

IN THE 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

**DEFENDANT THE UPS STORE, INC.'S MOTION FOR
ENTRY OF PROTECTIVE ORDER**

COMES NOW, Defendant, The UPS Store, Inc., (“Defendant”), by and through its counsel of record, and respectfully moves for entry of the attached protective order, attached hereto as “Exhibit A.”

1. On November 26, 2019, the Court instructed the parties to meet and confer in an attempt to agree on the terms of a proposed protective order. *See* Dec. 3, 2019 Text-Only Order. Following this conference, the parties were instructed to, either jointly or separately, file a motion for entry of a protective order by December 13, 2019. *Id.*

2. The parties have met and conferred several times in an attempt to reach a consensus on the terms of a protective order, but due to the Receiver’s insistence that Defendants

stipulate that the identity of every investor be kept confidential throughout every stage of litigation—no stipulation has been reached.

3. This Court has Local Rules that govern confidential material and the filing thereof, and there is no reason to deviate here, as the Receiver’s proposed order suggests.

4. Accordingly, Defendant moves this Court to enter Defendant’s proposed protective order—a proposed order that is consistent with the Local Rules.

WHEREFORE, PREMISES CONSIDERED, for the reasons stated in the accompanying memorandum, Defendant The UPS Store, Inc. respectfully requests this Court enter the Defendant’s proposed Protective Order.

Dated: December 13, 2019.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/ LaToya C. Merritt

LaToya C. Merritt, MSB #100054
Jessica Terrill Pulliam, MSB #105510
4270 I-55 North
Jackson, Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: 601-352-2300
Telecopier: 601-360-9777
Email: anderson@phelps.com
merrittl@phelps.com
pulliamj@phelps.com

Mark R. McDonald (CA Bar No.
137001)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: 213.892.5200

Facsimile: 213.892.5454
Email: MMcDonald@mofocom

Adam J. Hunt (NY Bar No. 4896213)
(Pro Hac Vice)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: 212.468.8000
Facsimile: 212.468.7900
Email: AdamHunt@mofocom

***ATTORNEYS FOR DEFENDANT
THE UPS STORE, INC.***

CERTIFICATE OF SERVICE

I, LATOYA C. MERRITT, do hereby certify that I electronically filed the above and foregoing *MOTION* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

Alysson Leigh Mills
Kristen D. Amond
Brent B. Barriere
Jason W. Burge
Rebekka C. Veith
FISHMAN HAYGOOD, LLP
201 St. Charles Avenue, Suite 4600
New Orleans, LA 70170-4600
(504) 586-5294
(504) 586-5250 (fax)
amills@fishmanhaygood.com
kamond@fishmanhaygood.com
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
rveith@fishmanhaygood.com

Lilli Evans Bass
Brown Bass & Jeter, PLLC
P.O. Box 22969
Jackson, MS 39225
(601) 487-8448
(601) 510-9934 (fax)
bass@bbjlawyers.com

ATTORNEYS FOR PLAINTIFF

G. Todd Burwell
Emily Kincses Lindsay
G. TODD BURWELL, PA
618 Crescent Blvd., Ste. 200
Ridgeland, MS 39157
(601) 427-4470
(601) 427-0189 (fax)
tburwell@gtbpa.com
elindsay@gtbpa.com

ATTORNEYS FOR RAWLINGS &

**MACINNIS, PA, JEANNIE CHISOLM,
AND TAMMY VINSON**

William Lee Guice, III
Randall Scott Wells
RUSHING & GUICE, PLLC – Biloxi
P.O. Box 1925
Biloxi, MS 39533-1925
1000 Government St., Suite E
Ocean Springs, MS 39564
(228) 374-2313
(228) 875-5987
bguice@rushingguice.com
swells@rushingguice.com

**ATTORNEY FOR HERRING
VENTURES, LLC, AUSTIN ELSEN,
CHANDLER WESTOVER, COURTNEY
HERRING, DIANE LOFTON, AND
TAMMIE ELSEN**

THIS, the 13th day of December, 2019.

