and is incorporated herein.

161. The Permission And Release Agreement calls for releases of liens by Booth for past and future grants of mineral royalties "until the limit of ten percent (10%) aggregate Overriding Royalties have been granted and sold by Borrower. . ."

162. Although Reece and RMP represented Booth in connection with the Permission and Release Agreement, they failed to disclose to Booth that MSI had previously granted overriding royalties in the amount of 10.5% and failed to disclose to Booth that MSI had contracted in the ORPA to grant S. Smith an additional 2.5% royalty for no new consideration.

163. The release of Booth's Mortgage liens, in favor of past grants of mineral royalties, is inconsistent with Reece's and S. Smith's representations that mineral royalty grants were needed

to generate new funds for MSI operations. The Permission And Release Agreement would apply first to prior royalty grants and as such, would not legitimately raise new money for MSI. Defendants failed to so inform Booth.

164. Upon recommendation of Reece, S3B was created to hold certain Booth assets. S3B was owned by Booth and his wife through S3B Management, LLC, also owned by Booth and his wife. S3B Management, LLC is the general partner of S3B. Booth is manager of S3B Management, LLC.

165. Upon recommendation of Reece, Booth agreed to assign and transfer all of his loans to MSI to S3B. Booth's loans to MSI were transferred to S3B pursuant to an Assignment dated October 1, 2017, a copy of which is attached hereto as Exhibit "Q" and is incorporated herein.

166. Any future Booth loans to MSI would be through S3B.

**The Fifth Booth Loan, \$22,000,000, total \$49,000,000**

167. In late summer or early fall of 2017, Reece again solicited Booth for an S3B loan to MSI. Reece told Booth that the additional funds were needed to complete construction of improvements and installation of equipment on a silica washing plant on land leased from the Russellville Alabama Industrial Development Board (the "IDB") in Franklin County, Alabama. Reece told Booth that completion of construction of improvements and installation of equipment were necessary to extract precious minerals from silica sand mined by MSI and that completion of the process or technology for extraction of precious minerals was near completion.

168. In connection with the proposed S3B loan, Reece again told Booth that Booth and S3B would have a first priority lien on all MSI assets, including the equipment to be installed at the Franklin County, Alabama plant with the additional money loaned by S3B to MSI and all assets of S. Smith and M. Smith.

169. Although Reece knew that improvements were being constructed on the property leased by MSI from the IDB, he failed to inform Booth that unpaid materialman's lien claims of contractors providing labor and materials for construction of improvements on the leased property, could file liens, which could lead to court ordered sale of the improvements. Millions of dollars were spent constructing improvements on property leased from the IDB. Defendants failed to notify S3B that materialman's lien claims could prime the lien claims of S3B. Defendants failed to perfect a collateral assignment of MSI's leasehold estate.

170. Reece also failed to inform Booth that Defendants would receive a substantial payment from the loan proceeds.

171. At the request of Reece and in anticipation of S3B replacing Booth as lender to MSI and S3B loaning an additional Twenty-Two Million Dollars (\$22,000,000) to MSI, S3B, MSI, S. Smith entered into a Notice and Waiver of Conflict of Interest (the "Waiver") dated September 29, 2017, a copy of which is attached hereto as Exhibit "R" and incorporated herein.

172. In the Waiver, the parties agreed that RMP would represent S3B, MSI and S. Smith regarding a loan transaction in which S3B was to loan money to MSI with S. Smith personally guaranteeing the loan. The Waiver purported to waive a conflict arising from Reece's and RMP's dual representation. The Waiver was not valid because Defendants did not provide adequate disclosures to enable Booth to give informed consent.

173. The Waiver, prepared by Reece and RMP states: "Anything Client A tells the attorney must be shared with Client B. An attorney will never withhold information provided by Client A from Client B or vice-versa . . ."

174. At the time the Waiver was signed, S. Smith's 2017 withdrawals from MSI had increased to One Million Two Hundred Nine Thousand Three Hundred Nine Dollars and 78/100

Dollars (\$1,209,309.78), and MSI was owed an additional Four Million Two Hundred Seven Thousand Four Hundred Sixty-Six and 78/100 Dollars. (\$4,207,466.78) by S. Smith which was borrowed from MSI in 2016.

175. On or about October 2, 2017, MSI as Borrower, S. Smith, Smith Trustee, Eternal Guardian Investments, LLLP (“EGI”) and Eternal Guardian Management, LLC (“EGM) as Guarantors and S3B as Lender entered into a Loan Modification Agreement (“LMA 2”) in which the parties acknowledged that the unpaid balance of principal and interest outstanding on the loans evidenced by the Original Note, Note 2, the Additional Note and Note 3 was Twenty-Seven Million Dollars (\$27,000,000), that Borrowers requested an increase in extension of credit to MSI from S3B to Forty-Nine Million Dollars (\$49,000,000) and to induce Booth and S3B to enter into the LMA 2, the Guarantors agreed to guarantee the payment, obligations and responsibilities of Borrower. A true and correct copy of LMA 2 is attached hereto as Exhibit “S” and is incorporated herein by reference.

