

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

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

Plaintiff,

v.

THE UPS STORE, INC.; HERRING
VENTURES, LLC d/b/a THE UPS STORE;
AUSTIN ELSER; TAMMIE ELSER;
COURTNEY HERRING; DIANE LOFTON;
CHANDLER WESTOVER; RAWLINGS &
MACINNIS, PA; TAMMY VINSON; and
JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-364-CWR-FKB

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

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

MOTION FOR PROTECTIVE ORDER

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, respectfully asks that the Court enter the Receiver’s proposed protective order [Exhibit A]. In support, she states as follows:

1.

The Court has broad discretion to enter a protective order, and there is good cause to enter the proposed protective order. The proposed protective order is intended to facilitate the exchange of information in this case and at the same time protect victims’ names and identifying information from public disclosure.

2.

The proposed protective order provides that victims' names and identifying information should be treated as confidential and, accordingly, redacted from any filings:

Investors' names and identifying information are hereby designated as Confidential Information. No separate designation is required. The Parties and any party who may appear in this lawsuit, shall redact investors' names and identifying information from any pleadings, exhibits, or other documents they might file in the Court's record. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

3.

The Receiver has attempted to negotiate a protective order that both protects victims' privacy and satisfies the defendants' own interests. The defendants, however, do not agree to the entry of the Receiver's proposed protective order. The defendants refuse to agree to treat victims' names and identifying information as confidential.¹

4.

Protecting victims' privacy is important to the Receiver, for obvious reasons. Victims tell the Receiver that they fear being singled out. They believe public exposure will feel like a revictimization. Redaction is a small effort to avoid making a victim feel like a victim twice.

5.

The Receiver does not know why it matters to the defendants that they be able to publish victims' names and identifying information in their filings. Lawyers redact information that is

¹ Exhibit A is the protective order the Receiver proposed to the defendants and proposes here. After the Receiver circulated her proposed protective order, Defendant The UPS Store, Inc. circulated an alternative protective order. [Exhibit B] The Receiver did not object to any term of that alternative protective order, but it did not address victims' names and identifying information.

Seeking compromise, the Receiver merged the two protective orders [Exhibit C]. Defendant The UPS Store, Inc. refused to agree to the merged protective order because it refuses to agree to treat victims' names and identifying information as confidential.

private in nature from filings all the time. Redaction in no way limits a defendant's ability to defend against the Receiver's claims. If it ever does, it can be addressed at that time.

WHEREFORE, for the reasons stated in the accompanying memorandum, the Receiver respectfully requests that the Court enter the Receiver's proposed protective order [Exhibit A].

December 13, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

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Receiver's counsel

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: December 13, 2019

/s/ Kristen D. Amond

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
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Hon. Carlton W. Reeves, District Judge

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, respectfully submits this memorandum in support of her motion for protective order.

INTRODUCTION

In every lawsuit, the parties exchange information. Often, they are required to produce information that they consider private in nature. To facilitate the exchange of information, it is customary for the parties to agree to treat certain information as confidential. The parties typically submit their agreement to the court, for entry as a protective order.

In the course of this lawsuit the Receiver may be required to produce information that identifies or is personal to victims of the Madison Timber Ponzi scheme. The Receiver is sensitive to victims' privacy and thus far has protected their names and identifying information from public disclosure.

The Receiver proposed that the parties agree to the entry of a protective order, as is customary. The Receiver's proposed protective order would allow each party to designate as confidential information that they consider private in nature. It separately expressly provides that victims' names and identifying information should be treated as confidential and, accordingly, redacted from any filings:

Investors' names and identifying information are hereby designated as Confidential Information. No separate designation is required. The Parties and any party who may appear in this lawsuit, shall redact investors' names and identifying information from any pleadings, exhibits, or other documents they might file in the Court's record. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

The Receiver has attempted to negotiate a protective order that both protects victims' privacy and satisfies the defendants' own interests. The defendants, however, do not agree to the entry of the Receiver's proposed protective order. The defendants refuse to agree to treat victims' names and identifying information as confidential.¹

¹ Exhibit A is the protective order the Receiver proposed to the defendants and proposes here. After the Receiver circulated her proposed protective order, Defendant The UPS Store, Inc. circulated an alternative protective order. [Exhibit B] The Receiver did not object to any term of that alternative protective order, but it did not address victims' names and identifying information.