/s/ LaToya C. Merritt

LATOYA C. MERRITT

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

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

"EXHIBIT A"

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 designated by another party or non-party under this Order, the filing party must provide fourteen (14) days' notice to the designating party of such filing and the designating party must make a submission in compliance with Local Rule 79(e) within seven (7) days. 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

IN THE 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

**DEFENDANT THE UPS STORE, INC.'S MEMORANDUM IN SUPPORT OF
MOTION FOR ENTRY OF PROTECTIVE ORDER**

RELEVANT BACKGROUND

On November 26, 2019, the Court instructed the parties to meet and confer in an attempt to agree on the terms of a proposed protective order. *See* Dec. 3, 2019 Text-Only Order. Following this conference, the parties were instructed to, either jointly or separately, file a motion for entry of a protective order by December 13, 2019. *Id.*

The parties have met and conferred several times in an attempt to reach a consensus on the terms of a protective order, but no stipulation has been reached. This failure is due to the Receiver's insistence that Defendants stipulate that the identity of every investor who invested in Lamar Adams' Ponzi scheme is confidential, and will never—throughout any stage of litigation—

be filed in the Court record without Defendants first filing a motion with the Court and obtaining a ruling that the name of the investor can be filed publicly. The UPS Store, Inc. (“Defendant” or “TUPSS”) will not stipulate to the Receiver’s overbroad request. Instead, TUPSS moves this Court to enter its proposed order that satisfies the guidelines required by the court in handling purportedly confidential information and filing information under seal, while also acknowledging the Fifth Circuit’s presumption in favor of the public’s access to judicial records.

ARGUMENT

This Court has Local Rules that govern confidential material and the filing of information under seal, and there is no reason to deviate. The protective order the Receiver insists upon is flatly contrary to those Rules. Accordingly, Defendant moves this Court to enter Defendant’s proposed protective order—a proposed order that is consistent with the Local Rules.

Local Rule 79(b) provides:

Documents Filed with the Court. Every document used by parties moving for or opposing an adjudication by the court, other than trial or hearing exhibits, must be filed with the court. No documents may be filed under seal, except upon entry of an order of the court either acting sua sponte or specifically granting a request to seal that document. Any order sealing a document must include a particularized finding demonstrating that sealing is supported by clear and compelling reasons and is narrowly tailored to serve those reasons. A statute mandating or permitting the non-disclosure of a class of documents provides sufficient authority to support an order sealing documents.

Local Rule 79(d) provides that “No document may be sealed merely by stipulation of the parties. A confidentiality order or protective order entered by the court to govern discovery will not qualify as an order to seal documents for the purposes of this rule. Any document filed under seal in the absence of a court order to seal may be unsealed without prior notice to the parties.”

Further, Local Rule 79(e) sets out the procedure for seeking to file a document under seal, and puts the burden on the party seeking to seal a document to show why sealing is necessary,

supported by case law. Whether asking for documents to be filed under seal and/or redacted, the Receiver is asking this Court to enter a far-reaching order that runs afoul of the Local Rules of this Court. She is asking the Court to create a contrary rule where the burden lies with the Defendants to file publicly any document referring to the identity of an investor—for this one case.

During the meet and confer process, Defendants asked the Receiver for any legal authority supporting such an unusual order, and no relevant, persuasive authority was presented.¹ This, coupled with the fact that she has failed to allege with any specificity the harm that will result, evidences the Receiver's failure to show why such an over-reaching protective order is necessary.

Moreover, the Fifth Circuit recognizes a presumptive common law right of public access to judicial records. *Smith v. Corr. Corp. of Am., LLC*, 2017 U.S. Dist. LEXIS 23037, (N.D. Miss. 2017). The public's interest as a matter of law includes "promot[ing] trustworthiness of the judicial process." *SEC v. Van Waeyenberghe*, 990 F.2d 845, 848-49 (5th Cir. 1993) (quoting *Littlejohn v. Bic Corp.*, 81 F.2d 673, 682 (3d Cir. 1988)). There is a "presumption in favor of the public's access to judicial records," and the decision whether to order judicial records sealed is committed to the discretion of the district court, which must balance this right of access against the interests favoring nondisclosure. *Van Waeyenberghe*, 990 F.2d 845, 848-49.

Defendant recognizes that this public right of access is not absolute. Notably, to overcome this right, the party seeking to seal any part of a judicial record bears the heavy burden of showing with specificity that 'the material is the kind of information that courts will protect' and that 'disclosure will work a clearly defined and serious injury. . . ." *Miller v. Indiana Hospital*, 16 F.3d

¹ The Receiver shared three cases that are not analogous to this matter. See *SEC v. Merrill Scott and Associates Ltd.*, 600 F.3d 1262 (2010) and *In re for Wilson*, WL 2536913 (2017) (both cases are irrelevant here as they dealt with a party's dissemination of information to a third party), and *Caxton Intern. Ltd. v. Reserve Intern. Liquidity Fund, Ltd.* WL 2365246 (2009) (the Court ordered the identities of third parties confidential noting since the names were not necessary to adjudicate the issue of subject matter jurisdiction, they were ordered sealed).