176. LMA 2 in ¶ 4.02 obligated MSI to execute such security interest as Lender may require to perfect and grant a security interest in the property described therein. Although Reece represented to Booth that Note 4 would be secured by a first priority security interest in and lien on all MSI property and although Defendants were Booth’s attorneys in connection with Note 4 and LMA 2, the Security Agreement called for in LMA 2 was never prepared by Defendants or signed by MSI.

177. LMA 2 in ¶ 2.12 states “. . . Revolving Credit Advances shall be used by Borrower for working capital in the ordinary course of business.”

178. LMA 2 in ¶ 6.02, in relevant part, states:

6.02 Negative Covenants. Borrower does hereby covenant and agree with Lender that, so long as any liabilities remain unsatisfied, it will not, without first obtaining written consent of Lender:

- (f) Make any loans or advances or sell any of its accounts receivable with or without recourse[.]

179. LMA 2 in ¶ 6.03, in relevant part, states:

6.03 Additional Covenants. Borrower further covenants and agrees as follows:

- (g) Neither Borrower nor any of the Guarantors, will, without prior written consent of Lender pay out of any funds advanced under this Agreement any salary, wages fees or compensation to any officer, director, member, stockholder, trustee or partner of Borrower or any Guarantor.
- (j) Borrower further agrees to utilize all advances by Lender only for items for which requisitions are permitted under this Agreement for reimbursement of expenditures all remade for items for which requisition are so permitted. Borrower agrees to hold all advances by Lender as a trust fund for the purposes of payment of costs and expenses permitted under this Agreement.

180. On October 2, 2017, pursuant to the provision of LMA 2, MSI executed and delivered its Amended And Restated Promissory Note to S3B (“Note 4”), in the amount of Forty- Nine Million Dollars (\$49,000,000). The purpose of Note 4 was to extend the time for payment of Note 3 and to provide additional credit in the amount of Twenty-Two Million Dollars (\$22,000,000) from S3B to MSI. A true and correct copy of Note 4 is attached hereto as Exhibit “T” and incorporated herein by reference.

181. In connection with the Assignment, MSI executed and delivered its Modification of Mortgage dated October 2, 2017, to S3B, a true and correct copy of which is attached hereto as Exhibit “V”<sup>1</sup> and is incorporated herein by reference.

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<sup>1</sup> There is no Exhibit “U” attached to this Complaint.

182. The Modification of Mortgage has not been filed in the real estate records of Lawrence County, Alabama.

183. Although Reece, Moore and RMP were Booth's and S3B's attorneys and had actual knowledge of S. Smith withdrawals and loans from MSI, Reece, Moore and RMP failed to notify Booth and S3B of said loans and withdrawals prior to S3B loaning an additional Twenty-Two Million Dollars (\$22,000,000) to MSI on October 2, 2017.

184. On October 4, 2017, a Gross Overriding Royalty Grant Agreement ("GORGA") was executed by S. Smith as Manager of MSI as Grantor and S. Smith as Trustee of the Steven D. Smith Trust u/a/d June 15, 2015 (the "GORGA"), a copy of which is attached hereto as Exhibit "W" and incorporated herein.

185. Although Defendants prepared the GORGA and the ORPA, neither were disclosed to Booth or S3B. Neither Booth nor S3B gave consent to the GORGA or the ORPA.

186. S. Smith gave no consideration for the GORGA or the ORPA. The purported consideration for the GORGA and the ORPA was past and future guarantees of loans to MSI. S. Smith had previously been granted royalties for his guarantees and had no obligation to guaranty loans to MSI in the future.

187. On October 25, 2017, MSI paid RMP \$475,139.98. Defendants failed to disclose to Booth and S3B that Note 4 was needed to pay RMP attorneys' fees.

188. The MSI general ledger shows that between January 1, 2016 and December 31, 2017, more than Six Million Seven Hundred Twenty-Seven Thousand Dollars (\$6,727,000) had been transferred from MSI to or for the benefit of S. Smith.

189. For tax year 2017, MSI reported gross receipts or sales of \$21,630 and a loss of \$2,182,820 on its federal income tax return.

**The Sixth Booth Loan, \$5,000,000, total \$54,000,000**

190. After entering into the LMA 2 and after receiving advances from S3B totaling Forty-Nine Million Dollars (\$49,000,000), MSI through S. Smith requested an additional Five Million Dollar (\$5,000,000) advance from S3B.