Seeking compromise, the Receiver merged the two protective orders [Exhibit C]. Defendant The UPS Store, Inc. refused to agree to the merged protective order because it refuses to agree to treat victims' names and identifying information as confidential.

Protecting victims' privacy is important to the Receiver, for obvious reasons. Victims tell the Receiver that they fear being singled out. They believe public exposure will feel like a revictimization. Redaction is a small effort to avoid making a victim feel like a victim twice.

The Receiver does not know why it matters to the defendants that they be able to publish victims' names and identifying information in their filings. Lawyers redact information that is private in nature from filings all the time. Redaction in no way limits a defendant's ability to defend against the Receiver's claims. If it ever does, it can be addressed at that time.

ARGUMENT

This Court has broad discretion to enter protective orders generally. Federal Rules of Civil Procedure Rule 26(c)(1) provides that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). Case law establishes that “[d]istrict courts have broad discretion in determining whether to grant a motion for a protective order.” *Palmer v. Sun Coast Contracting Servs., LLC*, No. 1:15-CV-34-HSO-JCG, 2017 WL 5653607, at *2 (S.D. Miss. Jan. 5, 2017) (quoting *In re LeBlanc*, 559 Fed. App'x 389, 392–93 (5th Cir. 2014)); see also *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (“The trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery.”).

There is good cause to enter an order that protects victims' names and identifying information from public disclosure. “Protective orders serve the vital function of ‘secur[ing] the just, speedy, and inexpensive determination of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant.” *S.E.C. v. Merrill Scott & Associates, Inc.*, 600 F.3d 1262, 1272 (10th Cir. 2010) (quoting *Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 295 (2d Cir. 1979)) (enforcing protective order to protect victim's information in a securities fraud

scheme). They are necessary in a case such as this to facilitate the exchange of information and at the same time protect victims' names and identifying information from public disclosure. *E.g.*, *In re for Wilson*, No. 8:12-CV-02078-JMC, 2017 WL 2536913, at *2 (D.S.C. June 12, 2017) (protective order, entered at receiver's request, addressed "very sensitive and confidential information related to the investigation and recoupment of assets for the victims of [a] Ponzi scheme"); *see also Zysman v. Zanett Inc.*, No. 13-cv-02813, 2014 WL 1320805, at *4 (N.D. Cal. Mar. 31, 2014) (allowing the production of names, addresses, and contact information of investors, who were victims of defendants' scheme, subject to a protective order because such a production "could contain private information").

The Receiver's proposed protective order does not affect a defendant's ability to defend against the Receiver's claims—it only requires that a defendant redact a victim's name and identifying information from filings.² Redaction is not cumbersome. Lawyers do it every day.

Redaction is a small effort but makes a big difference in a victim's life. As the Receiver's proposed protective order does not prejudice a defendant's defense, is not onerous, and in any event is no broader than necessary to serve valid privacy interests, the circumstances warrant its entry.

CONCLUSION

The Court has broad discretion to enter protective orders generally, and there is good cause to enter an order that protects victims' names and identifying information from public disclosure. The Receiver respectfully requests that the Court enter the Receiver's proposed

² If it is easier, the parties could simply agree to refer to a victim by his or her designated number, *i.e.*, "Investor No. 1" etc. In the event a victim's name or identifying information proves essential a defendant's defense, the parties and court may address that situation at the appropriate time.

protective order [Exhibit A] in order to facilitate the exchange of information and at the same time protect victims' valid privacy interests.

