

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

BRETT LORENZO FAVRE PLAINTIFF

VS. CIVIL ACTION NO. 23-cv-00095-DHG

SHADRACK TUCKER WHITE DEFENDANT

SHADRACK TUCKER WHITE COUNTER-PLAINTIFF

VS. CIVIL ACTION NO. 23-cv-00095-DHG

BRETT LORENZO FAVRE,  
ROBERT L. CULUMBER  
AND FAVRE ENTERPRISES, INC. COUNTER-DEFENDANTS

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ANSWER AND DEFENSES OF DEFENDANT SHAD WHITE  
TO THE PLAINTIFF'S COMPLAINT AND  
COUNTERCLAIM AGAINST BRETT FAVRE, ROBERT L. CULUMBER  
AND FAVRE ENTERPRISES, INC.

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COMES NOW the Defendant Shad White (“Defendant,” “White,” or “State Auditor”), by and through counsel, in his official capacity as the State Auditor of Mississippi and to the extent necessary in his personal capacity, and files this his Answer and Defenses to the Complaint filed against him by Plaintiff Brett Lorenzo Favre (“Favre” or “Plaintiff”) and asserts a a Counterclaim against Favre, Bobby L. Culumber

(“Culumber”) and Favre Enterprises, Inc., (“Favre’s business”) herein,<sup>1</sup> as follows:

### GENERAL STATEMENT

The assertion of any matter below as a “Defense” is not an admission that this Defendant bears the burden of persuasion, burden of proof, or burden of producing evidence with respect to any such matter.

### AFFIRMATIVE DEFENSES

#### FIRST DEFENSE

The Defendant asserts the affirmative defense of fraud by concealment and by false statements. The Defendant incorporates the Counterclaim set forth below.

On July 29, 2017, Favre offered to donate or gift the recording of a public service announcement to “help” Nancy New (“New”).

A screenshot of a text message in a grey bubble. The text reads: "Also I want to help you and was thinking a PSA is one option that could be done quick and easy to put together 😊".

Yet, Favre now claims that he did this “quick and easy” act of help— a few moments of light effort he offered to do for free to help his new friend— not for free but in exchange for \$1.1 Million. That claim is false and is at the black heart of a scheme Favre hatched with Nancy New (“New”) and John Davis (“Davis”) —both of whom now

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<sup>1</sup> Nothing in this Answer or Counterclaim suggests or implies that the State of Mississippi or the Mississippi Department of Human Services approved any act or omission of John Davis (“Davis”) or Nancy New (“New”) or any other person or entity. All actions of New and Davis described herein were unlawful, illegal and often confessed as criminal. New and Davis had access to public funds and their relevant expenditures were illegal and unauthorized.

stand convicted of various bribes, frauds and criminal wrongs— to use secret transactions to conceal the true purpose of those transactions, i.e., fraudulent violation of the known restriction on those funds.

Favre himself described these funds as “state money”<sup>2</sup> and knew full well the prohibition barring this “state money” from being spent on construction or to use the nomenclature of Favre “brick and mortar.” In spite of this knowledge, Favre, New, Culumber, and Davis shared a common goal of diverting this restricted “state money” to construct a building and reduce the financial liabilities of Favre in relation to the construction of a building despite the known prohibition on spending this “state money” in these manners.

THAT WHICH IS DONE IN THE DARK

“There is not a crime, there is not a dodge,  
there is not a trick, there is not a swindle,  
there is not a vice which does not live by secrecy.”

— Joseph Pulitzer

Between July 2017 and November 6, 2019,<sup>3</sup> within this judicial district and Forrest, Lamar and Harrison Counties, Favre engaged in a fraudulent scheme with New, Culumber, and Davis to obtain \$1.1 Million —almost 4% of total grant funds<sup>4</sup> which

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<sup>2</sup> It does not matter whether Favre knew this “state money” was TANF Funds. His claimed lack of knowledge that this “state money” was TANF Funds is a red herring and should not distract from the clear evidence that Favre knew the funds were “state money” and were restricted in use.

<sup>3</sup> This is the date Nancy New signed documents closing out the TANF Fund Subgrant for fiscal year 2018 (July 1, 2017 - September 30, 2018).

<sup>4</sup> Control over \$10,797,226.23 was provided to New under Subgrant Agreements for FY 2017, i.e., 4.63%. Control over \$18,437,792.29 was provided to New under Subgrant Agreement No. 6012990 for FY 2018, i.e., 3.25%.

were supposed to benefit poor children and their families and which were made available to the entity controlled by New and Davis— in restricted grant funds from the State of Mississippi.

During this time period and at these places, Favre, New, and Davis each knew the restricted funds could not be used for construction of buildings.

During this time period and at these places, Favre, New, and Davis each knew the restricted funds were state funds and were to be directed at meeting the needs of that economic class of people who need state shelters for habitation, state schools, or state homes.

During this time period and at these places, Favre, New, Culumber, and Davis each knew the restricted funds could not be used for gifts or transfers in which no value was exchanged or in exchange for vague and uncertain promises as to future events.

During this time period and at these places, Culumber acted as the authorized agent and representative of Favre and Favre's business, possessing both apparent and actual authority to act and speak on behalf of Favre and Favre's business.

During this time period and at these places, New acted as the authorized agent and representative of Favre and Favre's business, possessing both apparent and actual authority to act and speak on behalf of Favre and Favre's business in making representations to government officials or concealing information in furtherance of the fraudulent scheme and/or obtaining government funds which Favre and New could expend as they wished.

During this time period and at these places, Favre, New, and Davis agreed to launder said restricted grant funds through Favre or Favre's business and then cause the

restricted grant funds to be used for the forbidden purpose of construction of a building or buildings or to be pocketed by Favre

2017-07-31 07:11:02

So if we keep confidential where money came from as well as amount I think this is gonna work

This laundering was carried out in total secrecy at Favre’s insistence. Favre made no secret that he received money from sources such as Wrangler, Copperfit, etc. Favre’s insistence on secrecy is clear and convincing proof of guilty knowledge and bad intent.

During this time period and at these places, Favre repeatedly took affirmative actions which were designed or intended to prevent and which did prevent, the discovery of the material facts giving rise to this fraud claim and defense. These actions include —at these times and places— repeatedly insisting on secrecy as to the transfers, the amounts, and the source of funds.

At these times and places, Favre was under the legal duty —whether he knew it or not— to make reasonable inquires which would have lead to the recognition of the duty to disclose these material facts to the Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS, and gain necessary written approvals.

At these times and places, Favre was under the legal duty to refrain from insisting that his agent New not disclose these material facts and fail to meet her duty to disclose these material facts to the Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various

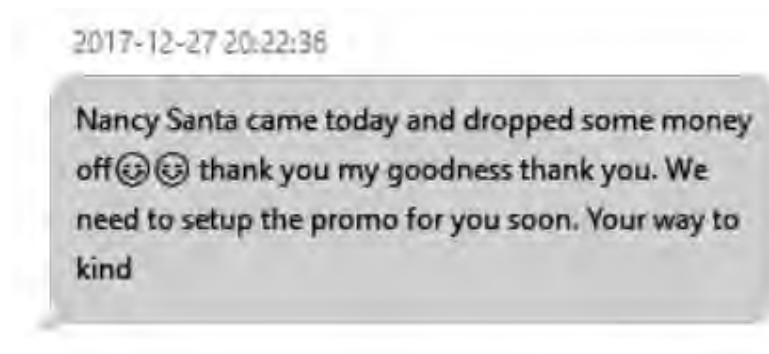
Fiscal and Integrity Officers at MDHS and gain necessary written approvals.

Favre knew, should have known or was at least on notice to inquire with the State or competent, honest independent consultants about the other restrictions on the funds which New and Davis seemed to be handing out like candy.

In furtherance of the fraudulent scheme, \$1.1 Million was transferred to Favre's control or possession without any corresponding exchange of value.

Favre, New, and Davis further agreed that if a separate scheme to divert and misappropriate \$4 Million in restricted funds was rejected by those prudent persons leery of and concerned about legality and propriety of the proposals of Favre, New and Davis then the \$4 Millions in restricted funds would simply be divert and misappropriated to Favre to be under the common control by Favre, New, and Davis.

Favre himself described the first \$500,000.00 transfer from New and Davis as a gift from Santa.



At all relevant times and at these places, Favre, New, and Davis concealed from the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers that Favre was receiving state funds, and had done nothing of value in exchange for the transfer of \$1.1 Million.

At all relevant times and at these places, Favre, New and Davis concealed from the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers the exorbitant, unreasonable, and illegal amounts which Favre received for doing nothing.

The Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers had the right to expect that New and Favre would disclose their transactions through a pre-approval process.

New and Davis were under a duty not to expend funds or to have New return to MDHS funds not spent in compliance with her approved budget, objectives and purchasing regulations and compliance with the other restrictions of federal and state law, federal and state regulations, and applicable contract documents.

Favre was under the duty to not accept transfers of restricted state funds when he had done nothing to earn such funds. Favre was under the duty to not accept transfers of restricted state funds when the restrictions he knew or should have known were violated, including but not limited to those laws, regulations and restrictions applicable to contractors or subcontractors of a subgrantee of MDHS.

Ignorance of the law is no excuse.

Instead, Favre demanded secrecy to defeat —and which did in fact defeat— the safeguards which the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers could bring to bear, and MDHS, and very poor children and families, were damaged thereby.

#### THE COVER-UP

Between July 9, 2019 and February 9, 2023, within this judicial district and

Forrest, Lamar and Harrison Counties, Favre engaged in a conspiracy and fraudulent scheme with New and Culumber to conceal and cover-up the above described fraudulent scheme by which Favre gained possession or control of \$1.1 Million in restricted grant funds from the State of Mississippi.

During this time period and at these places, Culumber acted as the authorized agent and representative of Favre and Favre's business, possessing both apparent and actual authority to act on behalf of Favre and Favre's business.

On or about July 9, 2019, the State Auditor directed the Financial and Compliance Audit Division of the Mississippi Department of Audit —also known as the Office of the State Auditor (“OSA”)— to conduct a single audit of MDHS for Fiscal Year 2019 (July 1, 2018, to September 30, 2019), with a particular focus on funds obtained from MDHS by New and the entity New controlled named Mississippi Community Education Center (“MCEC”).<sup>5</sup> Another Division within OSA also sprang to action.

On July 18, 2019, in the places described above, Favre —while trying to lay his hands on even more state money— falsely told then Governor Phil Bryant that Favre had “been involved in several of Nancy's families first activities.”

Favre —knowing he had done nothing and even inquiring as to the “little” he might have done— made this false statement mere seconds after New basically informed Favre that the most he had done was an announcement and that he was present — apparently accidentally and with no coordination— at some events where New's organization also had “activities.” New gave no indication to Favre that he engaged in such activities or even knew they were, or had, occurred. That same day, New told Favre: “We have the necessary paperwork on file and I worked with your accountant on

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<sup>5</sup> It was later learned that New claims that MCEC fell under the controlled of Davis through his role as Executive Director of MDHS.



anything [sic]. Actually, it is ok and perfectly legal had I paid you.”

On September 1, 2019, Favre asked New “Did you speak to Bobby?”

During the course of the single audit and related inquires, OSA requested MCEC provide all documents concerning any financial arrangements with Favre or Favre’s business. OSA obtained or secured the following document from MCEC signed by New and bearing the purported signature of Culumber:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

MISSISSIPPI COMMUNITY EDUCATION  
CENTER, a Mississippi 501(c)3 non-profit  
corporation

By: *Nancy New*  
Its: *Ex. Director*

**Favre  
Enterprises,  
Inc.**

By: *Bobby Culumber*  
*Bobby Culumber*  
Print Name  
Its: *CFO*

The records of MCEC also included the following documents:

**Scope of Work to be Performed:**

Services shall be available beginning with the start date of this contract and shall terminate upon conclusion of the contract.

Services to be performed include: public speaking at events, keynote speaking, radio and promotional events, and business partner development.

1. Speak at three (3) total speaking engagements
2. Provide one (1) radio spot during the contract period
3. Provide one (1) keynote speaking engagement

All travel, room and board shall be the responsibility of the contractor and are not reimbursable as part of this contract.

**Subject:** draft

**Date:** Monday, December 18, 2017 at 5:03:24 PM Central Standard Time

**From:** Nancy New

**To:** Zach New

**CC:** Nancy New

To: Brett Favre

CC: Bobby Lculumber

Services to be rendered from July 1, 2017 through July 31, 2018.

1. 3 PSA's and/or commercials supporting Families First (our Media department will help with necessary preparation of information. Also,, recordings/tapings will be arranged as local as possible(Hattiesburg) Most media representatives will come on location, as well.
2. Public appearances/photos for special events; for an example, Governor's Healthy Teens for a Better Mississippi. These are to be scheduled only upon available time of the client.
3. Autograph particular marketing material for special occasion or fundraising

All communication of the above services will be primarily coordinated by Nancy New or Zach New to Brett Favre or his designee.

Payments will be made in 1 installment

**Brett Favre**

**Public Speaking as requested- Ongoing**

**Jackson Healthy Teens 9/07/17**

**Biloxi Healthy Teens 01/24/18**

**Radio Recording 08/13/18**

**Hattiesburg Healthy Teens 10/18/18**

**Football Camp Remote 11/30/18**

**Summer Camp -Ongoing**

That was it. No other written documents of a contractual nature concerning Favre were provided by MCEC. No other written documents of a contractual nature concerning Favre were found by OSA personnel.

Neither Favre, New, Davis, nor Culumber have produced any documents which support Favre's claims to the \$1.1 Million for a single recording of a 57 word script. Not a single document.

Having these few documents in hand, Stephanie C. Palmertree, CPA, CGMA, then Director, Financial and Compliance Audit Division ("Palmertree"), made official contact

and spoke with Culumber concerning the transactions in December 2017 and June 2018.

On or about November 8, 2019, Culumber, acting as an authorized representative of both Favre and Favre's business with both real and apparent authority, represented to Palmertree that Favre was paid by MCEC for "speaking engagements and events which Favre attended."