191. As with the previous loans, Reece and RMP represented to S3B that the additional loan was needed for and would be used for MSI operations.

192. By June 1, 2018, Booth and S3B had become aware that S. Smith had borrowed or withdrawn money from MSI in late 2017 and 2018.

193. Based on Reece's and RMP's representations, S3B advanced an additional Five Million Dollars (\$5,000,000) to MSI on June 1, 2018.

194. S. Smith's indebtedness to MSI arising from transfers from MSI to or for the benefit of S. Smith increased by Three Million Three Hundred Ninety-Six Thousand One Hundred Eighty Dollars (\$3,396,180) in 2018.

195. For tax year 2018, MSI reported gross receipts or sales in the amount of \$66,019 and a loss of \$3,520,469 on its federal income tax return.

196. As of December 31, 2018, S. Smith owed MSI Ten Million Fifty-Nine Thousand Four Hundred Forty-Six Dollars (\$10,059,446) as a result of MSI transfers of money to or for the benefit of S. Smith since January 1, 2016.

197. As of December 31, 2018, MSI had never achieved annual gross receipts of or sales in excess of \$66,019.

198. For tax years 2015 through 2018, MSI reported losses in the aggregate amount of \$19,897,054.

199. The June 1, 2018 Five Million Dollar (\$5,000,000) advance from S3B to MSI was intended to be a modification of Note 4 to increase the outstanding principal indebtedness of MSI to S3B to Fifty-Four Million Dollars (\$54,000,000). The modification of Note 4 was acknowledged by the Affirmation of Guaranty Agreement signed by MSI, S. Smith, EGI and EGM dated September 19, 2019, a copy of which is attached hereto as Exhibit "X" and incorporated herein.

200. Note 4, in ¶ 3(a), required MSI to commence payment of accrued and unpaid interest on November 2, 2017, and on the same day of each successive month thereafter until maturity.

201. Note 4, in ¶ 1(e)(1), states that the interest rate prior to maturity is eight percent (8%) per annum for 12 months and after 12 months the interest rate increases by 0.5% per month until a maximum rate of fifteen percent (15%) is reached.

202. MSI last made a Note 4 payment on June 15, 2018, and has been in payment default since July 2, 2018. Pursuant to Note 4, the interest on the Note increased to the maximum legal rate as a result of MSI's failure to make the payment which became due July 2, 2018. As a result of the MSI's payment default, interest at the rate of fifteen percent (15%) per annum is due beginning July 3, 2018.

203. Note 4 matured on October 2, 2019, at which time Note 4 bore interest at the maximum legal rate. See Note 4, ¶¶ 1(a), (e)(2) and (h).

204. S. Smith's withdrawals from MSI continued through 2019. By December 31, 2019, indebtedness of S. Smith to MSI arising from withdrawals totaled at least Ten Million Nine Hundred Fifty-Four Thousand Dollars (\$10,954,000) since January 1, 2016.

205. S. Smith's withdrawals from MSI are particularly egregious considering that since MSI's formation in 2012, it has never made a profit and first achieved annual gross revenue of One Hundred Thousand Dollars (\$100,000) in 2019.

206. Sometime in 2018, S. Smith assigned to Reece, as Trustee of the A1A Trust, the right S. Smith claimed to hold to acquire an overriding royalty in the amount of 0.5% of all revenue from MSI's Alabama operations and assigned to Reece, as Trustee of the B1B Trust, the right S. Smith claimed to hold to acquire an overriding royalty in the amount of 0.25% of all revenue from MSI's Alabama operations.

207. The beneficiaries of the A1A Trust are Reece and his family members, and the beneficiaries of the B1B Trust are Moore and his family members. The A1A Trust and the B1B Trust were each formed on December 15, 2015, shortly after the Booth's original \$10,000,000 loan on November 12, 2015, to receive compensation "due" to Reece and Moore for obtaining loans to MSI from Booth.

208. Reece and Moore failed to disclose the existence of the AIA Trust and the BIB Trust and the reason for their creation to Booth and S3B.

209. Based upon the stipulated \$20,000,000 purchase price for 2.5% royalty interest to S. Smith, the value of A1A's right to receive 0.5% overriding royalty was \$4,000,000 and the value of B1B's right to receive 0.25% overriding royalty was \$2,000,000.

210. Reece and Moore failed to disclose the GORGA or the ORPA to Booth or S3B.

211. On February 25, 2019, MSI entered into an Amended By Restatement Gross Overriding Royalty Purchase Agreement (the "ARGORPA") with S. Smith, Joseph Reece, as Trustee of the A1A Trust, and as Trustee of the BIB Trust, and Paul J. Lombardi, as Trustee of the Lombardi Survivors Trust U/A DTD 07/06/2000. A copy of the AGORPA is attached hereto as

Exhibit “Y” and incorporated herein. Moore notarized the signatures on pp. 20-22 of the ARGORPA.