549, 551 (3d Cir. 1994). Assuming *arguendo* that the Receiver’s request that Defendants stipulate that the identity of every investor is confidential is merely an attempt to protect a legitimate privacy interest, i.e., an investor’s financial account information, social security number, etc., protection is already provided under Federal Rule of Civil Procedure 5.2, and the Receiver’s overreaching approach is wholly unnecessary.²

“Protective orders serve the vital function of securing the just, speedy, and inexpensive determination of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant.” *Martindell v. Int’l Tel. & Tel. Corp.*, 594 F.2d 291, 295 (2d Cir. 1979). Though obviously relevant, TUPSS has no intention of needlessly publicizing the names of the investors who were the victims of Lamar Adams’ Ponzi scheme; however, there is no reason, certainly at this stage of the case, to order a sweeping order declaring that one piece of information is so sensitive that the usual rules of this Court should *not* apply. To the contrary, the burden should be on the Receiver to make a showing that there is some particularized need for sealing or redaction. The Receiver has put forth no such evidence.

CONCLUSION

The Receiver is certainly free to designate material she produces confidential—including the names of investors—but the burden should remain on the Receiver to show that such material

² Federal Rule of Civil Procedure 5.2 addresses privacy protection for filings made with the court, and section (a) states, “Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual’s social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual’s birth;
- (3) the minor’s initials; and
- (4) the last four digits of the financial-account number

must be redacted in a filing, and/or filed under seal. For the foregoing reasons, Defendant The UPS Store, Inc. respectfully requests this Court enter Defendant's proposed protective order.

Dated: December 13, 2019.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/ LaToya C. Merritt

LaToya C. Merritt, MSB #100054
Jessica Terrill Pulliam, MSB #105510
4270 I-55 North
Jackson, Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: 601-352-2300
Telecopier: 601-360-9777
Email: anderson@phelps.com
merrittl@phelps.com
pulliamj@phelps.com

Mark R. McDonald (CA Bar No.
137001)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: 213.892.5200
Facsimile: 213.892.5454
Email: MMcDonald@mofocom

Adam J. Hunt (NY Bar No. 4896213)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: 212.468.8000
Facsimile: 212.468.7900
Email: AdamHunt@mofocom

**ATTORNEYS FOR DEFENDANT
THE UPS STORE, INC.**

CERTIFICATE OF SERVICE

I, LATOYA C. MERRITT, do hereby certify that I electronically filed the above and foregoing *MEMORANDUM* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

Alysson Leigh Mills
Kristen D. Amond
Brent B. Barriere
Jason W. Burge
Rebekka C. Veith
FISHMAN HAYGOOD, LLP
201 St. Charles Avenue, Suite 4600
New Orleans, LA 70170-4600
(504) 586-5294
(504) 586-5250 (fax)
amills@fishmanhaygood.com
kamond@fishmanhaygood.com
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
rveith@fishmanhaygood.com

Lilli Evans Bass
Brown Bass & Jeter, PLLC
P.O. Box 22969
Jackson, MS 39225
(601) 487-8448
(601) 510-9934 (fax)
bass@bbjlawyers.com

ATTORNEYS FOR PLAINTIFF

G. Todd Burwell
Emily Kincses Lindsay
G. TODD BURWELL, PA
618 Crescent Blvd., Ste. 200
Ridgeland, MS 39157
(601) 427-4470
(601) 427-0189 (fax)
tburwell@gtbpa.com
elindsay@gtbpa.com

***ATTORNEYS FOR RAWLINGS &
MACINNIS, PA, JEANNIE CHISOLM,
AND TAMMY VINSON***

William Lee Guice, III
Randall Scott Wells
RUSHING & GUICE, PLLC – Biloxi
P.O. Box 1925
Biloxi, MS 39533-1925
1000 Government St., Suite E
Ocean Springs, MS 39564
(228) 374-2313
(228) 875-5987
bguice@rushingguice.com
swells@rushingguice.com

***ATTORNEY FOR HERRING
VENTURES, LLC, AUSTIN ELSEN,
CHANDLER WESTOVER, COURTNEY
HERRING, DIANE LOFTON, AND
TAMMIE ELSEN***

THIS, the 13th day of December, 2019.

/s/ LaToya C. Merritt

LATOYA C. MERRITT