When Palmertree emailed Culumber that same day, and asked him "to confirm our phone call, Mr. Favre was paid by MCEC for speaking engagements, and events that he attended" and verify that Culumber had in fact signed the document appearing above, Culumber responded:

All is good. Have a great weekend! It's going to be cold!

Taking the care necessary to make sure these matters were clear, Palmertree emailed Culumber again asking "[s]orry to be such a pest, but I need you to confirm yes or no that it's your signature so I can move on to the next grantee."

On November 8, 2019, Culumber emailed Director Palmertree and stated:

"yes."

In February 2020, Nancy New, Zachary New, and John Davis were arrested for defrauding MDHS.

In May, 2020, Favre wrote to New, "I want to stick it to them so bad. You a good person Nancy and you have to dig in!! We have to get our reputation[s] back."

In May, 2020, Favre and New started trying to get their stories straight about what was done and paid.

In May, 2020, Favre —with full knowledge of his acts and omissions— began

trying to trick the authorities into making a false statement of exoneration.

On May 7, 2020, Favre —with full knowledge of his acts and omissions— caused a \$500,000.00 check to be delivered to a Special Agent of OSA.

A short time latter, Favre told ESPN Wisconsin’s “Wilde & Tausch” radio show was he was just being paid for his role in radio public service announcements and advertisements that ran for a few years in Mississippi.

“I did ads that ran for three years, was paid for it, no different than any other time that I’ve done endorsements for other people, and I went about my way,” Favre said. Favre reportedly “emphasized Friday the money had nothing to do with scheduled speaking engagements.”

This statement and statements like it are, and were, intended by Favre to cover up the true facts and particularly his involvement in the fraudulent scheme set forth above.

It is impossible to reconcile Favre’s statement that he did multiple “ads” when he recorded a single 57 word script. Moreover, Favre recorded the single 57 word script on August 13, 2018. When he claimed in May 2020 “ads ... ran for three years” less than three (3) years had passed since the recording.

It is impossible to reconcile Favre’s May 2020 claim that all he was required to do was record a single 57 word script, with his statement in July 2017, that he “could record a few radio spots.”

It is impossible to reconcile Favre’s statements in May 2020, with his July 18, 2019 statement to then Governor Phil Bryant, that Favre had “been involved in several of Nancy’s families first activities.”

It is impossible to reconcile Favre’s statements in May 2020, with the statements of

his authorized representative that Favre was paid for “speaking engagements and events” which he actually attended.

It is impossible to reconcile Favre’s statements in May 2020 with the numerous text messages of New to Favre where New stated: “just a few things here and there spread out, will be plenty”; “let’s get our calendars together on a few activities”; “in the next few days could I send you a draft proposal to do a couple of psa’s, etc. for Families First”; “if you get a chance let John know you will do things to help me promote Families First. I have just been waiting to get with you. Actually. I am saving you for a few special times”; “If you have a few minutes to spare to speak to 7th-12th graders and some community college students that will be great”; and “Zach has developed a list of a few big things that we were going to ask you to appear this year [2019].”

On May 14, 2020, New summed it up by telling Favre “Stick to you doing the work. That’s enough because they will twist anything else we say. Anything.... Anyway, you are definitely right to say you did the work, but best not to say too much more as it definitely will be twisted.” To which Favre replied: “Ok.”

On October 12, 2021, the State Auditor issued demand letters to Favre, Favre’s business and Culumber for principal and interest. The matter continued to be investigated.

On October 25, 2021, Favre —with full knowledge of his acts and omissions— caused a \$600,000.00 check to be delivered to OSA.

On November 10, 2021, Culumber caused a letter to be sent to the State Auditor representing that Culumber had done nothing for Favre and Favre’s business other than prepare tax returns and act as the agent for service of process for Favre’s business. The letter demanded retractions and implied legal action would be taken personally against the State Auditor.

These representations cannot be reconciled with Culumber's interactions with Palmertree and Favre's communications with New.

No retraction or apology was given and Culumber went silent.

On April 22, 2022, Nancy New and Zachary New pleaded guilty in State Court to defrauding MDHS. Their guilty pleas reflected bribes and fraud starting as early the first quarter of 2017.

On September 26, 2022, Davis pleaded guilty in State Court to conspiring with New to defraud MDHS and to, with Nancy New and others, defrauding MDHS.

On February 6, 2023, counsel for Favre —instead of sending Favre's check to make whole MDHS and its program to help the poorest of the poor— sent the Defendant a letter demanding that he retract and apologize to Favre for alleged defamatory statements and threatening vindication and the imposition of "substantial damages."

On February 9, 2023, counsel for Favre —instead of sending Favre's check to make whole MDHS and its program to help the poorest of the poor— filed a lawsuit seeking money from the Defendant.

Favre has failed and refused to pay the funds demanded of him. His fraudulent scheme to cover up the true material facts has caused damage to the State of Mississippi, and very poor children and families which MDHS serves.

## SECOND DEFENSE

The complaint represents an abuse of process and improper malicious prosecution.

2020-05-08 19:00:54

I know you didn't cause this Nancy and I want to stick it to them so bad. Your a good person Nancy and you have to dig in!! We have to get our reputation back. 🤔

### THIRD DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted, and Defendant moves for dismissal.

### FOURTH DEFENSE

Defendant alleges that at all times pertinent to the events made the subject of Plaintiff's Complaint, Defendant was acting in his official capacity as State Auditor of Mississippi, and Defendant hereby invokes the defense of absolute privilege in bar of Plaintiff's claims and moves to dismiss this action in its entirety.

### FIFTH DEFENSE

Defendant asserts the defense of truth in bar of Plaintiff's claims.

### SIXTH DEFENSE

Defendant alleges that Plaintiff is a public figure or a vortex/quasi-public figure, and Defendant further alleges an absence of actual malice in bar of Plaintiff's claims.

### SEVENTH DEFENSE

The statements of the Defendant were true. Defendant never had a high degree of awareness of any probable falsity of any relevant statement. Defendant never entertained serious doubts as to the truth of his statements.

### EIGHTH DEFENSE

All relevant communications by the Defendant were made without malice and in good faith and on a subject matter in which he had an interest, or in reference to which he had a duty. In addition such communications were made to a person or persons having a corresponding interest or duty. Therefore, the Defendant is immune from this suit.

NINTH DEFENSE

Defendant alleges that the statements made the subject of Plaintiff's Complaint are statements of opinion made in good faith and/or predicated upon conclusions of the State Auditor and of the Office of the State Auditor regarding the interpretation and/or operation of Mississippi law, and accordingly Defendant has and can have no liability for defamation.

TENTH DEFENSE

Defendant invokes any and all rights and protections afforded to Defendant by any applicable privileges and/or immunities, both absolute and qualified, governmental or otherwise, not already invoked hereinabove.

ELEVENTH DEFENSE

Defendant invokes all rights and protections afforded to him under MISS. CODE §85-5-7.

TWELFTH DEFENSE

Defendant invokes the provisions and protections of MISS. CODE §11-1-69 in bar of Plaintiff's claims or damages sought.

THIRTEENTH DEFENSE

Defendant invokes the provisions and protections of Miss. Code §11-1-60 in bar, or partial bar, of Plaintiff's claims or damages sought.

FOURTEENTH DEFENSE

Defendant invokes any and all rights, immunities and protections afforded to him under the Mississippi Tort Claims Act, if and to the extent deemed applicable.



FIFTEENTH DEFENSE

Defendant asserts the defense of illegality in bar of Plaintiff's claims.

SIXTEENTH DEFENSE

The claims asserted by the Plaintiff violate the First Amendment and Fourteenth Amendment to the U.S Constitution by infringing the Defendant's right to free speech.

SEVENTEENTH DEFENSE

The claims asserted by the Plaintiff violate the MS Const. Art. 3, §13 (right to free speech). The subject statements made by the Defendant were made with good motives and for justifiable ends.

EIGHTEENTH DEFENSE

Defendant asserts the defenses of unclean hands, laches, lack of good faith, estoppel, and waiver.

NINETEENTH DEFENSE

No damages were suffered by the Plaintiff. The Defendant's acts, if any, in reference to the matters and things alleged in the complaint, were not the proximate or legal cause of the Plaintiff's damages, if any. Alternatively, any damages suffered by the Plaintiff were the result of the acts or omissions of Plaintiff or his agents, confederates, or independent third parties and not the result of any act or omission of Defendant or anyone for whom Defendant may be legally responsible. Alternatively any damages suffered by the Plaintiff were the result of intervening or super-ceding causes for which the Defendant cannot be held liable.

TWENTIETH DEFENSE

The plaintiff has failed to join indispensable and necessary parties.

TWENTY-FIRST DEFENSE

The plaintiff has failed to mitigate his damages, if any.

TWENTY-SECOND DEFENSE

The plaintiff cannot establish special damages.

TWENTY-THIRD DEFENSE

The Defendant is not chargeable with the negligent and/or intentional acts of any person or persons over whom the Defendant exercised neither dominion nor control.

TWENTY-FOURTH DEFENSE

With the facts not having been fully developed, the Defendant incorporates and asserts all relevant affirmative defenses set forth in Rules 8(c) and 12 of the Mississippi Rules of Civil Procedure.

TWENTY-FIFTH DEFENSE

The Defendant reserves and/or invokes any and all defenses which are available or to which he is entitled pursuant to any applicable state and/or federal law and/or policies, standards, regulations, laws, statutes, authorities and/or ordinances.

TWENTY-SIXTH DEFENSE

The Defendant asserts that the Plaintiff's claim for punitive damages is governed and limited by Miss. Code §11-1-65, and Defendant hereby pleads and invokes the provisions and protections of same, including but not limited to the bifurcation of

punitive damages from other issues in this cause.

The claim for punitive damages cannot be sustained because an award for punitive damages under Mississippi law would violate the Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, §14 of the Mississippi Constitution and may result in violation of the Defendant's right not to be subjected to an excessive award in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article 3, §28 of the Mississippi Constitution.

#### TWENTY-SEVENTH DEFENSE

The Defendant asserts the affirmative defenses of set off, recoupment, assumption of the risk and contributory negligence.

#### TWENTY-EIGHTH DEFENSE

Defendant denies each and every allegation of Plaintiff's Complaint by which Plaintiff seeks to impose liability upon Defendant, and Defendant denies that he has been or can be guilty of any actionable conduct in the premises.

#### RESERVATION OF DEFENSES AND RIGHTS

Due to the lack of discovery, the Defendant is without knowledge or information sufficient to form a belief at this time as to whether other affirmative defenses may apply in this cause of action. The Defendant reserves the right to amend his Answer and Affirmative Defenses and to assert any additional defenses or matter of avoidance that may become apparent following the completion of additional investigation and/or discovery.

AND NOW, having presented his Affirmative Defenses, the Defendant responds to the numbered paragraphs of the Complaint, paragraph by paragraph, as follows:

The averments contained in the first unnumbered paragraph under the heading “JURY TRIAL DEMANDED” require no response from the Defendant but to the extent required the averments are denied.

1. Defendant denies the averments contained in Paragraph 1 of Plaintiff’s Complaint.

2. Defendant denies the averments contained in Paragraph 2 of Plaintiff’s Complaint.

3. Defendant denies the averments contained in Paragraph 3 of Plaintiff’s Complaint, except to admit that the Defendant is a party in the described other lawsuit. To the extent not expressly admitted, the averments of Paragraph 3 of Plaintiff’s Complaint are denied.

4. Except to state that before the instant Complaint was filed, Plaintiff’s counsel sent Defendant a letter, which will speak for itself in terms of its content, Defendant denies the averments contained in Paragraph 4 of Plaintiff’s Complaint. To the extent not expressly admitted, the averments of Paragraph 4 of Plaintiff’s Complaint are denied.

5. Defendant denies the averments contained in Paragraph 5 of Plaintiff’s Complaint.

6. Defendant denies the averments contained in Paragraph 6 of Plaintiff’s Complaint, except the Defendant admits that he has not retracted or apologized for any

statements made about Plaintiff, there having been no defamation. To the extent not expressly admitted, the averments of Paragraph 6 of Plaintiff's Complaint are denied.

7. Except to state that Plaintiff is a public figure, Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 7 of Plaintiff's Complaint and therefore denies the same.

8. Defendant admits that he is an elected public official of the State of Mississippi, and an attempt is being made to sue him in his individual capacity, and that he may be served as described in Paragraph 8 of Plaintiff's Complaint. Defendant denies the remaining averments contained in Paragraph 8 of Plaintiff's Complaint.

9. Except to admit that this Court has subject-matter jurisdiction over this matter, and except to further state that the law, where applicable, will speak for itself, Defendant denies the averments contained in Paragraph 9 of Plaintiff's Complaint.

10. Except to admit that venue is proper in Hinds County, and except to further state that the law, where applicable, will speak for itself, Defendant denies the averments contained in Paragraph 10 of Plaintiff's Complaint.

11. Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 11 of Plaintiff's Complaint, and therefore denies those averments.

12. Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 12 of Plaintiff's Complaint, and therefore denies those averments.

13. Defendant is without knowledge or information sufficient to form a belief as to

the averments contained in Paragraph 13 of Plaintiff's Complaint, and therefore denies those averments.

With respect to the heading "B. White's Egregious Falsehoods About Favre" immediately preceding Paragraph 14 of Plaintiff's Complaint, Defendant denies that he has made any "[e]gregious [f]alsehoods [a]bout Favre" as alleged therein.

14. Defendant, won reelection and admits the averments contained in Paragraph 14 of Plaintiff's Complaint.

15. It is denied that the Plaintiff has repaid all funds improperly paid to him. Defendant admits that on or about May 7, 2020, \$500,000.00 was received by OSA in payment to replace TANF Funds for which the Plaintiff was liable. It is admitted that OSA issued a press release containing the statement quoted in the second sentence of Paragraph 15 of Plaintiff's Complaint. Defendant admits that as of May 7, 2020, Defendant had seen no records indicating that Plaintiff knew that MCEC used TANF funds to pay Plaintiff. Defendant admits that in October 2021, Plaintiff received a demand and thereafter partially repaid the State of Mississippi an additional \$600,000.00 for unlawfully received welfare money for which Plaintiff was liable, leaving a balance of principal and statutory interest exclusively due and payable to the OSA under the controlling statute. Defendant denies the remaining averments contained in Paragraph 15 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 15 of Plaintiff's Complaint are denied.