212. In the ARGORPA, Reece, as Trustee of the A1A Trust and as Trustee of the B1B Trust, agreed to donate a portion to their royalty rights received from S. Smith to MSI as a capital contribution in exchange for preferred Class 1 Nonvoting Membership Interest in MSI.

213. To insure that the A1A Trust and the B1B Trust received the same distribution as would have been received as royalty holders, MSI agreed that the royalties would be reduced by the amount received by each Trust as preferred Class 1 Nonvoting Members and granted the A1A Trust and the B1B Trust security interest in all of its personal property to secure payment to the Trusts as holder preferred Class 1 Nonvoting Membership Interests.

214. On or about October 15, 2019, a 2018 Federal Gift Tax Return for S. Smith was filed and states that the return was prepared by Reece and RMP. The return discloses Reece as Trustee of both the A1A Trust and the B1B Trust and the right for each to a 0.125% royalty interest in MSI that S. Smith was entitled to receive pursuant to the GORGA and the ORPA. Excerpts from the return are attached hereto as Exhibit “Z-1” and Exhibit “Z-2” and are incorporated herein by reference.

215. Reece and Moore failed to disclose to Booth and S3B the existence of the A1A Trust and the B1B Trust and the reason for their creation.

216. The grant of royalty interests by S. Smith to the A1A Trust and the B1B Trust were not gifts but were pursuant to a prior agreement of S. Smith and MSI to compensate Reece for his “success” in soliciting loans from Booth and S3B and for soliciting investors and purchaser of royalty interests. Said agreement was never disclosed to Booth or S3B.

217. The gift tax return is an attempt by Reece and Moore to evade federal and state income tax on the payment to Reece and his partner, Lee Moore.

218. LMA 2 in ¶ 4.02 obligated MSI to execute such security interest as Lender may require to perfect and grant a security interest in the property described therein. Reece represented to Booth and S3B that the loan subject to LMA 2 would be secured by a first priority security interest in and lien on all MSI property. Reece and RMP were Booth's attorneys in connection with the loan subject to LMA 2, a Security Agreement in accordance with LMA 2 was never prepared or signed. Booth was not secured by a mortgage on all MSI real property or tangible and intangible personal property. The lack of collateral has resulted in millions of dollars of losses to Booth and S3B.

219. Reece has consistently represented to Booth and S3B that MSI's most valuable asset is the potential to extract precious minerals from its silica mining operations.

220. MSI contracted with metallurgist, Mike Wendell ("Wendell"), to develop a process to extract precious minerals from silica sand mined by MSI.

221. MSI has provided a building for a lab, purchased lab equipment, conducted numerous tests, conducted numerous bore samples and has employed Michael Froelich and Justin Froelich to work in its lab at a combined monthly salary of \$13,692 for many months. As of late December 2019, Michael Froelich and Justin Froelich continued to be employed by MSI.

222. On or about September 19, 2019, S. Smith caused Eternal Minerals South, LLC, ("EMS") to be formed. MSI, acting through S. Smith, its manager, approved the operating agreement of EMS in relevant part states:

1.2 Purposes. The purposes of the company shall be:

- a. Engage in extractive metallurgy and mineral processing as the Manager may from time to time deem to be in the best interest of the Company, including research and development of (1) technologies and processes relating to the extraction of minerals from ore (ii) technologies relating to physical and chemical behavior of elements and their compounds.

Reece organized EMS for S. Smith to gain control over the right to the proceeds to extract precious minerals mined from property owned or leased by MSI.

223. The owners of EMS and their respective interests are:

Eternal Guardian Investments, LLLP (S. Smith's company)	43.75%
Mike Wendell	25.00%
TEK Resources, LLC	10.00%
MSI	20.00%
Michael Froelich	1.00%
Justin Froelich	.25%

224. Eternal Guardian Investments, LLLP ("EGI"), holder of a 43.75% membership interest in EMS, is owned and controlled by S. Smith or S. Smith family members or affiliates. S. Smith is manager of MSI.

225. TEK Resources, LLC is a company owned by Wendell's attorney.

226. EGI contributes nothing to the process of extracting minerals from property owned and leased by MSI.

227. Defendants and S. Smith caused EMS to be formed to siphon 80% of sales proceeds from extraction of precious minerals from property owned and leased by MSI for the benefit of EGI, S. Smith, Wendell, TEK Resources, Michael Froelich and Justin Froelich.