December 13, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: December 13, 2019

/s/ Kristen D. Amond

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

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AS RECEIVER FOR ARTHUR LAMAR
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Case No. 3:19-cv-364-CWR-FKB

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

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

PROTECTIVE ORDER

Alysson Mills is the Court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (“the Receiver”).¹ She filed this lawsuit on behalf of the Receivership Estate.

The Receiver has advised the Court that this lawsuit requires the exchange of information that should be treated as private. In the course of discovery, the Receiver may be required to produce information that identifies or is personal to investors in the Madison Timber Ponzi scheme. The Receiver is sensitive to investors’ privacy and thus far has protected their names and identifying information from public disclosure.

¹ Doc. 33, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss).

The Court is also sensitive to investors' privacy and appreciates the parties' agreement to continue to protect investors' names and identifying information from public disclosure going forward. In order to facilitate the exchange of information in a way that protects privacy interests,

IT IS ORDERED:

1. In the course of this lawsuit, certain information shall be deemed confidential.
2. Information that is deemed confidential shall not be publicly disclosed.
3. Investors' names and identifying information is confidential information. No separate designation is required. The Receiver, the defendants, and any party who may appear in this lawsuit shall redact investors' names and identifying information from any pleadings, exhibits, or other documents they might file in the Court's record. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.
4. The Receiver shall not withhold any documents or other materials from the defendants on the basis that they contain investors' names or identifying information. The Receiver shall produce such documents or other materials in their un-redacted form, absent permission from the Court. Such documents shall be treated as confidential by any party who receives them.
5. The Receiver, the defendants, and any party who may appear in this lawsuit shall have a right to designate as confidential any information, documents, or other materials which they may be required to produce in the course of discovery. The designation shall be made by affixing the word "CONFIDENTIAL" on any document or other material that contains the confidential information. The Receiver, the defendants, and any party who may appear in this lawsuit shall redact information that has been designated as confidential from any pleadings, exhibits, or other documents they might file in the court's record or, as appropriate, shall obtain permission from the

Court to file such documents under seal. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

6. The Receiver, the defendants, and any party who receives confidential information in this lawsuit shall take precautions to protect the information's confidentiality. Confidential information may only be used in this lawsuit, for the purpose of prosecuting or defending the claims alleged.

7. The Receiver, the defendants, and any party who receives confidential information in this lawsuit may disclose it only for the purpose of prosecuting or defending the claims alleged, and only to the following persons:

- a. the Court and its staff;
- b. court reporters and videographers or persons providing like services;
- c. officers, directors, or employees of a party who are working on this lawsuit;
- d. lawyers for a party who are working on this lawsuit and their employed paralegals, legal assistants, secretaries, and outside support services vendors;
- e. an expert or consultant who is retained by a lawyer for a party to assist with the prosecution or defense of the claims alleged in this lawsuit—provided, however, that each such expert or consultant shall execute a declaration stating that he or she has read this Order, agrees to be bound by it, and agrees to be subject to the jurisdiction of this Court in the event the Order must be enforced, a copy of which shall be retained by the party's lawyer; and
- f. any person who may testify as a witness in this lawsuit—provided, however, that each such person shall execute a declaration stating, or alternatively shall affirm on the record, that he or she has read this Order, agrees to be bound by

it, and agrees to be subject to the jurisdiction of this Court in the event the Order must be enforced.

No person to whom confidential information is disclosed shall make use of such information for any purpose other than to prosecute or defend the claims alleged.

Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

8. In the event a party or a lawyer for a party receives a subpoena issued in another lawsuit for documents or other materials that were produced in this lawsuit and designated confidential by a party other than itself, the subpoenaed party shall not produce such documents or other materials unless required by a court. The subpoenaed party shall notify the producing party in sufficient time to allow the producing party to take lawful action to protect any confidential information from disclosure.

9. A producing party who inadvertently fails to designate information as confidential at the time of production shall be entitled to correct its failure by providing written notice of its intent to the parties to whom production was made, who shall take reasonable steps to conform to this Order, including by returning or destroying any documents or other materials that were inadvertently produced in error.