16. Except to state that additional information developed after May 2020 revealed that Plaintiff's involvement in the welfare scandal was much more extensive than previously believed, Defendant denies the averments contained in Paragraph 16 of

Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 16 of Plaintiff's Complaint are denied.

17. Except to state that Defendant was asked about Plaintiff's role in the welfare scandal, as investigated by OSA, during multiple official media interviews, including interviews with CNN, ESPN, and WORLD, Defendant denies the averments contained in Paragraph 17 of Plaintiffs' Complaint. To the extent not expressly admitted, the averments of Paragraph 17 of Plaintiff's Complaint are denied.

18. Except to state that Defendant is aware that clips from official interviews of Defendant have been published by various media outlets, Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 18 of Plaintiff's Complaint and therefore denies the same. To the extent not expressly admitted, the averments of Paragraph 18 of Plaintiff's Complaint are denied.

19. Defendant admits that in the course of a television interview with CNN's Kate Bolduan, on or about September 15, 2022, and while acting in his official capacity as State Auditor of Mississippi, Defendant made a statement substantially in accord with the quotation appearing next to the bullet in Paragraph 19 of Plaintiff's Complaint. It is denied that the September 15, 2022 statement accused Favre of any crime. It is denied that the September 15, 2022 statement was false. Defendant denies the remaining averments contained in Paragraph 19 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 19 of Plaintiff's Complaint are denied.

20. Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 20 of Plaintiff's Complaint and therefore denies the same.

21. Defendant admits that in the course of an ESPN Daily Podcast interview on or about September 29, 2022, and while acting in his official capacity as State Auditor of Mississippi, Defendant made a statement substantially in accord with the quotation appearing next to the bullet in Paragraph 21 of Plaintiff's Complaint. Defendant is without knowledge or information sufficient to form a belief as to the number of people who listened to the aforementioned podcast. It is denied that the September 29, 2022 statement accused Favre of any crime. It is denied that the September 29, 2022 statement was false. Defendant denies the remaining averments contained in Paragraph 21 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 21 of Plaintiff's Complaint are denied.

22. Defendant denies the averments contained in Paragraph 22 of Plaintiff's Complaint.

23. Except to state that before the Complaint was filed, Plaintiff's counsel sent Defendant a letter, which will speak for itself in terms of its content, and except to further state that Defendant did not respond to this letter, Defendant denies the averments contained in Paragraph 23 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 23 of Plaintiff's Complaint are denied.

24. Defendant denies the averments contained in Paragraph 24 of Plaintiff's Complaint.

25. Defendant denies the averments contained in Paragraph 25 of Plaintiff's Complaint.

26. Defendant adopts and incorporates by reference his defenses and answers to the averments contained in the preceding paragraphs in response to the averments



contained in Paragraph 26 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 26 of Plaintiff's Complaint are denied.

27. Defendant denies the averments contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the averments contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendant denies the averments contained in Paragraph 29 of Plaintiff's Complaint.

30. Defendant denies the averments contained in Paragraph 30 of Plaintiff's Complaint.

31. Defendant denies the averments contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the averments contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the averments contained in Paragraph 33 of Plaintiff's Complaint.

34. Defendant adopts and incorporates by reference his defenses and answers to the averments contained in the preceding paragraphs in response to the averments contained in Paragraph 34 of Plaintiff's Complaint. To the extent not expressly admitted, the averments of Paragraph 34 of Plaintiff's Complaint are denied.

35. Defendant denies the averments contained in Paragraph 35 of Plaintiff's Complaint.

36. Defendant denies the averments contained in Paragraph 36 of Plaintiff's Complaint.

37. Defendant denies the averments contained in Paragraph 37 of Plaintiff's Complaint.

38. Defendant denies that Plaintiff is entitled to any payment in the premises. To the extent not expressly admitted, the averments of Paragraph 38 of Plaintiff's Complaint are denied.

Defendant denies the averments contained in the unnumbered paragraph and Sub-paragraphs a. through e. thereunder, following Paragraph 38 of Plaintiff's Complaint under the heading "PRAYER FOR RELIEF" and commencing "WHEREFORE, PREMISES CONSIDERED," and Defendant further denies that Plaintiff is entitled to a judgment, declaratory relief, injunctive relief, damages, attorneys' fees, interest, or costs, or to any sum or relief whatsoever of, from, or against Defendant herein.

#### COUNTERCLAIM

The State Auditor Shad White ("State Auditor") makes this counterclaim against Brett Favre ("Favre"), Favre Enterprises, Inc., (Favre's business), and Robert L. Culumber ("Culumber"):

#### EXCLUSIVE STANDING

This State Auditor has standing and the exclusive right to pursue the claims asserted below. Miss. Code §7-7-211(g). See also Miss. Code §7-7-75. See general MS Const. Art. 5, § 134.

On October 21, 2021, OSA made demand on Favre, Favre's business and Cucumber for payment of public funds which New and Davis had transferred to Favre or

Favre's business and for which Favre, Favre's business and Culumber were culpable and legally obligated to pay.

Miss. Code §7-7-211(g) provides that after a demand is made by OSA, the demand "shall<sup>6</sup> be paid into the proper treasury of the state, county or other public body through the office of the department in the amount demanded within thirty (30) days from the date thereof, together with interest thereon in the sum of one percent (1%) per month from the date such amount or amounts were improperly withheld, misappropriated and/or otherwise illegally expended."

"In the event, however, such person or persons or such surety shall refuse, neglect or otherwise fail to pay the amount demanded and the interest due thereon within the allotted thirty (30) days, the **State Auditor shall have the authority and it shall be his duty to institute suit**, and the Attorney General shall<sup>7</sup> prosecute the same in any court of the state to the end that there shall be recovered [by the State Auditor] the total of such amounts from the person or persons...; and **the amounts so recovered shall be paid ... through the State Auditor.**" Miss. Code §7-7-211(g)(emphasis added).

Rule 13 of the Mississippi Rules of Civil Procedure compels assertion of this Counterclaim or at least grants permission for it to be asserted in this action.

#### PARTIES

1. The Counter-Plaintiff is the State Auditor Shad White brings this counterclaim in his official capacity as State Auditor of the State of Mississippi and Head of the Department of Audit, whose principal office is at 501 North West Street, Suite 801, Jackson, First Judicial District of Hinds County, Mississippi 39201. In his official capacity, the State Auditor is authorized to seek relief for the State of Mississippi and all of its

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<sup>6</sup> When interpreting statutes, the word shall is a mandatory directive. *Univ. of Mississippi Med. Ctr. v. Aycock*, 369 So. 3d 534, 540 (Miss. 2023)(quotations and citations omitted).

<sup>7</sup> Miss. Code §7-5-39 (process for Attorney General to decline representation).

subdivisions under the Mississippi Constitution, the common law, and various statutes, including but not limited to §7-7-75, §7-7-211, §7-7-213, §31-7-57, §21-35-17, and §25-1-73 of the Mississippi Code of 1972, as amended.

2. The Counter-Defendants are:

- a. Brett Favre;
- b. Favre Enterprises, Inc., which is a Mississippi corporation which may be served by service upon its registered agent Robert L. Culumber at 2300 20Th St., Gulfport, MS 39501; and,
- c. Robert L. Culumber. Culumber is an adult resident citizen of Mississippi and may be served with process at 2300 20Th St., Gulfport, MS 39501.

#### JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims asserted in this Counterclaim. This Court has jurisdiction over the parties. Venue in this cause is proper in this Court.

#### STATEMENT OF FACTS

4. On December 27, 2017, New transferred \$500,000.00 to the possession or control of Favre.

5. In June 2018, New transferred \$600,000.00 to the possession or control of Favre.

6. As detailed below, Favre had no legal right to the possession or control of this \$1.1 Million.

7. MCEC has no legal right or equitable claim to this \$1.1 Million or any portion thereof. All legal rights and equitable claims rest with the State of Mississippi.

8. On or about May 5, 2020, Favre owed the State of Mississippi \$1,100,000.00 in principal along with accrued statutory interest of \$437,000.00.

9. On or about May 6, 2020, Favre admitted he was personally responsible, that he did not contest his responsibility and promised the State of Mississippi that he would pay all he owed to the State in the “coming months.”

10. On May 7, 2020, Favre paid \$500,000.00, which satisfied the accrued interest to that date, and left a principal balance owing of \$740,000.00, in unpaid principal which continued to bear statutory interest and \$132,000.00 in accrued interest.<sup>8</sup>

11. On October 25, 2021, Favre tendered a payment of \$600,000.00, which reduced the principal owed by Favre to \$437,000.00 with no further accrued interest owed at that time.

12. Since October 25, 2021, an additional \$292,790.00 in interest has accrued.

13. As of this date Favre is liable for least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00.

14. On or about September 27, 2016, Nancy New (“New”) signed a series of \$1 Million Subgrant Agreements with MDHS which provided New access to over \$10 Million in TANF Funds which MDHS had received from the federal government. These Subgrant Agreements were in the name of MCEC, the non-profit entity New controlled, and covered a period from October 1, 2016 to September 30, 2017 (“FY 2017”).

15. None of the approved budget narratives submitted by New for these Subgrant Agreements contained a line item for “advertising” and the Funding Division of MDHS had not approved expenditure of the funds entrusted to New for “advertising.” Likewise, there was no approved budget item for “public relations.”

16. These subgrant agreements provided in Section VII that if MCEC “advertises

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<sup>8</sup> See Miss. Code §75-17-9 (“When partial payments are made, the interest that has accrued to the time of payment, if any, shall be first paid, and the residue of such partial payment shall be placed to the payment of the principal, except that the parties may agree in writing that such partial payment, or any portion thereof, shall be applied first to the payment of principal, in which case the residue shall be applied to the payment of interest that has accrued to the time of payment.”).

...relating to, or promoting, the services which it is providing through this Subgrant, it shall acknowledge that said funding for said Subgrant and for said advertising was provided by MDHS.”

17. For example, 2 CFR §200.421 (Advertising and public relations) imposed very strict limitations of the use of TANF Funds for advertising and public relation. This regulation disallows “[c]osts of advertising and public relations designed solely to promote the non-federal entity.”

18. Upon information and belief, the federal award to MDHS did not authorize or require sub-grantees to incur advertising cost for program outreach and other specific purposes set out in the award.

19. The regulations of MDHS limited and controlled the procurement and payment of contractual services and in almost every case required review and approval by the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers. See MDHS Subgrant/Agreement Manual (Revised 11/2/2016).

20. The regulations of MDHS placed the approval of budgets, budget modifications and allowance of expenditures with the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers.

21. As early as the first quarter of 2017, Nancy New (“New”) and John Davis (“Davis”) then holding the position of Executive Director of MDHS, were actively engaged in multiple sham transactions which defrauded MDHS and funded —with TANF Funds and other public funds— New and MCEC, the entity New and Davis controlled.

22. As early as the first quarter of 2017, New and Davis were actively engaged in a criminal bribery scheme which had as its source TANF Funds and other restricted public funds held by MDHS.

23. In 2017, Favre became involved with New and Davis.

24. Upon information and belief, Favre, prior to meeting New and Davis, was unaware of their criminality and the system of sham funding they were criminally operating.

25. Favre met New on July 18, 2017 in Hinds County, Mississippi.

26. Favre initiated contact with New to request that she join in his plan to construct a volleyball building on the campus of the University of Southern Mississippi (“USM”).

27. Prior to July 18, 2017, Favre had made certain personal financial commitments to fund at least part of the cost of constructing the volleyball building.

28. New agreed to Favre’s request in Hinds County, Mississippi and the two (2) joined forces to achieve Favre’s goal of construction of the volleyball building with as little Favre’s money as possible.

29. Shortly after meeting New, Favre attended a meeting that was also attended MDHS Executive Director Davis.

30. That meeting was held July 24, 2017 in Forrest County, Mississippi and the topic was the volleyball construction project at USM.

31. On July 24, 2017, and well prior thereto, it was common knowledge that MDHS was the State of Mississippi’s lead welfare agency serving the poor and needy within the state.

32. By July 24, 2017, Favre knew the funds controlled by New and Davis were restricted to limited uses.

33. By July 24, 2017, Favre knew the funds controlled by New and Davis could not be used to pay for “brick and mortar” construction.

34. In July 2017, Favre, Nancy New, and Davis reached an agreement to work

together to obtain funds to construct a building or buildings on the campus of the USM with the least amount of Favre's financial expenditures as could be achieved.

35. On July 29, 2017, Favre offered to donate or gift a public service announcement to help New.

36. By July 29, 2017, Nancy New, in response to Favre stating he was thinking of a quick and easy PSA, countered with the idea of Favre "contracting with Families First and some of its programs as a spokesperson. We are really trying to influence community college and university athletes."

37. "Influenc[ing] community college and university athletes is, and was, not a legal use for TANF Funds or any other funds which New obtained or could obtain from MDHS.

38. In response to New's "spokesperson" idea, Favre responded, "Ok. I could record a few radio spots here initially, I'm sure, right here. See how it is received and whatever compensation could go to USM."

39. In response, New stated, "4 Million Dollars... Just kidding. The first phase could be \$500,000 and after [September] we can renew. This is a good approach. What do you think?"

40. This is not the last time New would propose funneling \$4 Million through Favre.

41. Favre replied to New: "Was just thinking that here is the way to do it."

42. Thereafter Favre and New discussed putting their agreement in writing with Favre stating: "My biggest concern is time commitment so we can manage that I'm good."

43. On July 31, 2017, Favre declared that he would go along with New as long as the money he received could be used "any way we choose."



44. By July 31, 2017, Favre realized that funneling the restricted funds to the volleyball building construction project through him might be a way to “solve the brick and mortar issue.”