228. The EMS Operating Agreement was prepared by Reece and RMP without any notice to Booth or S3B prior to its execution. Reece was working to protect S. Smith at the expense of Booth and S3B.

229. On or about September 19, 2019, the same day that the EMS Operating Agreement was executed, S. Smith, Smith Trustee, EGI and EGM, as Guarantors, entered into an Affirmation of Guaranty Agreement. Exhibit “X.”

230. The Affirmation of Guaranty Agreement was given in connection with MSI’s request to S3B to release certain collateral securing MSI indebtedness to S3B. MSI sought release of S3B collateral for liquidation to provide operating capital to MSI. Based on Reece’s advice, S3B complied with MSI’s request and released collateral valued at \$380,000.

231. Reece and S. Smith failed to disclose S. Smith’s plan to strip 80% of sales of MSI’s mineral extraction by assignment to EMS and S. Smith’s company, EGM. Had Reece disclosed this plan, S3B would not have released collateral to fund MSI operations.

232. MSI last made a payment on Note 4 as modified on June 15, 2018.

233. MSI has been in default of its obligations under Note 4 as modified since July 2, 2018.

234. Booth and S3B filed suit against MSI and others, styled as Steven Booth and S3B, LLLP v. MS Industries II, LLC, et al., Lawrence County, Alabama Circuit Court Case No. 42-CV-2020-900025.00, to foreclose on collateral granted by MSI. Notwithstanding Reece’s representations to Booth and S3B that Booth and S3B held first priority liens on all MSI assets, MSI disputes these allegations.

235. As alleged above, Defendants failed to advise Plaintiffs of risks that a materialman’s lien claim could cause if contractors were not paid on construction projects.

236. Contractor Service And Fabrication, Inc. (“CSF”) claims to hold a materialman’s lien in the approximate amount of One Million Nine Hundred Dollars (\$1,900,000) arising from

construction of improvements on property leased by MSI from the IDB in Franklin County, Alabama.

237. CSF has filed suit against MSI, S3B and the IDB in Franklin County, Alabama asserting a materialman's lien on the improvements and disputing that S3B has any interest in said improvements. MSI does not dispute the claims of CSF and a default judgment has been entered against MSI on the CSF claims in that lawsuit. The CSF suit is styled Contractor Service and Fabrication, Inc. v. MS Industries, II, et al., in the Circuit Court of Franklin County, Alabama, Case No. 33-CV-2019-900041.

238. Global Maintenance, LLC filed suit against MSI claiming a materialman's lien for construction of improvements to the property leased by MSI from the Russellville Alabama Industrial Development Board in Franklin County, Alabama in the case of Global Maintenance LLC v. Steven Smith, agent et al., Case No. CV-20190900031 in the Circuit Court of Franklin County, Alabama. MSI reached a settlement agreement with Global Maintenance, LLC in that case.

239. MSI did not pay the settlement money. On October 30, 2019, an Order For Enforcement of Settlement Agreement was entered in the Global Maintenance Franklin County case granting Global Maintenance a Judgment in the amount of \$672,672.03 and granting Global Maintenance a lien on the leasehold rights of MSI in the property leased from the Russellville IDB. A copy of the Order For Enforcement of Settlement Agreement is attached hereto as Exhibit "AA".

240. Global Maintenance, LLC has possession of equipment belonging to MSI had is challenging the lien claims of S3B in the Circuit Court of Massac County, Illinois No. 2020-L-1 in connection with a Writ of Execution against equipment of MSI located in Illinois. MSI has not challenged the Global Maintenance Writ of Execution.

241. Pursuant to the Notes, the indebtedness of MSI to S3B became due and payable in full on October 2, 2019, but remains unpaid in the principal amount of Fifty-Four Million Dollars (\$54,000,000) with interest at the rate of eight percent (8%) per annum from June 15, 2018, through July 2, 2018, in the amount of Two Hundred One Thousand Two Hundred Five and 37/100 Dollars (\$201,205.37) and interest at the rate of fifteen percent (15%) from July 2, 2018, through March 23, 2020, in the amount of Thirteen Million Nine Hundred Fifty-Eight Thousand Six Hundred Thirty and 22/100 Dollars (\$13,958,630.22), and thereafter continuing at the rate of fifteen percent (15%) per annum until paid.

242. By email dated February 13, 2020, S. Smith notified Booth that he was the subject of an IRS criminal investigation by the United States Attorney in the Northern District of Georgia.

243. MSI has ceased operations due to creditor lawsuits and lack of money.

244. MSI's lack of money is due to S. Smith's withdrawals of Ten Million Nine Hundred Fifty-Four Thousand Dollars (\$10,954,000.00) from MSI between January 1, 2016 and December 31, 2019, for his personal use and mismanagement of MSI.