10. This Order shall not prejudice any other rights any party may have to challenge or defend any asserted privilege. Whether information, documents, or other materials are privileged shall be determined on a case-by-case basis pursuant to applicable law.

11. Within 14 days of a party's termination in this lawsuit, whether by final judgment or settlement, the terminated party shall return any confidential information, documents, or other materials the terminated party received in this lawsuit—including any copies the terminated party

shared with persons in Paragraph 7. In the alternative, counsel for the terminated party may execute a declaration stating that all such information, documents, or other materials have been destroyed.

12. This Order survives the termination of this lawsuit and this Court retains jurisdiction over this action in the event the Order must be enforced.

DATED: _____

Honorable F. Keith Ball

United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DRAFT

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

Plaintiff,

v.

THE UPS STORE, INC.; HERRING
VENTURES, LLC d/b/a THE UPS STORE;
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COURTNEY HERRING; DIANE LOFTON;
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Arthur Lamar Adams and Madison
Timber Properties, LLC*

Hon. Carlton W. Reeves, District Judge

AGREED PROTECTIVE ORDER

Plaintiff and Defendants (collectively “the Parties”), acknowledge and agree that during the course of discovery it may be necessary to disclose certain confidential information relating to the subject matter of this action. They agree that certain categories of such information should be treated as confidential, protected from disclosure outside this litigation, and used only for purposes of prosecuting or defending this action and any appeals. The parties jointly request entry of this Agreed Protective Order pursuant to Federal Rule of Civil Procedure 26(c) to limit the disclosure, dissemination, and use of certain identified categories of confidential information.

The parties assert in support of their request that protection of the identified categories of confidential information is necessary because discovery in this case will likely seek private information from both parties and nonparties, including, but not limited to, financial information

and other sensitive and proprietary information and documents related to and relied upon by investors in Madison Timber Properties, LLC and/ or Madison Timber Ponzi scheme and confidential business and proprietary information related to The UPS Store, Inc., Herring Ventures, LLC and Rawlings & MacInnis, PA.

For good cause shown under Fed. R. Civ. P. 26(c), the Court grants the parties' joint request and hereby enters the following Protective Order:

1. **Scope.** All documents and materials produced in the course of discovery of this case, including initial disclosures, responses to discovery requests, all deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents"), are subject to this Order concerning Confidential Information as set forth below. "Confidential Information" is defined as information that the producing party designates in good faith has been previously maintained in a confidential manner and should be protected from disclosure and use outside the litigation because its disclosure and use is restricted by statute or could potentially cause harm to the interests of disclosing party or nonparties.

2. **Definition of Confidential Information.** For purposes of this Order, the parties will attempt to limit their designation of "Confidential Information" to the following categories of information or documents: financial information and other sensitive and proprietary documents related to and relied upon by investors in Madison Timber Properties, LLC and/ or the Madison Timber Ponzi scheme, confidential business and proprietary information related to The UPS Store, Inc., Herring Ventures, LLC and Rawlings & MacInnis, PA, and any other documents that are necessary to prosecute and defend the claims alleged so designated by an attorney of record in good faith.

3. **Form and Timing of Designation.** The producing party may designate documents as containing Confidential Information and therefore subject to protection under this Order by marking or placing the words “CONFIDENTIAL” (hereinafter “the marking”) on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, “copies” includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking will be applied prior to or at the time of the documents are produced or disclosed. Applying the marking to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Copies that are made of any designated documents must also bear the marking. Designated documents shall be treated as confidential by any party who receives them. Unless attorney work product, attorney-client privilege or another privilege recognized by law apply, all documents produced, notwithstanding their designation as “CONFIDENTIAL”, shall be produced in their un-redacted form, inclusive of names and other identifying information. Whether information, documents or other materials are privileged shall be determined on a case-by-case basis pursuant to applicable law. This Order shall not prejudice any other rights any party may have to challenge or defend any asserted privilege.