45. On July 31, 2017, Favre and New agreed that funneling the restricted funds to the volleyball building construction project through him was a way to “solve the brick and mortar issue.”

46. As of July 31, 2017, Favre knew that the restricted funds he and New were discussing were funds of the State of Mississippi.

47. As of July 31, 2017, Favre knew that the restricted funds were funds intended to help the poor and not to construct volleyball buildings.

48. On July 31, 2017, Favre realized that funneling the restricted funds to the volleyball building construction project through him would need to be kept secret: secret as to to the transfers, the source of funds and any relationship between Favre and the poor and needy and the institutions by which the state served the poor and needy.

49. On July 31, 2017, Favre demanded secrecy and New agreed with Favre to keep the transfers to him secret.

50. After reaching this agreement on secrecy, Favre, wrote to New: “Ok perfect. I'll send you my CPA Bobby Culumber cell if ok?”

51. A little while later on July 31, 2017, Favre wrote New: “So if we keep confidential where money came from as well as amount I think this is gonna work.”

52. On August 2, 2017, New wrote Favre informed him that she had spoken with Culumber and “We both are on the same page.”

53. On August 3, 2017, Favre wrote New and stated:

If you were to pay me is there anyway the media can find out where it came from and how much?

54. That same day, New wrote Favre and stated:

No, we never have had that information publicized. I understand you being uneasy about that though....

55. Favre thanked New for her agreement to keep the source and amounts of payments to him a secret.

56. On August 6, 2017, Favre and New again discussed the hesitance of the USM Administration to go along with the plan of Favre, New, and Davis. During this exchange New—who had been bribing Davis and defrauding MDHS—wrote to Favre: “I do know this, if Dr. Cannon questions or even suggests that he is worried about the integrity of this process, John Davis and I both may lose it. That is insulting to both of us.”

57. To which Favre replied: “Well again I'm with you!!! If they won't take it I will.”

58. In response to Favre's suggestion that the \$4 Million be paid to him, New replied: “For sure! That's exactly what John Davis said... ‘well, we will just give it to Brett if Southern can't come to their senses’. John is tired of fooling with them.”

59. After New and Davis met with officials from USM, she texted Favre that “What we can do if they don't get on board is contract with you.”

60. To which Favre responded: “Ok Nancy I'm all in!! Thank you.”

61. New replied: “With or without them.”

62. On August 8, 2017, New wrote Favre that “[I]f they don't figure this out soon maybe we should fund your foundation??”

63. To which Favre responded: “Some for sure!!” But Favre added that his foundation could not fund “athletics.” Then Favre once again returned to getting around the prohibition on the use of funds in New's control “for brick and mortar.”

64. Two (2) days later, Favre sent a text to New which stated: “My goal is for you and I to build what state and ole miss have or at least close.”

65. By October 19, 2017, the multi-million dollar transaction with TANF Funds which Favre, New and Davis had been pushing received final approval.

66. On October 26, 2017, Favre told New he was “a little disgruntled when I was told a million is going elsewhere.”

67. On November 6, 2017, New caused MCEC to pay \$2.5 Million to the USM Athletic Foundation.

68. On December 5, 2017, New caused MCEC to pay a \$2.5 Million payment to the USM Athletic Foundation.

69. By agreement with Favre, New worked to ensure that these funds went to brick and mortar construction in accordance with their wishes..

70. A little over five (5) months after his first meetings with New and Davis, Favre obtained control or possession of \$500,000.00 from New.

71. This \$500,000.00 constituted public funds which had been entrusted to New by MDHS in Hinds County.

72. This transfer occurred on December 27, 2017 and originated in Hinds County, Mississippi.

73. Favre was not entitled to receive, possess, control, or disburse this \$500,000.00 which constituted public funds entrusted to New.

74. On December 27, 2017, Favre and Favre’s business were not entitled to receive TANF Funds.

75. On December 27, 2017, Favre and Favre’s business were not entitled to receive “state money.”

76. On December 27, 2017, Favre and Favre’s business were not entitled to receive restricted funds originating from MDHS.

77. On December 27, 2017, neither Favre nor Favre’s business had performed any work or service or given anything of value in exchange for the transfer of \$500,000.00 by New.

78. The day Favre received the \$500,000.00 in restricted state funds, Favre relayed to New that “Santa came today and dropped” off the \$500,000.00.

79. In reply, New wrote Favre that Santa felt he had been “pretty good this year” and that after the holidays, they should “get our calendars together on a few activities, etc.”

80. By May 7, 2020, Favre —with full knowledge of his acts and omissions— delivered, or caused to be delivered in Forrest County, \$500,000.00 to a Special Agent of OSA.

81. In March 2018, Favre hosted Davis at a social function at Favre’s home.

82. New encouraged Favre to use the visit to “let John know you will do things to help me promote Families First. I have just been waiting to get with you. Actually, I am saving you for a few special times.”

83. On May 2, 2018, Favre and his wife Deanna signed a donor agreement with the USM Athletic Foundation obligating themselves to pay up to \$1.4 Million to fund the construction of the volleyball facility. The agreement provides that “[d]onors shall personally contribute any funds not collected from third parties.”

84. In April 2018, New and Favre communicated about getting even more money through Davis to meet Favre’s obligations with relation to the USM construction.

85. On May 10, 2018, New sent a text to Favre which stated “Hey Bret, I am making some progress on our money needs; What amount out of the whole loan that you signed would be most helpful right now? John and I may have a plan.”

86. Favre replied: “I only signed a guarantee for 1.4. I won't owe until the money that's there runs out, then I have to come up with the rest. Probably about 6 months ....”

87. Favre followed up with: “So however you think we should proceed.”

88. To which New responded: “Ok We are definitely working on a good plan.”

89. On May 17, 2018, New wrote Favre and stated: “Morning! Good news. I have a little money for the project —\$500,000! Do you want me to send to Athletic Dept. Or to your foundation? NN.”

90. Favre responded that he “guessed” the Athletic Department, to which New stated: “I want to think about sending it to the Dept. I want to make sure it is used on our project, we want to help get that note pd. off that you and we will continue to work toward that!”

91. Three (3) days later, New wrote Favre that “Tomorrow I am going to call Jon Gilbert or Daniel to make sure that the money we are sending tomorrow, the whole amount, will go toward the building. We don’t want it spread across other areas. I will let you know. The amount is ... \$650,000.00. We will kept chipping away to get it down even more.”

92. In June 2018, Favre obtained \$600,000.00 from New in restricted state funds to which neither New, MCEC, nor Favre were entitled to receive, possess, or disburse.

93. In August, 2018, Favre communicated with New about “doing something quick” in terms of a recording while he was in Jackson on other business.

94. On August 13, 2018, Favre travelled to Jackson and recorded the following 57 word script:

This is Brett Favre with Families First for Mississippi and the Governor's Healthy Teens for a Better Mississippi. Being healthy is about physical and emotional wellbeing. Healthy Teens encourages youth through social interaction and leadership to build a better future for our next generation. So get involved with Families First to support health and wellness across Mississippi.

95. On September 11, 2018, New asked Favre to speak to young people at Reed Green Coliseum on October 18, 2018.

96. Favre communicated to New on September 11, 2018 that Brett Favre thought he would be in “Montana elk hunting that day.”

97. New replied that “There will be other things going on later.”

98. Favre did not speak at Reed Green Coliseum on October 18, 2018.

99. On July 8, 2019, MDHS announced the resignation of Davis effective July 31, 2019.

100. On July 16, 2019, Favre texted New: “Nancy if I can help you in any way you know I will. Please know that.”

101. He followed that message up with: “About to see Governor Bryant. Anything I can say to him that could help?”

102. To which New replied: “Let him know how much we work together on youth development, sports programs that instill leadership and future work skill.”

103. Favre agreed to convey this false statement to then Governor Bryant.

104. Before July 16, 2019 was over, Favre texted New: “I love John so much. And you too.”

105. On July 18, 2019, Favre asked New to tell the Governor that Favre asked New to fund a new indoor football facility at USM.

106. New responded: “I am fine with that as we can do a lease on it and Families First can use it for many activities.”

107. That same day, New wrote Favre: “Did you tell him you were already involved with some of our activities?”

108. To which Favre replied: “No I will though this morning ... Well check that I actually did a little.”

109. This inquiry prompted New to write:

You did. You have been a public figure through OSA; and some events where we have activities. Conference USA, etc. honestly, Zach has developed a list of a few big things; that we were going to ask you to appear this year. Governor's Healthy Teens Rally which will be late fall like last year. We have had other retired professional wrestlers, Athletes, etc. the last 2 years.

110. After reading New's response, Favre chose to mislead the Governor by sending a text which read:

Hey Governor I have been involved in several of Nancy's families first activities and our plan was after completing Vball construction we were/are building a spectacular indoor facility on campus that we can use for just about anything.

111. Favre's false message drew the following message out of New:

Oops I meant PSA's, All is good We did not pay you directly but we could have. Financial support was made available to your foundation but that is absolutely ok. We have the necessary paperwork on file and I worked with your accountant on anything. Actually, it is ok and perfectly legal had I paid you. Some folks probably will like knowing that I didn't should they ask. They love knowing you are very generous with your time. Please know I we understand grant Regulations and it's common to be creative. they do allow fund, to get speakers, motivators, etc. It is all ok.... Even though we cant fund brick and mortar, renting/ leasing is fine. This will be a great place for us to do many programs./ activities for all ages.... Sorry for all the information but I just want to keep you in the loop.

112. On July 25, 2019, Favre learned that the State Auditor's Office was working on a report on MDHS.

113. By July and August, 2019, Favre undeniably knew that the funds New paid out came from MDHS and that the funds could only be spent helping children and was limited to certain specific purposes.

114. Yet Favre still retained the \$1.1 Million New had transferred to him.

115. On September 12, 2019, Favre texted New and asked: "Did you speak to Bobby?"

116. To which New replied that she was attempting to make contact.

117. On November 25, 2019, Favre sent New a message which read: "I'm sorry Nancy but know that I am with you all the way. You are good for this state and I'm proud to be your friend."

118. On December 12, 2019, Favre informed New he had sent the following

message: “Hey Gov I think your meeting with Nancy tomorrow. This money will be used for state programs as well as help USM but w/ a director in place good things will happen and The University is all in as well. I know your doing all you can and we appreciate you very much.”

119. In February 2020, Nancy New, Zachary New, and John Davis were arrested for defrauding MDHS.

120. Yet Favre still retained the \$1.1 Million which New had transferred to him.

121. On March 3, 2020, Favre sent New the following message: Deanna and I want you to know we are thinking about you and praying that all is well.”

122. Prior to April 22, 2020, the State Auditor directed the Financial and Compliance Audit Division of the Mississippi Department of Audit —also known as the Office of the State Auditor (“OSA”)— to conduct a single audit of the Mississippi Department of Human Services (“MDHS”) for Fiscal Year 2019 (July 1, 2018, to September 30, 2019), with a particular focus on funds obtained from MDHS by Mississippi Community Education Center “MCEC”).

123. At all times relevant hereto, MCEC was an entity controlled by Nancy New and Davis and employed her son Zachary New.

124. During test-work for activities allowed and allowable costs, the assigned auditor(s) noted the following violations:

Favre Enterprises was [allegedly] contracted<sup>9</sup> to appear at several events, record promotions, and provide autographs for marketing materials from July 1, 2017 through July 31, 2018. Additional contract information provided that the contract fee would be paid in installments and would include three (3) speaking engagements, one (1) radio spot and one (1) keynote address. There was no mention of the contract price in the contract supplied to auditors.

When auditors requested further details on the performance of the contract,

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<sup>9</sup> Later acquired information reflected that there was no contract.



specifically the dates of any speaking engagements, MCEC provided a list of dates and events that fulfilled the contract terms; however, upon a cursory review of those dates, auditors were able to determine that the individual contracted [Brett Favre] did not speak nor was he present for those events. Two payments were made to Favre Enterprises – one for \$500,000 in December 2017 and one for \$600,000 in June 2018.

Due to the inability to verify that any work was performed in order to fulfill the contract, and due to the unreasonable amount paid, the entire payment of \$1,100,000 paid in FY 2018 is questioned.

Single Audit Management Report dated April 22, 2020.

125. During the audit, the audit team was provided a document purportedly signed by Culumber and other information by MCEC concerning an alleged contract between Favre Enterprises and MCEC.

126. At all times relevant hereto, Culumber was the authorized representative of Favre and Favre's business Favre Enterprises, Inc.

127. During the single audit, Stephanie C. Palmertree, CPA, CGMA, then Director, Financial and Compliance Audit Division ("Palmertree"), personally contacted Culumber concerning the transactions in December 2017 and June 2018.

128. On November 8, 2019, Director Palmertree emailed Culumber and stated:

Mr. Culumber,

If you could just email me back and verify that this is your signature, we can move on to the next grantee.

Also, to confirm our phone call, Mr. Favre was paid by MCEC for speaking engagements, and events that he attended.

Thank you for your assistance!

129. On November 8, 2019, Culumber emailed Director Palmertree and stated:

Stephanie,

All is good.

Have a great weekend! It's going to be cold!

Robert L. Culumber, CPA

130. However, "all [was not] good" as falsely represented by Culumber in the scope and course of his representation of Mr. Favre and Mr. Favre's business.

131. The facts later revealed, while Mr. Favre was paid \$1.1 Million, he had not attended speaking engagements and events.

132. On November 8, 2019, Director Palmertree again emailed Culumber and stated:

Mr. Culumber,

Sorry to be such a pest, but I need you to confirm yes or no that it's your signature so I can move on to the next grantee.

133. On November 8, 2019, Culumber emailed Director Palmertree stated:

"yes

Robert L. Culumber, CPA"

134. Culumber, acting in the scope and course of his agency for Favre and Favre's business and in concert with Favre, Nancy New, and MCEC, had lied to OSA during an official investigation of the transfer of \$1.1 Million to the possession or control of Favre.