#### **VIOLATIONS OF THE ARKANSAS RULES OF PROFESSIONAL CONDUCT**

245. The standard of care for Arkansas attorneys is established in part by the Arkansas Rules of Professional Conduct promulgated by the Arkansas Supreme Court. Deviation from the standards is evidence of the negligence and the standard of care to be expected of the ordinarily careful and prudent attorney.

246. Plaintiffs restate and reallege all preceding paragraphs.

247. The Preamble of the Arkansas Rules of Professional Conduct, in paragraphs 1 and 2 states:

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

248. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP have failed to comply with their responsibilities as representative of Booth and S3B, failed to comply with the responsibilities as negotiators to seek advantageous results for Booth and S3B, and as evaluator, they have failed to competently examine Booth and S3B's legal affairs and reporting about them to Booth and S3B.

249. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP in their representation of Booth and S3B, have failed to comply with Arkansas Rules of Professional Conduct 1.1, which states:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

250. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP in their representation of Booth and S3B, have failed to comply with Arkansas Rules of Professional Conduct 1.3, which states:

A lawyer shall act with reasonable diligence and promptness in representing a client.

251. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP in their representation of Booth and S3B, have failed to comply with Arkansas Rules of Professional Conduct. Ark. R. Prof. C. 1.4, which, in relevant, part states:

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

252. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP in their representation of Booth and S3B, have failed to comply with Arkansas Rules of Professional Conduct. Ark. R. Prof. C. 1.7, which, in relevant, part states:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer,

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

254. Rule 1.0 of the Arkansas Rules of Professional Conduct, in relevant part, states:

- (e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risk of reasonably available alternatives to the proposed course of conduct.

255. Booth and S3B did not give informed consent to Defendants’ concurrent representation of Booth and S3B as lenders, MSI as borrower, and S. Smith and M. Smith and their related entities as guarantors.

256. By their acts and omissions alleged in this Complaint, Reece, Moore and RMP in their representation of Booth and S3B, have failed to comply with Arkansas Rules of Professional Conduct 1.8, which, in relevant part, states:

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the

lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, in a writing signed by the client, except as permitted or required by these Rules.

### **FRAUDULENT CONCEALMENT SUSPENDING THE RUNNING OF THE STATUTE OF LIMITATIONS**

257. Plaintiff restates and realleges all preceding paragraphs.

258. Defendants sought to fraudulently conceal their actions by failing to disclose when a duty to disclose existed and by concealing the wrongdoing in accounting, tax returns and setting up dummy companies and dummy bank accounts.

259. Defendants committed positive acts of concealment that were distinct from conduct that is the basis of the claim and was so secretly planned and executed as to keep the claim hidden from Plaintiffs.

260. The conduct that is the basis of these claims was perpetuated in a way that it conceals itself.

261. Plaintiffs were unable to exercise reasonable diligence to discover the claims.

262. Plaintiffs were not able to ascertain the claims due to the continuous representation of the Defendants. Upon hiring new counsel to sue MSI, Plaintiffs discovered the acts of the Defendants and acted reasonably in pursuing their claims.

263. Plaintiffs did not know or have reason to know the basis of the claims before December 19, 2019. The full nature and extent of the claims would not be known until foreclosure of the Plaintiffs' Mortgage was filed in Alabama.

## CLAIMS AND CAUSES OF ACTIONS

### COUNT I - PROFESSIONAL NEGLIGENCE

264. Plaintiffs hereby incorporate all allegations contained in the foregoing paragraphs 1-263.

265. Plaintiffs and Defendant formed an attorney-client relationship dating back to as early as 2010, which continued at the time period giving rise to the causes of action alleged herein.

266. Defendants engaged in actions, omissions, representations and misrepresentations as further set forth in paragraphs 1 – 263, including but not limited to representations that S. Smith was a successful businessman, that MSI stood to reap enormous profits from mineral extraction, that Booth should loan MSI large sums because it was a safe business opportunity and that MSI would generate enough income from the silica/sand operations to service the loan, that the loan would be secured by a first priority lien on MSI's assets as well as the assets of M. Smith and S. Smith, and omitted to tell Booth that there were royalty holders entitled to payment prior to Booth's loans, among other representations and omissions as set forth herein.

267. Defendants owed Plaintiffs, as their legal counsel, a duty to use reasonable care provided by other lawyers in the same or similar circumstances with respect Plaintiffs in safeguarding the Plaintiffs' information and property.

268. For the reasons stated here, and upon the Defendants' conduct, individually and collectively, violated the standard of care owed under federal and Arkansas law, and constituted a breach of Defendants' duty to the Plaintiffs.