4. **Inadvertent Failure to Designate.** Inadvertent failure to designate any document or material as containing Confidential Information will not constitute a waiver of an otherwise valid claim of confidentiality pursuant to this Order, so long as a claim of confidentiality is asserted within 14 days after discovery of the inadvertent failure.

5. **Protection of Confidential Material.**

(a) **General Protections.** Designated Confidential Information must be used or disclosed solely for purposes of prosecuting or defending this lawsuit, including any appeals.

(b) **Who May View Designated Confidential Information.** Except with the prior written consent of the designating party or prior order of the court, designated Confidential Information may only be disclosed to the following persons:

- (1) The parties to this litigation, including any employees, agents, and representatives of the parties;
- (2) Counsel for the parties and employees and agents of counsel;
- (3) The Court and Court personnel, including any special master appointed by the Court, and members of the jury;
- (4) Court reporters, recorders, and videographers engaged for depositions;
- (5) Any mediator appointed by the Court or jointly selected by the parties;
- (6) Any expert witness, outside consultant, or investigator retained specifically in connection with this litigation provided that such person shall execute a declaration stating that he or she has read the Order, agrees to be bound by it, and agrees to be subject to the jurisdiction of the Court for enforcement purposes;
- (7) Any potential, anticipated, or actual fact witness and his or her counsel, but only to the extent such confidential documents or information will assist the witness in recalling, relating, or explaining facts or in testifying

provided that such person shall execute a declaration stating or alternatively shall affirm on the record that he or she has read the Order, agrees to be bound by it, and agrees to be subject to the jurisdiction of the Court for enforcement purposes;

(8) Other persons only upon consent of the producing party and on such conditions as the parties may agree.

(c) Control of Documents. The parties must take reasonable efforts to prevent unauthorized or inadvertent disclosure of documents designated as containing Confidential Information pursuant to the terms of this Order, including, without limitation, by instructing any of the individuals listed in Paragraph 5(b)(6) and (7) that any Confidential Information disclosed to them is confidential and subject to a protective order limiting use of the information to this lawsuit.

6. **Filing of Confidential Information.** In the event a party seeks to file any document containing Confidential Information subject to protection under this Order with the Court, that party must take appropriate action to insure that the document receives proper protection from public disclosure including: (a) filing a redacted document with the consent of the party who designated the document as confidential; (b) where appropriate (e.g., in relation to discovery and evidentiary motions), submitting the document solely for in camera review; or (c) when the preceding measures are inadequate, seeking permission to file the document under seal by filing a motion for leave to file under seal in accordance with L.U.Civ.R. 79. Nothing in this Order will be construed as a prior directive to allow any document to be filed under seal. The parties understand that the requested documents may be filed under seal only with the permission of the court after proper motion. If the motion is granted and the requesting party permitted to

file the requested documents under seal, only counsel of record and unrepresented parties will have access to the sealed documents. In the event the Court denies a party's motion to seal, nothing in this Order shall prevent the party from then filing the document at issue in the usual manner as part of the public docket.

7. **Use of Confidential Documents or Information at Trial or Hearing.** Nothing in this Order will be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential Information at a hearing or trial must bring that issue to the attention of the court and the other parties without disclosing the Confidential Information. The court may thereafter make such orders as are necessary to govern the use of such documents or information at the hearing or trial.

8. In the event a party or a lawyer for a party receives a subpoena issued in another lawsuit for documents or other materials that were produced in this lawsuit and designated confidential by a party other than itself, the subpoenaed party shall not produce such documents or other materials unless required by a court. The subpoenaed party shall notify the producing party in sufficient time to allow the producing party to take lawful action to protect any confidential information from disclosure.

9. This Order survives the termination of this lawsuit and this Court retains jurisdiction over this action in the event the Order must be enforced.

SO ORDERED, this the _____ day of November, 2019.