135. Unfortunately, the lies had just began.

136. Additional facts are set forth below.

#### COUNT I - UNJUST ENRICHMENT

137. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

138. No contract existed under which the subject \$1.1 Million was payable to Favre or Favre's business.

139. Favre and/or Favre's business are in possession of \$437,000.00, and unpaid

interest of at least \$292,790.00,<sup>10</sup> which in good conscience and justice neither of them should retain, but should be delivered to the Counter-Plaintiff for placement in the appropriate treasury of the State of Mississippi.

140. MCEC has no legal right or equitable claim to this \$1.1 Million or any portion thereof. All legal rights and equitable claims rest with the State of Mississippi.

141. Due to this unjust enrichment, the Counter-Plaintiff is entitled to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

#### COUNT II - PROMISSORY ESTOPPEL

142. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

143. On or about May 5, 2020, Favre owed the State of Mississippi \$1,100,000.00 in principal along with accrued interest of \$437,000.00.

144. On or about May 6, 2020, Favre admitted he was personally responsible, that he did not contest his responsibility and promised the State of Mississippi that he would pay all he owed to the State in the “coming months.”

145. On May 7, 2020, Favre paid \$500,000.00, which satisfied the accrued interest to that date, and left a principal balance owing of \$740,000.00, in unpaid principal which continued to bear statutory interest and \$132,000.00 in accrued interest.<sup>11</sup>

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<sup>10</sup> Miss. Code §7-7-211(g) provides for interest of “one percent (1%) per month from the date such amount or amounts were improperly withheld, misappropriated and/or otherwise illegally expended.”

<sup>11</sup> See Miss. Code §75-17-9 (“When partial payments are made, the interest that has accrued to the time of payment, if any, shall be first paid, and the residue of such partial payment shall be placed to the payment of the principal, except that the parties may agree in writing that such partial payment, or any portion thereof, shall be applied first to the payment of principal, in which case the residue shall be applied to the payment of interest that has accrued to the time of payment.”).

146. On October 25, 2021, Favre tendered a payment of \$600,000.00, which reduced the principal owed by Favre to \$437,000.00 with no further accrued interest owed at that time.

147. Since October 25, 2021, an additional \$292,790.00 in interest has accrued.

148. As of this date Favre is liable for least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00.

149. Favre failed to perform as promised and he should be estopped from denying or failing to fulfill his promises.

150. The State of Mississippi was and continues to be damaged as the direct, foreseeable and proximate result of Favre's failure to perform as promised.

151. A refusal to enforce these promises would virtually sanction the perpetration of fraud or would result in an injustice.

152. The Counter-Plaintiff is entitled to a judgment against Favre for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

153. Alternatively, to the extent that Favre's promises are found to operate only against and only bind Favre Enterprises, Inc., the latter should be estopped from denying or failing to fulfill Favre's promises.

154. The State of Mississippi was and continues to be damaged as the direct, foreseeable and proximate result of the failure of Favre Enterprises, Inc., to perform as Favre promised.

155. A refusal to enforce these promises would virtually sanction the perpetration of fraud or would result in an injustice.

156. Alternatively, the Counter-Plaintiff is entitled to a judgment against Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory

interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

### COUNT III - EQUITABLE ESTOPPEL

157. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

158. On or about May 5, 2020, Favre owed the State of Mississippi \$1,100,000.00 in principal along with accrued interest of \$437,000.00.

159. On or about May 6, 2020, Favre admitted he was personally responsible, that he did not contest his responsibility and promised the State of Mississippi that he would pay all he owed to the State in the “coming months.”

160. Favre represents as fact that he was personally responsible and that he did not contest his responsibility.

161. Favre represented as fact that he would pay all he owed to the State in the “coming months.”

162. Believing Favre to be a man of his word, the State of Mississippi forbore in collection efforts, something different from what otherwise would have been done.

163. Favre failed to perform as represented.

164. The State of Mississippi experienced detriment as “coming months” turned into over 1 year, 5 months, 20 days and then only a partial payment was received contrary to Favre’s representations.

165. Favre failed to perform as represented.

166. The State of Mississippi was and continues to be damaged as the direct, foreseeable and proximate result of Favre’s failure to perform act in accordance with his representations.

167. Equity demands that Favre be estopped from denying his representations or

failing to act in accordance with his representations

168. The Counter-Plaintiff is entitled to a judgment against Favre for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

169. Alternatively, to the extent that Favre's representations are found to operate only against and only bind Favre Enterprises, Inc., the latter should be estopped from denying or failing to fulfill Favre's representations.

170. The State of Mississippi was and continues to be damaged as the direct, foreseeable and proximate result of the failure of Favre Enterprises, Inc., to perform as Favre represented.

171. Equity demands that Favre Enterprises, Inc., be estopped from denying Favre's representations or failing to act in accordance with his representations

172. Alternatively, the Counter-Plaintiff is entitled to a judgment against Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

#### COUNT IV - FASHIONED EQUITABLE REMEDY

173. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

174. Equity will not suffer a wrong without a remedy.<sup>12</sup>

175. Equity and justice should not tolerate Favre and/or Favre Enterprises, Inc., to retain any of the \$1.1 Million of public funds or trust funds which were transferred by New and/or Davis.

176. Equity and justice should not tolerate Favre and/or Favre Enterprises, Inc.,

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<sup>12</sup> MRCP 18 allows the joinder of all claims in this action.

having use, possession and control of any of the \$1.1 Million of public funds or trust funds which were transferred by New and/or Davis without paying statutory interest or interest at the statutory rate found in Miss. Code §7-7-211(g).

177. If it is determined that Counter-Plaintiff has no adequate remedy at law and that traditional recognized equitable claims are inadequate to prevent these inequities, injustices and wrongs, then the Court should fashion a remedy adequate to avoid these inequities, injustices and wrongs and award Counter-Plaintiff is a judgment against Favre and Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

#### COUNT V - ILLEGAL GIFT OF PUBLIC FUNDS

178. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

179. Miss. Const., Art., 4, §66 prohibits public officials from using public funds to make donations or gifts or other transactions not supported by an exchange of value.

180. Miss. Const., Art., 4, §66 may be enforced, and is routinely enforced, by the Counter-Plaintiff.

181. Miss. Const., Art., 4, §96 is self executing.

182. At all times relevant hereto, Davis was a public official.

183. At all time relevant hereto New and Davis controlled MCEC.

184. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis.

185. As such, MCEC should be viewed as a fraudulent conduit by which Davis — a public official— without legal right or authority transferred \$1.1 Million in public funds to Favre or Favre's business.

186. Alternatively, that the funds in the \$1.1 Million placed in the hands of Favre or Favre's business were the public funds of the State of Mississippi placed in trust with New and at no time lost the nature or character of the public funds of the State of Mississippi, i. e., remained the public funds of the State of Mississippi

187. The transfers to Favre or Favre's business of \$1.1 Million were not supported by any contemporaneous exchange of consideration.

188. The transfers to Favre or Favre's business of \$1.1 Million and any related contract, if any, were illegal.

189. The transfers to Favre or Favre's business of \$1.1 Million were not made in relation to any bona fide legal or legally enforceable contract.

190. The transfers to Favre or Favre's business of \$1.1 Million were not made in relation to any enforceable contract or obligation having terms upon which the minds of the parties were in agreement.<sup>13</sup>

191. As described below in the next count, Davis made an illegal gift to Favre and/or Favre's business by postponing enforcement of the liability and obligation of Favre or Favre's business as to the \$1.1 Million and by failing to require Favre or Favre's business to place these funds in the proper treasury.

192. As such, the transfers to Favre or Favre's business of \$1.1 Million and other gifts by Davis violated the prohibition of Miss. Const., Art., 4, §66 entitling the Counter-Plaintiff to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

#### COUNT VI - VIOLATION OF SECTION 100

193. Counter-Plaintiff incorporates and reasserts herein the averments contained

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<sup>13</sup> For example, in July 2019, New expressed the expectation to Favre that he would appear at "few big things" in 2019.



in the foregoing paragraphs of this Counterclaim.

194. Miss. Const., Art., 4, §100 provided:

No obligation or liability of any person, association, or corporation held or owned by this state ... shall ever be remitted, released or postponed, or in any way diminished by the Legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the Legislature from providing by general law for the compromise of doubtful claims.

195. Miss. Const., Art., 4, §100 may be enforced, and is routinely enforced, by the Counter-Plaintiff.

196. Miss. Const., Art., 4, §100 is self executing.

197. At all times relevant hereto, Davis was a public official bound by Miss. Const., Art., 4, §100.

198. At all times relevant hereto, MDHS was a creature of the Mississippi Legislature having only those limited express and reasonably implied powers.

199. The limited express and reasonably implied powers did not include the ability to violate Miss. Const., Art., 4, §100.

200. At all time relevant hereto New and Davis controlled MCEC.

201. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis.

202. As such MCEC should be viewed as a fraudulent conduit by which Davis — a public official— transferred \$1.1 Million in public funds to Favre or Favre's business.

203. The entirety of the subject \$1.1 Million is not currently in the proper treasury.

204. At all times relevant hereto Davis, while serving as executive director of MDHS, knew that Favre or Favre's business was liable and under the obligation to return to the State of Mississippi the \$1.1 Million which Davis had illegally authorized to be

paid to Favre or Favre's business.

205. For Favre's benefit and to conceal misdeeds, Davis postponed the liability and/or obligation of Favre or Favre's business and conspired with New and Favre to conceal such liability or obligation so that it would not be deposited in proper treasury nor full payment to be made at its face value.

206. As such the Counter-Plaintiff is entitled to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below which constitute the postponed liability or obligation and as those funds may be placed in the proper treasury.

#### COUNT VII - VIOLATION OF §96

207. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

208. Miss. Const., Art., 4, §96 prohibits public officials from using public funds to authorize payment, or part payment, of any claim under any contract not authorized by law.

209. Miss. Const., Art., 4, §96 may be enforced, and is routinely enforced, by the Counter-Plaintiff.

210. Miss. Const., Art., 4, §96 is self executing.

211. At all times relevant hereto, Davis was a public official.

212. At all time relevant hereto New and Davis controlled MCEC.

213. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis.

214. As such MCEC should be viewed as a fraudulent conduit by which Davis — a public official— transferred \$1.1 Million in public funds to Favre or Favre's business.

215. Alternatively, the funds in the \$1.1 Million placed in the hands of Favre or Favre's business were the public funds of the State of Mississippi placed in trust with New and at no time lost the nature or character of the public funds of the State of Mississippi, i. e., remained the public funds of the State of Mississippi.

216. No legal contract existed by which Favre or Favre's business was entitled to the subject \$1.1 Million or entitled to retain any portion thereof.

217. Any attempted contract between Favre and/or Favre's business and New, MCEC and/or Davis was not authorized by law. See e.g., Miss. Code §43-17-1.

218. Particularly the law did not authorize New and/or Davis to contract to expend public funds on advertising or public relations contrary to those applicable federal regulations as cited elsewhere herein.

219. Particularly the law did not authorize New and/or Davis to contract to expend public funds on advertising or public relations contrary to full compliance with the applicable MDHS regulations.

220. Particularly the law did not authorize New and/or Davis to contract to expend public funds on advertising or public relations contrary to those applicable MDHS contracts as cited elsewhere herein.

221. Particularly the law did not authorize New and/or Davis to contract to expend public funds on "brick and mortar" construction via a contract, if any, created to conceal the true purpose of the transfer(s).

222. The transfers to Favre or Favre's business of \$1.1 Million constitutes a prohibited payment, or part payment, of a claim under any contract not authorized by law.

223. As such transfers to Favre or Favre's business of \$1.1 Million violated the prohibition of Miss. Const., Art., 4, §96 entitling the Counter-Plaintiff to a judgment

against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

COUNT VIII - VIOLATIONS OF MISS. CODE §31-7-57

224. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

225. Miss. Code §31-7-57 may be enforced, and is routinely enforced, by the Counter-Plaintiff.

226. Miss. Code §31-7-57(1) prohibits any appointed public officer or the executive head of an agency from authorizing the expenditure of “any money” to an object not authorized by law.

227. At all times relevant hereto, Davis was an appointed public officer or the executive head of an agency.

228. At all time relevant hereto New and Davis controlled MCEC.

229. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis.

230. As such MCEC should be viewed as a fraudulent conduit by which Davis — a public official— transferred \$1.1 Million in public funds to Favre or Favre’s business.

231. Davis unlawfully authorized the expenditure of money — \$1.1 Million— to Favre or Favre’s business.

232. This expenditure of money — \$1.1 Million— to Favre or Favre’s business was not authorized by Miss. Code §43-17-1 or any other provision of law or implied authority.

233. This expenditure of money — \$1.1 Million— to Favre or Favre’s business was not authorized by any statute or regulations which sets the legal parameters of the limited

authority of MDHS.

234. No provision of law authorized New or MCEC to expend the \$1.1 Million in public funds to Favre or Favre's business.

235. Miss. Code §31-7-57(1) provides no safe harbor for a person or entity which receives an expenditure of "any money" to an object not authorized by law.

236. The State of Mississippi has been damaged receipt of these funds by Favre and/or Favre's business and each is liable in the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure.

237. The violation of Miss. Code §31-7-57(1) by Davis entitles the Counter-Plaintiff to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

238. Miss. Code §31-7-57(3) provides:

The individual ... officers ... of any agency or governing authority as defined in Section 31-7-1 causing any public funds to be expended ... in any manner whatsoever, contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such ... payment or expenditure made, shall be liable, individually, and upon their official bond, for compensatory damages, in such sum up to the full amount of such contract, purchase, expenditure or payment as will fully and completely compensate and repay such public funds for any actual loss caused by such unlawful expenditure.

239. At all times relevant hereto, Davis was an appointed public officer or the executive head of an agency.

240. At all time relevant hereto New and Davis controlled MCEC.

241. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis.

242. As such MCEC should be viewed as a fraudulent conduit by which Davis —

a public official— transferred \$1.1 Million in public funds to Favre or Favre’s business.