269. Defendants knew or should have known that their conduct could result in injury to the Plaintiffs.

270. Defendants, in their capacity as attorneys, were well aware that Plaintiffs had no knowledge, training, education or experience as commercial lenders. Defendants knew that Plaintiffs had inherited substantial assets that had been invested by Booth in a conservative manner.

271. Defendants set out on a course of action that resulted in substantial damages to the Plaintiffs, in excess of \$54,000,000 and resulted in substantial gain to Defendants.

272. Defendants were in privity of contract with Plaintiffs for purposes of holding them liable under Ark. Code Ann. § 16-14-303, which governs attorney liability in the state of Arkansas. Plaintiffs were clients of Defendants.

273. Plaintiffs' damages were a direct and proximate result of the acts, omissions, representations, misrepresentations, and concealment of Defendants.

274. As a direct result of Defendants' negligence, Plaintiffs have sustained damages in an amount in excess of \$54,000,000, and the exact amount will be determined by the Court. The claim is in excess of the amount required for federal diversity jurisdiction.

## **COUNT II - BREACH OF FIDUCIARY DUTY**

275. Plaintiffs hereby incorporate all allegations contained in forgoing paragraphs 1-274.

276. Defendants received confidential financial and other information from Plaintiffs, claiming to act in the Plaintiffs' interest, protecting and preserving the Plaintiffs' estate, plan the Plaintiffs' estate, and promising not to allow Plaintiffs to be harmed.

277. As counsel for Plaintiffs, Defendants had a fiduciary duty to protect the interest of Plaintiffs, including the duty to avoid conflicts of interest, disclose information important to Plaintiffs' decision making, recommending transactions without due diligence, stating the Plaintiffs would be fully protected when they would not, and other breaches of fiduciary duty.

278. Defendants breached their fiduciary duty to Plaintiffs as further set forth in paragraphs 1 – 274, including but not limited to making representations that S. Smith was a successful businessman, MSI stood to reap enormous profits from mineral extraction, Booth should loan MSI large sums because it was a safe business opportunity and that MSI would generate enough income from the silica/sand operations to service the loan, that the loan would be secured by a first priority lien on MSI's assets as well as the assets of M. Smith and S. Smith, and omitted to tell Booth that there were royalty holders entitled to payment prior to Booth's loans, among other representations and omissions as set forth herein.

279. Plaintiffs have sustained damages as a direct and proximate result of the breach of fiduciary duty by Defendants.

280. Plaintiffs' damages caused by Defendants are in excess of \$54,000,000. The claim is in excess of the amount required for federal diversity jurisdiction.

### **COUNT III – CONVERSION**

281. Plaintiffs hereby incorporate all allegations contained in forgoing paragraphs 1-277.

282. Defendants, individually and collectively, engaged in actions which constitute conversion, which is the wrongful or unauthorized exercise of dominion or control over another person's property.

283. Defendants were aware of the limits on the use of loan proceeds. With full knowledge of the limitations of the use and documents prepared by the Defendants, the Defendants proceeded to withdraw funds from the loan proceeds to pay their legal fees and allow S. Smith and others to benefit from the funds in derogation of Plaintiffs' rights.

284. Defendants engaged in wrongful conduct which operated as a distinct act of demand and control over the loan proceeds that were the property of Plaintiffs.

285. Defendants also participated with each other and the other parties, including but not limited to S. Smith, M. Smith, MSI and John Doe Defendants 1 – 10 to transfer assets which were subject to the Plaintiffs' Mortgage and security interests in violation of loan agreements.

286. Defendants' conversion includes but is not limited to the conversion of loan proceeds for stock, the receipt of loyalty or equity interest and any other use of proceeds or transfers of property inconsistent with loan agreements which were drafted by Defendants.

287. Plaintiffs have sustained damages as a direct and proximate result of the conversion by Defendants and are entitled to judgment, jointly and severally, by Defendants in an amount in excess of \$54,000,000. The claim is in excess of the amount required for federal diversity jurisdiction.

#### **COUNT IV - FRAUD, CONSTRUCTIVE FRAUD AND FRAUDULENT CONCEALMENT**

288. Plaintiffs hereby incorporate all allegations contained in forgoing paragraphs 1-287.

289. As described above in paragraphs 1 – 287, Defendants' actions hereby constitute actionable fraud.

290. Defendants committed fraud by knowingly making false representations of past or present material fact, including but not limited to Defendants making the following false representations: that S. Smith was a successful businessman, that MSI stood to reap enormous profits from mineral extraction, that Booth should loan MSI large sums because it was a safe business opportunity and that MSI would generate enough income from the silica/sand operations to service the loan, that the loan would be secured by a first priority lien on MSI's assets as well as the assets of M. Smith and S. Smith, and omitted to tell Booth that there were royalty holders

entitled to payment prior to Booth's loans, among other representations and omissions as set forth herein.