UNITED STATES MAGISTRATE JUDGE

DRAFT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
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ALYSSON MILLS, IN HER CAPACITY
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AGREED PROTECTIVE ORDER

Alysson Mills is the Court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (“the Receiver”).¹ She filed this lawsuit on behalf of the Receivership Estate.

The Receiver has advised the Court that this lawsuit requires the exchange of information that should be treated as private. In the course of discovery, the Receiver may be required to produce information that identifies or is personal to investors in the Madison Timber Ponzi scheme. The Receiver is sensitive to investors’ privacy and thus far has protected their names and identifying information from public disclosure.

¹ Doc. 33, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.).

The Court is also sensitive to investors' privacy and appreciates the parties' agreement to continue to protect investors' names and identifying information from public disclosure going forward.

The Receiver and Defendants (collectively, "the Parties"), acknowledge and agree that during the course of discovery it also may be necessary to disclose certain confidential information relating to the subject matter of this action, including, but not limited to, confidential business and proprietary information related to The UPS Store, Inc., Herring Ventures, LLC, and Rawlings & MacInnis, PA.

The Parties therefore agree that certain categories of such information should be treated as confidential, protected from disclosure outside this litigation, and used only for purposes of prosecuting or defending this action and any appeals. The Parties jointly request entry of this Agreed Protective Order pursuant to Federal Rule of Civil Procedure 26(c) to limit the disclosure, dissemination, and use of certain identified categories of confidential information.

In order to facilitate the exchange of information in a way that protects privacy interests, and for good cause shown under Fed. R. Civ. P. 26(c), the Court grants the Parties' joint request and hereby enters the following Protective Order:

1. **Scope.** All documents and materials produced in the course of discovery of this case, including initial disclosures, responses to discovery requests, all deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents"), are subject to this Order concerning Confidential Information as set forth below.

2. **Definition of Confidential Information.** "Confidential Information" is defined as information that the producing party designates in good faith and should be protected from

disclosure and use outside the litigation because its disclosure and/or use is restricted by statute or could potentially cause harm to the interests of disclosing party or nonparties.

For purposes of this Order, the Parties will attempt to limit their designation of “Confidential Information” to the following categories of information or documents: investors’ names and identifying information; financial information and other sensitive and proprietary documents related to and relied upon by investors in Madison Timber Properties, LLC and/ or the Madison Timber Ponzi scheme; confidential business and proprietary information related to The UPS Store, Inc., Herring Ventures, LLC, and Rawlings & MacInnis, PA, and any other documents that are necessary to prosecute and defend the claims alleged so designated by an attorney of record in good faith.

3. **Form and Timing of Designation.** The Parties and any party who may appear in this lawsuit may designate documents as containing Confidential Information and therefore subject to protection under this Order by marking or placing the words “CONFIDENTIAL” (hereinafter “the marking”) on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, “copies” includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking will be applied prior to or at the time of the documents are produced or disclosed. Applying the marking to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Copies that are made of any designated documents must also bear the marking. Designated documents shall be treated as confidential by any party who receives them.

Unless attorney work product, attorney-client privilege or another privilege recognized by law apply, all documents produced, notwithstanding their designation as “CONFIDENTIAL”,

shall be produced in their un-redacted form, inclusive of names and other identifying information. Whether information, documents, or other materials are privileged shall be determined on a case-by-case basis pursuant to applicable law. This Order shall not prejudice any other rights any party may have to challenge or defend any asserted privilege.

4. **Investors' Names and Identifying Information.** Investors' names and identifying information are hereby designated as Confidential Information. No separate designation is required. The Parties and any party who may appear in this lawsuit, shall redact investors' names and identifying information from any pleadings, exhibits, or other documents they might file in the Court's record. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

The Receiver shall not withhold any documents or other materials from the defendants on the basis that they contain investors' names or identifying information. The Receiver shall produce such documents or other materials in their un-redacted form, absent permission from the Court. Such documents shall be treated as confidential by any party who receives them.