243. Davis unlawfully authorized the expenditure of money — \$1.1 Million— to Favre or Favre’s business.

244. Davis repeatedly caused public funds to be expended, in a manner whatsoever, contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such payment or expenditure are to be made. Specially these expenditures include the subject \$1.1 Million transferred to Favre or Favre’s business.

245. Miss. Code §31-7-51(3) provides no safe harbor for a person or entity which receives an expenditure made contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such payment or expenditure are to be made.

246. The State of Mississippi has been damaged by Favre and/or Favre’s business receipt of these funds and is entitled to compensatory damages, in such sum up to the full amount of such expenditure or payment as will fully and completely compensate and repay such public funds for any actual loss caused by such unlawful expenditure.

247. The violation of Miss. Code §31-7-51(1) by Davis entitles the Counter-Plaintiff to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

COUNT IX - DEBTS DUE UNDER MISS. CODE §43-1-27

248. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

249. Miss. Code §43-1-27 provides, “Any sums paid to or on behalf of any person, entity or subgrantee ... obtained or received under any state or federally funded assistance

program as a result of any false statement, misrepresentation, concealment of a material fact, ... or by whatever means, becomes a debt due to the state department of public welfare.” (Emphasis added).

250. Miss. Code §43-1-27 may be enforced, and is routinely enforced, by the Counter-Plaintiff.

251. MDHS is the state agency formerly known as the state department of public welfare.

252. At no time did MCEC receive any funds from MDHS which were not funds from a state funded assistance program or a federally funded assistance program.

253. On the dates which New transferred all or part of the subject \$1.1 Million to Favre or Favre’s business, MCEC had no funds with which to complete such transfers other than funds received under state funded assistance program or a federally funded assistance program.

254. The funds transferred to MCEC, New and Davis were sums obtained or received under a state funded assistance program or a federally funded assistance program.

255. MCEC, New and Davis obtained such funds by false statement, misrepresentation, concealment of a material fact or by whatever means.

256. The \$1.1 Million in funds transferred to Favre and/or Favre’s business were sums obtained or received under a state funded assistance program or a federally funded assistance program.

257. Favre and/or Favre’s business obtained such funds by concealment of a material facts from Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS.

258. Favre and/or Favre's business obtained such funds by "whatever means" within the prohibition of Miss. Code §43-1-27. Particularly, Favre and/or Favre's business engaged in those means outline in this Counterclaim.

259. On or about October 21, 2021, OSA made demand on Favre and Favre's business<sup>14</sup> and Favre and Favre's business have failed and refused to pay this debt in full with interest.

260. Favre and Favre's business failed to pay in breach of the obligations imposed on them by Miss. Code §43-1-27; the State of Mississippi has been damaged, and continues to be damaged by this breach; and the Counter-Plaintiff is now discharging his duties under Mississippi law, including but not limited to Miss. Code §7-7-211(g) and the exclusive rights and processes set forth therein.

261. The violation of Miss. Code §31-7-51(1) by Davis entitles the Counter-Plaintiff to a judgment against Favre and/or Favre Enterprises, Inc., for at least \$437,000.00 in unpaid principal, along with statutory interest which currently amounts to at least \$292,790.00, and all other relief set forth below.

#### COUNT X - MISSISSIPPI UNIFORM FRAUDULENT TRANSFER ACT

262. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

263. The Counter-Plaintiff has claims as defined by Miss. Code §15-3-101(c) against MCEC, including but not limited to the claims for those unlawful transfers totaling \$1.1 Million made to Favre and Favre's business. Those transfers breached contracts, violated state law and regulations and federal law and regulations and were part of a scheme by, at least New, Zach New and Davis to defraud the State of Mississippi.

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<sup>14</sup> This demand had inadvertently incorrectly calculated the amounts then due from Favre and/or Favre's business.



264. The Counter-Plaintiff is a creditor of MCEC as defined by Miss. Code §15-3-101(d).

265. On the dates and at the times of those unlawful transfers totaling \$1.1 Million made to Favre and Favre's business, MCEC was insolvent.

266. No value was given by Favre and Favre's business on the dates and at the times of those unlawful transfers totaling \$1.1 Million were made to Favre and Favre's business, as required by Miss. Code §15-3-105.

267. This creditor's claims against MCEC arose as early the first quarter of 2017 and predate the transfers to Favre and Favre's business.

268. MCEC made the transfers, in part, with actual intent to hinder, delay or defraud any creditor of the debtor as described in Miss. Code §15-3-107.

269. MCEC made a transfer to Favre and/or Favre's business in December 2017 without receiving a reasonably equivalent value in exchange for the transfer or obligation.

270. MCEC made a transfer, within the meaning of Miss. Code §15-3-109, to Favre and/or Favre's business in December 2017 while insolvent.

271. In December 2017, MCEC was engaged a business or a transaction or transactions for which the remaining assets of MCEC were unreasonably small in relation to the business or transactions.

272. In September 2017, MCEC had entered into a contract under which it was bound to provide up to \$21,006,065.00 in services to qualified poor people and related administrative services and was obligated to pay for such services and administrative cost up front and seek reimbursement or to seek a cash advance limited to sixty (60) days of cash needs approved after full disclosures to Funding Division of the Mississippi Department of Human Services ("MDHS"), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS.

273. Moreover MCEC had breached and defrauded MDHS with regard to the SubGrant Agreements covering the previous fiscal year such that MCEC's liability exceeded already its assets.

274. Alternatively in December 2017, MCEC believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

275. The facts set forth above about the December 2017, transfer, are equally true for the transfer to Favre and Favre business made in June of 2018.

276. Counter-Plaintiff is entitled to a judgment providing for the avoidance of the transfers of \$1.1 Million to the extent necessary to satisfy the Counter-Plaintiff's \$1.1 Million claim against MCEC; an attachment or other provisional remedy against the \$1.1 Million transferred or other property of the Favre or Favre's business.

277. Counter-Plaintiff is entitled to an injunction against further disposition by the Favre or Favre's business, of the \$1.1 Million transferred or of other property of the Favre or Favre's business; or any other relief the circumstances may require.

#### COUNT XI - FRAUD

278. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

279. On July 29, 2017, Favre offered to donate or gift the recording of a public service announcement to "help" Nancy New ("New").

280. In the coming days and months after this "quick and easy" donative gesture was made, it was abandoned, casted aside and replaced with a fraudulent scheme to obtain money from the State of Mississippi.

281. Between July 2017 and November 6, 2019,<sup>15</sup> within this judicial district and Forrest, Lamar and Harrison Counties, the Plaintiff engaged in a fraudulent scheme with

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<sup>15</sup> This is the date Nancy New signed documents closing out the TANF Fund Subgrant for fiscal year 2018 (July 1, 2017 - September 30, 2018).

Nancy New (“New”), Culumber and John Davis (“Davis”) to obtain \$1.1 Million in restricted grant funds from the State of Mississippi.

282. During this time period and at these places, Favre, New, and Davis each knew the restricted funds could not be used for construction of buildings.

283. During this time period and at these places, Favre, New, and Davis each knew the restricted funds were state funds and were to be directed at the meeting the needs of that economic class of people who need state shelters, state schools or state homes.

284. During this time period and at these places, Favre, New, Culumber and Davis each knew the restricted funds could not be used for gifts or transfers in which no value was exchanged or in exchange for vague and uncertain promises as to future events.

285. During this time period and at these places, Culumber acted as the authorized agent and representative of Favre and Favre’s business possessing both apparent and actual authority to act and speak on behalf of Favre and Favre’s business.

286. During this time period and at these places, New acted as the authorized agent and representative of Favre and Favre’s business possessing both apparent and actual authority to act and speak on behalf of Favre and Favre’s business in making representations to government officials or concealing information in furtherance of the fraudulent scheme and obtaining government funds which Favre and New could expend as they wished.

287. During this time period and at these places, Favre, New, and Davis agreed to launder said restricted grant funds through Favre or Favre’s business and then cause the restricted grant funds to be used for the forbidden purpose of construction of a building or buildings or to be pocketed by Favre. This laundering was carried out in total secrecy at Favre’s insistence or under the false guise of a spokesperson role for a state funded entity which was supposed to be serving the poor.

288. During this time period and at these places, Favre repeatedly took affirmative actions which were designed or intended to prevent and which did prevent, the discovery of the material facts giving rise to this fraud claim and defense. These actions include —at these times and places— repeatedly insisting on secrecy as to the transfers, the source of funds and any relationship between Favre and the poor and needy and the institutions by which the state served the poor and needy.

289. At these times and places, Favre was under the legal duty —whether he knew it or not— to disclose these material facts — or refrain from insisting that his agent New not disclose these material facts— to the Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS and gain necessary written approvals.

290. Favre knew, should have know or was at least on notice to inquire with the State about the other restrictions on the funds which New and Davis seemed to be handing out like candy.

291. In furtherance of the fraudulent scheme, \$1.1 Million —almost 4% of total grant funds<sup>16</sup> which were supposed to be benefiting poor children and their families and which were made available to the entity controlled by New and Davis— was transferred to Favre’s control or possession without any corresponding exchange of value.

292. Favre, New and Davis further agreed that if a separate scheme to divert \$4 Millions in restricts funds was rejected by those leery of and concerned about legality and propriety then the laundering operation through Favre would just be increased.

293. Favre himself described the first \$500,000.00 transfer from New and Davis as a gift from Santa.

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<sup>16</sup> Control over \$10,797,226.23 was provided to New under Subgrant Agreements for FY 2017, i.e., 4.63%. Control over \$18,437,792.29 was provided to New under Subgrant Agreement No. 6012990 for FY 2018, i.e., 3.25%.

294. At all relevant times and at these places, Favre, New and Davis concealed from the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers that Favre was receiving state funds, and had done nothing of value in exchange for the transfer of \$1.1 Million.

295. At all relevant times and at these places, Favre, New and Davis concealed from the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers the exorbitant, unreasonable, and illegal amounts which Favre received for doing nothing.

296. The Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers had the right to expect that New and Favre would disclose their transactions through a pre-approval process.

297. New and Davis were under a duty not to expend funds or to have New return to MDHS funds not spent in compliance with her approved budget, purchasing regulations and compliance with the other restrictions of federal and state law, federal and state regulations and applicable contract documents.

298. Favre was under the duty to not accept transfers of restricted state funds when he had done nothing to earn such funds. Favre was under the duty to not accept transfers of restricted state funds when the restrictions which he knew or should have known were violated, including but not limited to those laws, regulations and restrictions applicable to contractors or subcontractors of a subgrantee of MDHS.

299. Ignorance of the law is no excuse.

300. Instead, Favre demanded secrecy which defeated all of the safeguards which the Funding Division of MDHS, and the MDHS Funding Division Director and other MDHS Fiscal and Integrity Officers could bring to bear, and MDHS, and very poor children and families, were damaged thereby.

301. Between July 9, 2019 and February 9, 2023, within this judicial district and Forrest, Lamar and Harrison Counties, the Plaintiff engaged in a fraudulent scheme with New and Culumber to conceal and cover-up the fraudulent scheme by which Favre gained possession or control of \$1.1 Million in restricted grant funds from the State of Mississippi.

302. During this time period and at these places, Culumber acted as the authorized agent and representative of Favre and Favre's business possessing both apparent and actual authority to act on behalf of Favre and Favre's business.

303. On or about July 9, 2019, the State Auditor directed the the Financial and Compliance Audit Division of the Mississippi Department of Audit —also known as the Office of the State Auditor (“OSA”)— to conduct a single audit of MDHS for Fiscal Year 2019 (July 1, 2018, to September 30, 2019), with a particular focus on funds obtained from MDHS by New and the entity New controlled named Mississippi Community Education Center (“MCEC”).<sup>17</sup> Another Division within OSA also sprang to action.

304. On July 18, 2019, in the places described above, Favre —while trying to lay his hands on even more state money— falsely told then Governor Phil Bryant that Favre had “been involved in several of Nancy's families first activities.”

305. Favre —knowing he had done “little” or nothing— made this false statement mere seconds after New had basically informed Favre that the most he had done was an announcement and that he was present —apparently accidentally and with no coordination— at some events where New's organization also had “activities.” New gave no indication to Favre that he had engaged in such activities. That same day, New told Favre: “We have the necessary paperwork on file and I worked with your accountant on anything [sic]. Actually, it is ok and perfectly legal had I paid you.”

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<sup>17</sup> It was later learned that New claims that MCEC fell under the controlled by Davis through his role as Executive Director of MDHS.

306. On September 1, 2019, Favre asked New “Did you speak to Bobby?”

307. During the course of the single audit and relate inquires, OSA requested MCEC provide all documents concerning any financial arrange with Favre or Favre’s business. OSA obtained or secured a document from MCEC signed by New and bearing the purported signature of Culumber.

308. The records of MCEC also included a documents entitled “Scope of Work to be Performed” which outlined Favre being an active spokesperson and to be engaged in a wide range of duties.

309. The records of MCEC also included a draft email to Favre and Culumber which outlined Favre being an active spokesperson and to be engaged in a wide range of duties and a document with a list of dates for activities for Favre to attend in 2017 and 2018.

310. That was it. No other written documents of a contractual nature concerning Favre were provided by MCEC. No other written documents of a contractual nature concerning Favre were found by OSA personal.

311. Neither Favre, New, Davis, nor Culumber have produced any documents which support Favre’s claims to the \$1.1 Million for a single recordings of a 57 word script. Not a single document.

312. Having these few documents in hand, Stephanie C. Palmertree, CPA, CGMA, then Director, Financial and Compliance Audit Division (“Palmertree”), made official contact and spoke with Culumber concerning the transactions in December 2017 and June 2018.

313. On or about November 8, 2019, Culumber, acting as an authorized representative of both Favre and Favre’s business with both real and apparent authority, represented to Palmertree that Favre was paid by MCEC for “speaking engagements and

events which Favre attended.”

314. When Palmertree emailed Culumber that same day, and asked him “to confirm our phone call, Mr. Favre was paid by MCEC for speaking engagements, and events that he attended” and verify that Culumber had in fact signed the document appearing above, Culumber responded:

All is good. Have a great weekend! It’s going to be cold!