291. Plaintiffs reasonably relied upon the actions and representations of the Defendants.

292. The actions and representations of Defendants were made with the intent to induce reliance by all Plaintiffs, which resulted in damages to Plaintiffs.

293. Staying silent, failing or refusing to take actions or make disclosures is fraud.

294. Defendants engaged in fraud because by virtue of the fiduciary duty they had with Plaintiffs, they had an affirmative duty to speak or act, and they did not do so.

295. The facts and circumstances related to the Defendants' conduct, acts, omissions, representations and misrepresentations constitute the act of fraudulent concealment, which tolls the statute of limitations.

296. Defendants were, in fact, the attorneys and fiduciaries who stated they were operating in the Plaintiffs' best interest, had the legal duty to protect the Plaintiffs, and yet the Defendants were actively taking advantage of Plaintiffs through acts, omissions, representations and misrepresentations.

297. Plaintiffs have been damaged as a direct and proximate result of Defendants' fraud, constructive fraud and fraudulent concealment. Plaintiffs were damaged in an excess of an amount of \$54,000,000. The claim is in excess of the amount required for federal diversity jurisdiction.

#### **COUNT V - CIVIL CONSPIRACY**

298. Plaintiffs hereby incorporate all allegations contained in forgoing paragraphs 1-297.

299. The foregoing actions, conduct, omissions, representations, misrepresentations by Defendants constitute a civil conspiracy, which is an agreement to accomplish a purpose that is

unlawful, oppressive or alternatively an effort to accomplish a purpose that is not in itself oppressive or unlawful.

300. Defendants' acts of civil conspiracy include but are not limited to the misrepresentations of S. Smith, MSI, his businesses and sham businesses, as well as other individuals and entities identified as John Does 1 – 10, perfection of liens, the perfection of liens of borrower and the guarantors, transferring assets in violations of their duty to the Plaintiffs and violation of Plaintiffs' loan agreements

301. Defendants knowingly entered into the civil conspiracy to commit fraud, conversion, and breach of fiduciary duty with S. Smith, MSI, and John Does 1 – 10, among others that resulted in damages to the Plaintiffs.

302. One or more of the Defendants committed one or more overt acts in furtherance of the conspiracy.

303. The Defendants entered into the conspiracy voluntarily with full knowledge of consequences and that it would cause significant monetary harm to Plaintiffs.

304. Plaintiffs have been damaged as a direct and proximate result actions of the Defendants in committing a civil conspiracy in an amount in excess of \$54,000,000. The claim is in excess of the amount required for federal diversity jurisdiction.

### **PUNITIVE DAMAGES**

305. Plaintiffs hereby incorporate all allegations contained in forgoing paragraphs 1-301.

306. In addition to compensatory damages, the award of punitive damages is appropriate to punish the Defendants for their acts and deter Defendants and others from similar conduct.

307. Defendants knew or should have known that their conduct would naturally and probably result in damages to the Plaintiffs, but the Defendants continued such conduct in reckless disregard of consequences from which malice may be inferred.

308. Defendants directly benefited from the actions, to the detriment of the Plaintiffs.

309. As a result of Defendants' actions, Plaintiffs are entitled to recover punitive damages.

### **JURY TRIAL DEMAND**

310. Plaintiffs demand a jury trial on all issues in this Complaint.

### **RELIEF REQUESTED**

311. As a direct and proximate result of the actions, omissions, representations, and misrepresentations by the Defendants, the Plaintiffs have been damaged. Plaintiffs demand judgment against the Defendants, jointly and severally, in the amount of at least \$54,000,000.

312. Plaintiffs are also entitled to punitive damages.

313. Plaintiffs are also entitled to multiple damages as set forth here and above.

314. Plaintiffs are entitled to recover interest. Plaintiffs are entitled to recover attorneys' fees and costs.

315. Plaintiffs reserve the right to amend or supplement this Complaint as discovery progresses, including but not limited to, adding additional claims or new parties.

WHEREFORE, the Plaintiffs, Steven Booth and S3B, LLLP, pray that this Court grant judgment over the Defendants, jointly and severally, for their damages as more specifically described herein together with interest thereon, all which are in excess of the amount necessary for Federal Court jurisdiction in diversity of citizenship cases, exclusive of interest and costs, the exact amount to be determined by a jury; for their costs; for their attorney's fees; for the maximum

amount of post-judgment interest allowed by law on all amounts awarded herein; and for all other relief to which they are entitled in law or in equity that this Court deems proper.

Respectfully submitted,

*/s/ Patrick R. James*

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