5. **Inadvertent Failure to Designate.** Inadvertent failure to designate any document or material as containing Confidential Information will not constitute a waiver of an otherwise valid claim of confidentiality pursuant to this Order. A producing party who inadvertently fails to designate information as confidential at the time of production shall be entitled to correct its failure by providing written notice of its intent to the parties to whom production was made, who shall take reasonable steps to conform to this Order, including by returning or destroying any documents or other materials that were inadvertently produced in error.

6. Protection of Confidential Material.

a. The Parties and any party who receives Confidential Information in this lawsuit shall take precautions to protect the information's confidentiality. Designated Confidential Information must be used or disclosed solely for purposes of prosecuting or defending this lawsuit, including any appeals.

b. Except with the prior written consent of the designating party or prior order of the Court, designated Confidential Information may be disclosed only to the following persons:

1. the Parties to this litigation, including any employees, agents, and representatives of the Parties;
2. lawyers for a party who are working on this lawsuit and their employed paralegals, legal assistants, secretaries, and outside support services vendors;
3. the Court and Court personnel, including any special master appointed by the Court, and members of the jury;
4. court reporters, recorders, and videographers engaged for depositions;
5. any mediator appointed by the Court or jointly selected by the Parties;
6. any expert witness, outside consultant, or investigator retained by a lawyer for a party to this litigation—provided, however, that such person shall execute a declaration stating that he or she has read the Order, agrees to be bound by it, and agrees to be subject to the jurisdiction of the Court for enforcement purposes;
7. any potential, anticipated, or actual fact witness and his or her counsel, but only to the extent such Confidential Information will assist the witness in recalling, relating, or explaining facts or in testifying—provided, however, that

such person shall execute a declaration stating, or alternatively shall affirm on the record, that he or she has read the Order, agrees to be bound by it, and agrees to be subject to the jurisdiction of the Court for enforcement purposes; and

8. other persons only upon consent of the producing party and on such conditions as the Parties may agree.

c. No person to whom Confidential Information is disclosed shall make use of such information for any purpose other than to prosecute or defend the claims alleged.

d. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

e. The Parties must take reasonable efforts to prevent unauthorized or inadvertent disclosure of documents designated as containing Confidential Information pursuant to the terms of this Order, including, without limitation, by instructing any of the individuals listed in Paragraph 6(b)(6) and (7) that any Confidential Information disclosed to them is confidential and subject to a protective order limiting use of the information to this lawsuit.

7. **Filing of Confidential Information.** The Parties and any other party who may appear in this lawsuit shall redact information that has been designated as confidential from any pleadings, exhibits, or other documents they might file in the Court's record or, as appropriate, shall obtain permission from the Court to file such documents under seal. Any party seeking an exception to this rule shall obtain either the written consent of the Receiver and all other parties or permission from the Court.

8. **Use of Confidential Documents or Information at Trial or Hearing.** A party that intends to present or that anticipates that another party may present Confidential Information

at a hearing or trial must bring that issue to the attention of the Court and the other parties without disclosing the Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at the hearing or trial.

9. In the event a party or a lawyer for a party receives a subpoena issued in another lawsuit for documents or other materials that were produced in this lawsuit and designated confidential by a party other than itself, the subpoenaed party shall not produce such documents or other materials unless required by the Court. The subpoenaed party shall notify the producing party in sufficient time to allow the producing party to take lawful action to protect any Confidential Information from disclosure.

10. Within 14 days of a party's termination in this lawsuit, whether by final judgment or settlement, the terminated party shall return any Confidential Information, documents, or other materials the terminated party received in this lawsuit—including any copies the terminated party shared with persons in Paragraph 5. In the alternative, counsel for the terminated party may execute a declaration stating that all such information, documents, or other materials have been destroyed.

11. This Order survives the termination of this lawsuit and this Court retains jurisdiction over this action in the event the Order must be enforced.

DATED: _____

Honorable F. Keith Ball
United States Magistrate Judge