315. Taking the care necessary to make sure these matters were clear, Palmertree emailed Culumber again asking “[s]orry to be such a pest, but I need you to confirm yes or no that it’s your signature so I can move on to the next grantee.”

316. On November 8, 2019, Culumber emailed Director Palmertree and stated: “yes.”

317. In February 2020, Nancy New, Zachary New and John Davis were arrested for defrauding MDHS.

318. In May, 2020, Favre wrote to New, “I want to stick it to them so bad. Your a good person Nancy and you have to dig in!! We have to get our reputation[s] back.”

319. In May, 2020, Favre and New started trying to get their stories straight about what was done and paid.

320. On May 7, 2020, Favre —with full knowledge of his acts and omissions— caused a \$500,000.00 check to be delivered to a Special Agent of OSA.

321. At the same time Favre represented to the State of Mississippi that he accepted responsibility and would not contest his liability and would he would pay all he owed to the State in the “coming months.”

322. Favre’s promise to pay in the “coming months” was false. Favre knew the falsity or was ignorance of its truth.

323. Favre intended that it should be acted on by hearer.



324. It now appears clear that his vow to “stick them” involved over a year delay in making any partial payment and the claim of entitlement to an interest free loan of taxpayer money, especially money intended for benefit the poor.

325. Favre’s representations concerning accepted responsibility and would not contest his liability and would he would pay all he owed to the State in the “coming months” were materiality, and the hearer of his representations were ignorant of the falsity.

326. The State of Mississippi reliance on its truth and had a his right to rely thereon.

327. The State of Mississippi temporally forbore in collection from Favre and as the result of his fraudulent statement suffered consequent and proximate injury.

328. A short time latter, Favre told ESPN Wisconsin’s “Wilde & Tausch” radio show was he was just being paid for his role in radio public service announcements and advertisements that ran for a few years in Mississippi.

329. “I did ads that ran for three years, was paid for it, no different than any other time that I’ve done endorsements for other people, and I went about my way,” Favre said. Favre reportedly “emphasized Friday the money had nothing to do with scheduled speaking engagements.”

330. This statement and statements like it are, and were, intended by Favre to cover up the true facts and particularly his involvement in the fraudulent scheme set forth above.

331. It is impossible to reconcile Favre’s statement that he did multiple “ads” when he recorded a single 57 word script. Moreover, Favre recorded the single 57 word script on August 13, 2018. When he claimed in May 2020 “ads ... ran for three years” less than three (3) years had passed since the recording.

332. It is impossible to reconcile Favre's May 2020 claim that all he was required to do was record a single 57 word script, with his statement in July 2017, that he "could record a few radio spots."

333. It is impossible to reconcile Favre's statements in May 2020, with his July 18, 2019 statement to then Governor Phil Bryant, that Favre had "been involved in several of Nancy's families first activities."

334. It is impossible to reconcile Favre's statements in May 2020, with the statements of his authorized representative that Favre was paid for "speaking engagements and events" which he actually attended.

335. It is impossible to reconcile Favre's statements in May 2020 with the numerous text messages of New to Favre where New stated: "just a few things here and there spread out, will be plenty"; "let's get our calendars together on a few activities"; "in the next few days could I send you a draft proposal to do a couple of psa's, etc. for Families First"; "if you get a chance let John know you will do things to help me promote Families First. I have just been waiting to get with you. Actually. I am saving you for a few special times"; "If you have a few minutes to spare to speak to 7th-12th graders and some community college students that will be great"; and "Zach has developed a list of a few big things that we were going to ask you to appear this year [2019]."

336. On May 14, 2020, New summed it up by telling Favre "Stick to you doing the work. That's enough because they will twist anything else we say. Anything.... Anyway, you are definitely right to say you did the work, but best not to say too much more as it definitely will be twisted." To which Favre replied: "Ok."

337. On October 12, 2021, the State Auditor issued demand letters to Favre, Favre's business and Culumber for principal and interest.

338. On October 25, 2021, Favre —with full knowledge of his acts and omissions

— caused a \$600,000.00 check to be delivered to OSA.

339. On November 10, 2021, Culumber caused a letter to be sent to the State Auditor representing that Culumber had done nothing for Favre and Favre’s business other than prepare tax returns and act as the agent for service of process for Favre’s business. The letter demanded retractions and implied legal action would be taken personally against the State Auditor.

340. These representations cannot be reconciled with Culumber’s interactions with Palmertree and Favre’s communications with New.

341. No retraction or apology was given and Culumber went silent.

342. On April 22, 2022, Nancy New and Zachary New pleaded guilty to defrauding MDHS. Their guilty pleas reflect bribes and fraud starting as early the first quarter of 2017.

343. On September 26, 2022, Davis pleaded guilty to conspiring with New to defraud MDHS and to, with New, defrauding MDHS.

344. On February 6, 2023, counsel for Favre —instead of sending Favre’s check to make whole MDHS and its program to help the poorest of the poor— sent the Defendant a letter demanding that he retract and apologize to Favre for alleged defamatory statements and threatening vindication and the imposition of “substantial damages.”

345. On February 9, 2023, counsel for Favre —instead of sending Favre’s check to make whole MDHS and its program to help the poorest of the poor— filed as lawsuit seeking money from the Defendant.

346. Favre had failed and refused to pay the funds demanded of him. His Fraudulent Scheme to cover up the true material facts has caused, and continues to cause, damage to the State of Mississippi, and very poor children and families which MDHS serves.

347. The fraud committed by Favre is also borne by Favre Enterprises Inc., as the former is vicarious liable for torts committed by Favre within the scope of employment or agency.

348. Favre, Favre Enterprises, Inc., and Culumber acted intentionally, in bad faith, and were willful or grossly negligent.

349. This willful, reckless or grossly negligent conduct by Favre and Favre Enterprises, Inc., and Culumber was attended by such malice, insult, and abuse that it constitutes an independent tort by Favre, Favre Enterprises, Inc., and Culumber thus entitling the Counter-Plaintiff to recover punitive damages and/or extra-contractual damages from Favre and Favre Enterprises, Inc., as well as the actual damages and other relief.

#### COUNT XII - NEGLIGENCE

350. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

351. At all time relevant hereto, Favre knew that the funds transferred to Favre and/or Favre's business by New or MCEC were "state funds."

352. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were "state funds."

353. At all time relevant hereto, Favre knew that expenditures of "state funds" could not be kept secret or confidential.

354. At all time relevant hereto, Favre should have known that expenditures of "state funds" could not be kept secret or confidential.

355. In fact a reasonable person exercising ordinary prudence in the same or similar circumstances using ordinary care would take a willingness to keep such matters secret or conditional as a serious red flag warning against such a transaction with the

failure to decline such a transaction or the failure to make further inquiries of a reliable source being negligent.

356. At all time relevant hereto, Favre knew that the funds transferred to Favre and/or Favre's business by New or MCEC were funds which had the State of Mississippi as the source.

357. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were funds which had the State of Mississippi as the source.

358. At all time relevant hereto, Favre knew that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds.

359. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds.

360. At all time relevant hereto, Favre knew that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spend on construction of buildings.

361. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spend on construction of buildings.

362. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spent on advertisement and public relations.

363. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spent contrary to federal law and regulations.

364. At all time relevant hereto, Favre should have known that the funds

transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spent contrary to state law and regulations.

365. At all time relevant hereto, Favre should have known that the funds transferred to Favre and/or Favre's business by New or MCEC were restricted funds which could not be spent contrary to the contractual agreements by which New gained control over such funds.

366. At all time relevant hereto, Favre knew that he and New agreed and intended for New to control how Favre or Favre's business spent the \$1.1 Million he received.

367. A reasonable person exercising ordinary prudence in the same or similar circumstances using ordinary care would take a person's insistence at controlling allegedly earned funds of another person as a serious red flag warning against such a transaction with the failure to decline such a transaction or the failure to make further inquiries of a reliable source being negligent.

368. At all time relevant hereto, Favre knew that he and New agree and intended for New to control how the \$1.1 Million he received even after he transferred the money to someone else.

369. A reasonable person exercising ordinary prudence in the same or similar circumstances using ordinary care would take a person's insistence at controlling allegedly earned funds of another person after the former transferred the funds to yet another person as a serious red flag warning against such a transaction with the failure to decline such a transaction or the failure to make further inquiries of a reliable source being negligent.

370. At all time relevant hereto, Favre should have known that funds which could not be used for construction could not be laundered through a possible personal service contract where each party knew for a fact that the possible personal service contract only

would exist as a vehicle to launder funds which they each wanted to the money to go to construction and be spent on such construction only in ways which they wished.

371. A reasonable person exercising ordinary prudence in the same or similar circumstances using ordinary care would take such a laundering scheme as a serious red flag warning against such a transaction with the failure to decline such a transaction or the failure to make further inquires of a reliable source being negligent.

372. At all time relevant hereto, Favre knew that expenditures involving these restricted funds required due diligence by the recipient of such funds and consultation with independent expert advisers.

373. A reasonable person exercising ordinary prudence in the same or similar circumstances using ordinary care would in advance of accepting restricted decline such a transaction until the completion of further inquires of and consultations with a reliable source or sources being negligent.

374. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care did not take the word of New that an expenditure involving these restricted funds was proper and instead further inquiry and consultations were necessary with the failure to do so being negligent.

375. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care did not take the word of Davis that an expenditure involving these restrict funds was proper and instead further inquiry and consultations were necessary.

376. In fact Favre had witnessed the fact that careful, prudent and reasonable people using ordinary care did not take the word of New or Davis that an expenditure involving these restrict funds was proper and instead further inquiry and consultations were necessary.

377. A reasonable person exercising ordinary prudence and care in the same or similar circumstances would in advance of accepting the opinions of New and/or Davis would decline such a transaction until the completion of further inquires of and consultations with a reliable source or sources. The failure to do so being negligent.

378. Favre had been told by New that they would need a written agreement. Receiving \$1.1 Million with no contract was negligent.

379. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care did not accept and retain \$500,000.00, received out of the blue, with no agreement as to what the money was for and when having done absolutely nothing to deserve a \$500,000.00 transfer. Receiving and retaining \$500,000.00 in such circumstance was negligent.

380. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care did not accept and retain \$600,000.00, received out of the blue, with no agreement as to what the money was for and when having done absolutely nothing to deserve a \$600,000.00 transfer. Receiving and retaining \$600,000.00 in such circumstance was negligent.

381. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care would not retain any part of money which they had received from persons arrested for criminal fraud and bribery and instead had a duty to seek out the victim/rightful owner or their representative and return all of the money received and any interest which has been accrued or obtained. Retaining and failing to promptly deliver to any part of such money and interest to the victim/rightful owner in such circumstance is negligent.

382. At all time relevant hereto, Favre knew that careful, prudent and reasonable people using ordinary care would not retain any part of money which they had received



from persons convicted for criminal fraud and bribery and instead had a duty to seek out the victim/rightful owner or their representative and return all of the money received and any interest which has been accrued or obtained. Retaining and failing to promptly deliver to any part of such money and interest to the victim/rightful owner in such circumstance is negligent.

383. Favre either knew or by the exercise of reasonable care or should have known of the wrongful nature of the deliver by New of \$1.1 Million to his possession or control and the wrongful nature of a plan to attempt to convert restricted funds and apply such funds to construction expenses and should have objected and taken steps to prevent it.

384. Favre's failure to know wrongful nature of the delivery by New of \$1.1 Million to his possession or control and the wrongful nature of a plan to attempt to convert restricted funds and apply such funds to construction expenses was negligent. A careful, prudent and reasonable people using ordinary care would have known.

385. Favre's failure to object to the delivery by New of \$1.1 Million to his possession or control and failure to object a plan to attempt to convert restricted funds and apply such funds to construction expenses was negligent. A careful, prudent and reasonable people using ordinary care would have objected.

386. Favre's failure to take steps to stop the delivery by New of \$1.1 Million to his possession or control and failure to stop the plan to attempt to convert restricted funds and apply such funds to construction expenses was negligent. A careful, prudent and reasonable people using ordinary care would have stopped it.

387. The State of Mississippi suffered, and continues to suffer, damages as a direct and proximate result of the negligence of Favre as described in the forgoing paragraphs of this Count.

388. At all time relevant hereto, Favre authorized New to act on his behalf in

dealing with official of the State of Mississippi concerning expenditures of restricted state funds.

389. While acting on behalf of Favre, New omitted to inform the Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS that she was, or had, delivered state money to Favre.

390. At the same time, Favre insisted on secrecy concerning as to the transfers, the source of funds and any relationship, real or contrived, between Favre and the poor and needy and the institutions by which the state served the poor and needy. In absence of his insistence of secrecy concerning the transfers and source and relationship, real or contrived, Favre could have easily identified that he needed to disclose information to Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS.

391. These omissions were material and significant.

392. Favre failed to exercise that degree of diligence and expertise the public was entitled to expect of him.

393. The Funding Division of the Mississippi Department of Human Services (“MDHS”), and in particular to the MDHS Funding Division Director, various Fiscal and Integrity Officers at MDHS reasonably relied upon Favre or his agent New to disclose the proposed or completed transactions with Favre or Favre’s business.

394. The State of Mississippi suffered damages as a direct and proximate result of its reasonable reliance upon the omissions of Favre or his agent New.

395. In May 2020, Favre made representations that he took full responsibility for his receipt of \$1.1 Million from New, that he did not, and would not, contest his

responsibility and that he would pay all funds due from him within a “couple of months.”

396. In May 2020, Favre omitted to disclose that he intended to delay for more than a couple of months and that he would not take full responsibility for his receipt of \$1.1 Million from New, that he would not contest his responsibility.

397. These representations and omissions were material and significant.

398. Favre failed to exercise that degree of diligence and expertise the public was entitled to expect of him.

399. The State of Mississippi reasonably relied Favre to fully disclose his intent and reasonably relied on Favre’s representations.

400. The State of Mississippi suffered damages as a direct and proximate result of its reasonable reliance upon Favre’s representations and omissions.

401. During the relevant time period and at the places indicated, Culumber acted as the authorized agent and representative of Favre and Favre’s business possessing both apparent and actual authority to act on behalf of Favre and Favre’s business.

402. On or about November 8, 2019, Culumber, acting as an authorized representative of both Favre and Favre’s business with both real and apparent authority, represented to OSA’s Palmertree that Favre was paid by MCEC for “speaking engagements and events which Favre attended.”

403. Culumber failed to disclose and omitted the truth: there was no signed contract and Favre had failed to attend speaking engagements and events.

404. Later Culumber claimed that he had done nothing but prepare tax returns and act as an agent for service of process.

405. Favre for his part represented that he was only obligated to record a 57 word script and speaking engagements and events were alien to any agreement he had with New.

406. These representations and omissions were material and significant.

407. Favre and Culumber failed to exercise that degree of diligence and expertise the public was entitled to expect of him.

408. The State of Mississippi reasonably relied Favre and Culumber to fully disclose the truth and make no omissions. For a time the State of Mississippi reasonably relied on Favre's and Culumber's representations and claimed absence omissions.

409. The State of Mississippi suffered damages as a direct and proximate result of its reasonable reliance upon Favre's and Culumber's representations and claimed absence omissions.

410. The negligence of Favre is also borne by Favre Enterprises Inc., as the former is vicarious liable for torts committed by Favre within the scope of employment or agency.

411. Favre, Favre Enterprises, Inc., and Culumber acted intentionally, in bad faith, and were willful or grossly negligent.

412. This willful, reckless or grossly negligent conduct by Favre and Favre Enterprises, Inc., and Culumber was attended by such malice, insult, and abuse that it constitutes an independent tort by Favre, Favre Enterprises, Inc., and Culumber thus entitling the Counter-Plaintiff to recover punitive damages and/or extra-contractual damages from Favre and Favre Enterprises, Inc., as well as the actual damages and other relief.

#### COUNT XIII - CONSPIRACY/AID AND ABET

413. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

414. The Defendants combined for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully.

415. Generally the Defendants conspired and agreed with each other and New,

Davis to stick it to the officials who reacted appropriately to the criminal behavior of New and Davis and who reacted appropriately to the wrongful acts and omissions of Favre. This very lawsuit is an overt act undertaken to in further of the goals of this conspiracy.

416. Generally the Defendants conspired and agreed with each other and New, Davis and others to attempt to violate and to violate the following provisions of law and binding legal agreements or cover up and conceal violations of the following provisions of law and binding legal agreements:

416.1. Miss. Const., Art. 4, §66, §96 and §100;

416.2. Miss. Code §31-7-57, §43-17-1, §43-1-27, and §§15-3-101 et seq.;

416.3. 2 CFR § 200.439; 2 CFR 200.421; 45 CFR 260.20; 2 CFR §200.319; 2 CFR §200.320; 2 CFR §200.53; 2 CFR §200.467; 2 CFR § 200.405; and, 2 CFR 200.465;

416.4. Applicable provisions of the Field Operations TANF Manual; MDHS Subgrant/Agreement Manual – (Revised 11/2/2016); 18 MS ADC Pt. 8, §§4 -8; and,

416.5. The Subgrant Agreements and related contractual documents signed by New.

277. The Defendants conspired and agreed with each other and New, Davis and others to attempt to wrongfully obtain and to wrongfully possess and retain \$1.1 Million to which none of the Defendants had any valid legal right or claim.

278. The Defendants conspired and agreed with each other and New, Davis and others to attempt to wrongfully convert or direct the funds of the State of Mississippi to illegally accomplish the personal desires of Favre and New, to enrich Favre and ton enhance their social standing and respect in a discreet community; to further the wrongful

conversions of funds and acts of criminal and non-criminal fraud by New and Davis; and to accomplish these wrongful acts.

279. The Defendants conspired and agreed with each other and New, Davis and others to attempt to wrongfully attempt to commit and to commit fraud as described herein.

280. The overt acts taken in the course of the fraud and related conspiracy to commit fraud are set forth in detail above and are incorporated here by reference.

281. The Defendants conspired and agreed with each other and New, Davis and others to attempt to wrongfully defeat the claims and attempts of the Counter-Plaintiff to recover all of the \$1.1 Million plus interest from the Defendants. The Defendants have overtly acted to conceal the truth, omit significant and material facts and cover up their wrongful acts and omissions.

282. New and Davis were in control of MCEC.

417. Favre was in control of Favre's business.

418. During the time period of the events described in this Counterclaim, Favre and Culumber have overtly participated in the tortious acts of each other and Favre's business as described herein, or has authorized or directed Favre's business, or has acted in his own behalf, or has knowledge of, or given any consent to, the act or transaction, or has acquiesced in it when he either knew or by the exercise of reasonable care or should have known of it and should have objected and taken steps to prevent it.

419. Favre and Culumber, at all pertinent times, had knowledge, or reasonably should have had knowledge, of the statutory and regulatory duties, contractual duties and common law duties owed by MCEC, New, Favre and Davis.

420. Favre and Culumber, at all pertinent times, overtly provided substantial assistance or encouragement to MCEC, New, Favre and Davis that allowed the breach of

duties owed to the State.

421. Favre and Culumber did these tortious acts in concert with each other and MCEC and Favre's Business pursuant to a common design.

422. Favre and Culumber gave substantial assistance to MCEC and Favre's Business and accomplishing these tortious results and their own individual conduct, separately considered, constitutes a breach of duty to the State.

423. Additional in furtherance of the conspiracy, New overtly caused \$1.1 Million in state funds, also being restricted funds, to be delivered to the possession or control of Favre.

424. Thereafter Favre and New overtly took actions to make sure these funds were either expended on construction—which they both knew was prohibited—or were used to reduce Favre's personal debt or obligations incurred in relations to construction.

425. During the time period of the events described in this Counterclaim, the Defendants have participated in the tortious acts of each other and New and Davis, or have authorized or directed it, or have acted in his own behalf, or has knowledge of, or given any consent to, the act or transaction, or has acquiesced in it when he either knew or by the exercise of reasonable care or should have known of it and should have objected and taken steps to prevent it.

426. The State of Mississippi has suffered damaged, and continues to suffer damages as the result of proximate result of the conspiracy and aid and abetting by the Defendants.

427. This willful, reckless or grossly negligent conduct by the Defendants was attended by such malice, insult, and abuse that it constitutes an independent tort, thus entitling the State recover punitive damages and/or extra-contractual damages as well as the actual damages and other relief.

COUNT XIV - DECLARATORY JUDGMENT

428. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

429. Counter-Plaintiff is entitled to a declaratory judgment pursuant to Rule 57 of the Mississippi Rules of Civil Procedure.

430. The judgment sought will terminate any controversy or remove any uncertainty. MRCP 57(b)(4).

431. The rights, status, or other legal relations of the Counter-Plaintiff are affected by a statutes, instruments, or contracts and he may have determined any question of construction or validity arising under the instrument, statute, or contract and obtain a declaration of rights, status or other legal relations thereunder. MRCP 57(b)(1).

432. Favre in his dealings with New and Davis never represented himself as solely acting as a representative on behalf of Favre Enterprises, Inc.

433. For example Favre exclusively used, and has exclusively continued to use, the word "I" in his dealings with New and Davis, communications with the public and communications with the State of Mississippi.

434. Favre has disregarded the corporate structure.

435. Favre limited the role of Favre Enterprises, Inc., to that of conduit merely taking funds in and sending funds out.

436. At all times relevant hereto, Favre Enterprises, Inc., was merely the alter ego of Brett Favre and should be ignored and disregarded as an entity separate from Brett Favre.

437. Maintaining the fiction of a separate corporate existence would sanction a fraud or promote injustice or subvert the ends of justice.

438. Alternatively Favre Enterprises, Inc., was a sham or was used in fraud or



equivalent malfeasance.

439. Favre has abused of the corporate form itself.

440. The acts and omissions of Favre described herein present extraordinary factual circumstances where to recognize a corporate veil between Favre Enterprises, Inc., and Favre would be to subvert the ends of justice.

441. The Counter-Plaintiff is entitled to a declaratory judgment that Favre Enterprises, Inc., is the alter ego of Favre and Favre Enterprises, Inc., should be disregarded for purposes of this action and the recovery of damages.

442. At all time relevant hereto New and Davis controlled MCEC.

443. The criminal and fraudulent conduct of New and Davis demands that MCEC be disregarded as an entity separate from either New or Davis. Favre has disregarded the corporate structure.

444. At all times relevant hereto, MCEC, was merely the alter ego of New and Davis and should be ignored and disregarded as an entity separate from New and Davis.

445. Maintaining the fiction of a separate corporate existence of MCEC would sanction a fraud or promote injustice or subvert the ends of justice.

446. Alternatively MCEC was a sham or was used in fraud or equivalent malfeasance.

447. Davis and New have abused of the corporate form itself.

448. The acts and omissions of New and Davis described herein present extraordinary factual circumstances where to recognize a corporate veil between New and Davis would be to subvert the ends of justice.

449. Favre has not indicated that he will seek to hide behind the corporate form of the MCEC criminal enterprise and seek any advantage or benefit from the corporate form of the MCEC criminal enterprise.

450. It would be unjust and inequitable for Favre to hide behind the corporate form of the MCEC criminal enterprise

451. It would be unjust and inequitable for Favre to seek any advantage or benefit from or defense based upon the corporate form of the MCEC criminal enterprise.

452. As such MCEC should be viewed as a fraudulent conduit by which Davis — a public official— transferred \$1.1 Million in public funds to Favre or Favre’s business.

453. In sum the \$1.1 Million placed in the hands of Favre or Favre’s business were the public funds of the State of Mississippi.

454. Alternatively, that the funds in the \$1.1 Million placed in the hands of Favre or Favre’s business were the public funds of the State of Mississippi placed in trust with New and at no time lost the nature or character of the public funds of the State of Mississippi, i. e., remained the public funds of the State of Mississippi.

455. The Counter-Plaintiff is entitled to a declaratory judgment that the \$1.1 Million placed in the hands of Favre or Favre’s business were the public funds of the State of Mississippi.

#### COUNT XV - COSTS OF SERVICES

456. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

457. Miss. Code Ann. §7-7-213(2) provides that the “cost of any service by the department not required of it under the provisions of the cited sections but made necessary by the willful fault or negligence of an officer or employee of any public office of the state shall be recovered ... (ii) from the individual, partnership, corporation or association involved, in the same manner and under the same terms, when necessary, as provided the department for recovering public funds in Section 7-7-211.”

458. Davis committed willful fault or negligence which made necessary the services

of an investigation by OSA.

459. These services —these investigation fees exceed \$30,000.00, were not services required to be provided by the cited sections.

460. Favre, Favre's business and Culumber were involved in Davis' willful fault or negligence and therefore are liable to OSA for these cost.

#### COUNT XVI - ON GOING COST

461. Counter-Plaintiff incorporates and reasserts herein the averments contained in the foregoing paragraphs of this Counterclaim.

462. As the result of the acts and omissions of Favre, the State of Mississippi has incurred and continues to incur ongoing expenses for the operation, maintenance, and other related cost and expense related to a building which would not exist save for the malfeasance of Favre.

463. The State of Mississippi is entitled to recover in this action all past expenses and the present value of all future expenses

#### PRAYER FOR RELIEF

Accordingly the State Auditor Shad White, in his official capacity, prays for:

A. a judgment against Brett Favre and Favre Enterprises, Inc., jointly and individually, in the principal amount of \$437,000.00, along with statutory interest which currently amounts to at least \$292,790.00, plus investigation fees of the State Auditor of OSA, reasonable attorneys' fees and all expenses and costs, prejudgment and post-judgment interest on such award as allowed by law and until paid in full, and such other and further relief, both general and special, to which the State may be entitled or as may be just and proper;

B. a judgment against Brett Favre and Favre Enterprises, Inc., jointly and

individually, providing for the avoidance of the transfers of \$1.1 Million to the extent necessary to satisfy the Counter-Plaintiff's \$1.1 Million claim against MCEC; an attachment or other provisional remedy against the \$1.1 Million transferred or other property of the Favre or Favre's business; an injunction against further disposition by the Favre or Favre's business, of the \$1.1 Million transferred or of other property of the Favre or Favre's business; or any other relief the circumstances may require including a ward of investigation fees of the State Auditor of OSA, reasonable attorneys' fees and all expenses and costs, prejudgment and post-judgment interest on such award as allowed by law and until paid in full, and such other and further relief, both general and special, to which the State may be entitled or as may be just and proper; and,

C. a judgement against Brett Favre, Favre Enterprises, Inc., and Robert L. Culumber jointly and individually, for actual, compensatory, consequential, extra-contractual, incidental and punitive damages in an amount to be decided by the Court directly or through a jury; reasonable attorneys' fees and all expenses and costs, post-judgment interest on such award as allowed by law and until paid in full, and such other and further relief, both general and special, to which the State may be entitled or as may be just and proper.

D. a judgement against Brett Favre for all past expenses and the present value of all future expenses related to the expenses for the operation, maintenance, and other related cost and expense related to a building which would not exist save for the malfeasance of Favre in an amount to be decided by the Court directly or through a jury; reasonable attorneys' fees and all expenses and costs, post-judgment interest on such award as allowed by law and until paid in full, and such other and further relief, both general and special, to which the State may be entitled or as may be just and proper.

Dated: February 5, 2024.

Respectfully submitted.

Respectfully submitted,

STATE AUDITOR SHAD WHITE  
IN HIS OFFICIAL CAPACITY

BY: s/ James A. Bobo  
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Counsel For The State Auditor Shad White

#### JOINDER

I, Shad White, join in, adopt and assert, this Answer with its Affirmative Defenses and in the Counterclaim, in all of my capacities both personal and official.

Dated: February 5, 2024.

s/ Shad White  
Shad White

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system, which sent notification to all counsel of record.

s/ James A. Bobo  
James A. Bobo