

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

**REPLY TO THE UPS STORE, INC.'S OPPOSITION TO
THE RECEIVER'S 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"), respectfully files this reply to The UPS Store, Inc.'s opposition [Doc. 62] to the Receiver's motion for protective order [Doc. 57].

1.

The Receiver attempts to be direct and brief. The parties have burdened the Court with multiple filings:

1. The Receiver's motion for protective order [Docs. 57, 58]
2. The UPS Store, Inc.'s competing motion for protective order [Docs. 59, 60]
3. The Receiver's response to The UPS Store, Inc.'s competing motion for protective order [Doc. 61]

4. The UPS Store, Inc.'s opposition to the Receiver's motion for protective order [Doc. 62]
5. Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover's "joinder" in The UPS Store, Inc.'s opposition to the Receiver's motion for protective order [Doc. 63]
6. Rawlings & MacInnis, P.A., Tammy Vinson, and Jeannie Chisholm's "joinder" in The UPS Store, Inc.'s opposition to the Receiver's motion for protective order [Doc. 64]
7. The UPS Store, Inc.'s reply to the Receiver's response to The UPS Store, Inc.'s competing motion for protective order [Doc. 65]
8. The Receiver's reply to The UPS Store, Inc.'s opposition to the Receiver's motion for protective order [the instant filing]

For all of these filings, there is only one question before the Court: Should victims' names and identifying information be redacted from publicly filed documents? The Receiver says yes; the defendants say no.

2.

The protective order the Receiver proposes asks nothing more than that the defendants redact victims' names and identifying information from publicly filed documents. This Court has broad discretion to enter a protective order, and the Receiver has shown good cause for the protective order she proposes. [Docs. 58, 61]

For reasons that are obvious, but which the Receiver has nevertheless explained, privacy is important to victims. [Docs. 58, 61] Redaction is a small effort to ask of the defendants, and there is ample precedent for it in cases such as this. The Receiver has pointed to opinions of other courts enforcing protective orders intended to protect victims' names and identifying information in securities fraud and Ponzi scheme cases. [Doc. 58 at pages 3–4]

Protective orders are common and encouraged. The fact that there are not more opinions addressing the same issue does not suggest that the issue is unprecedented but instead that the

issue is not often litigated—because typically the parties reasonably agree that victims ought not be subjected to a public airing of their names.

3.

For all of their filings, the defendants still have not explained why it matters to them that they be able to publish victims' names and identifying information in their filings.

Again, The UPS Store, Inc.'s defense is that it is not liable for the acts of its franchisee. Franchisor liability turns on several factors, but primarily on whether the franchisor controlled or had the right to control its franchisee's business. The identity of an individual victim is not relevant to UPS's defense. [Doc. 61]

The other defendants, who have merely joined in The UPS Store, Inc.'s arguments, have added nothing to the analysis. To the extent an individual victim is relevant to any of the other defendants' defenses, they may identify the individual victim in public filings by, for instance, a number or letter.

Nothing in the Receiver's proposed protective order will inhibit the defendants from defending against the Receiver's claims. Yes, redaction requires some effort and so can be called a "burden" [Doc. 63 at page 2]—but it is hardly an *undue* burden. The effort redaction requires is small—lawyers do it all the time—but the interests it protects are great.

4.

The UPS Store, Inc. persists in its argument that redaction violates Local Rule 79(b). Local Rule 79(b) states that "[n]o document may be filed under seal, except upon entry of an order of the court" Again, the Receiver is not asking anyone to file any documents under seal. [Doc. 61] The opinions from this Court that The UPS Store, Inc. cites in support of its argument are simply inapplicable here. In *Equal Employment Opportunity Comm'n v.*

Halliburton Energy Servs., No. 3:16-cv-233-CWR-FKB, 2018 WL 3061973 (S.D. Miss. May 17, 2018), for instance, a party moved to seal *all* the documents it submitted in opposition to a motion for summary judgment. *Id.* at *2 (“[I]t has simply asked to seal every document related to its opposition to Halliburton’s motion for summary judgment.”). The Court reasonably denied that request but—and *The UPS Store, Inc. omits this fact*—it did so without prejudice to the party’s refileing its motion to explain whether specific portions of the documents might nevertheless warrant protection. *Id.*

Unlike the parties in the cases *The UPS Store, Inc.* cites, the Receiver does not seek blanket seals but only surgical redactions. The Receiver asks only that the parties redact victims’ names and identifying information from publicly filed documents as she herself has done all along without much effort and certainly without controversy.¹

5.

Callously, *The UPS Store, Inc.* argues, and the other defendants apparently agree, that the Madison Timber Ponzi scheme’s victims are “not of the type” worthy of protection. [Doc. 62 at 5²] *The UPS Store, Inc.* cites an opinion from the Madoff case, which it says rejected victims’ privacy interests as a justification for redactions. *The UPS Store, Inc.* writes:

As stated, in nearly identical circumstances, the names of the victims of the Madoff Ponze [sic] scheme were ordered not to be redacted.” Bernard L. Madoff Inv. Sec. LLC, 2011 Bankr. LEXIS 1390, at *7.

[Doc. 62 at 7]

¹ See, e.g., Exhibit B to Receiver’s opposition to Baker Donelson’s motion to dismiss, Doc. 35-2, *Alysson Mills vs. Butler Snow, et al.*, No. 3:18-cv-00866 (S.D. Miss.).

² *The UPS Store, Inc.* also calls victims’ privacy interests “hypothetical” and complains that the Receiver has not offered a declaration or other evidence of victims’ privacy interests. If a declaration would satisfy *The UPS Store, Inc.*, the Receiver would gladly provide one.

But the UPS Store, Inc. misrepresents the opinion it cites. In fact, the opinion did not reject victims' privacy interests as a justification for redactions at all. The words "victim" and "investor" do not even appear in the opinion. The opinion instead addressed whether "this Court [ought to] maintain the redaction of names of non-party individuals who are or were employed by a Financial Institution Defendant (the 'Employee Names')" *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789, 2011 WL 1378602, at *1 (Bankr. S.D.N.Y. Apr. 12, 2011).

To be clear: The opinion from the Madoff case that The UPS Store, Inc. says presents "identical circumstances" in fact presents *the opposite circumstances*. In the Madoff case, *the defendants* sought to protect *their own employees* from their "embarrassing and prejudicial" association with Madoff. In its opinion, the court rejected the argument that *the defendants' employees'* privacy interests outweighed the public's qualified right to know. The court did not even address, much less reject, victims' privacy interests.

6.

The UPS Store, Inc. complains that the Receiver "has produced roughly 1,500 timber deeds" as well as "1,500 other documents, such as promissory notes" but all "with investor identifying information redacted." [Doc. 62 at 3]

The UPS Store, Inc. must be mistaken. The Receiver produced less than 1,500 *pages* to The UPS Store, Inc.

The UPS Store, Inc. nevertheless is correct that, consistent with her practice, the Receiver did redact victims' names from the production, pending a determination as to how the parties shall treat victims' names going forward.

7.

The UPS Store, Inc. accuses the Receiver of gamesmanship, suggesting that she has withheld documents for “strategic reasons.” [Doc. 62 at 2] That is simply untrue. The Receiver’s only desire is to protect the privacy interests of the victims to whom she answers. What The UPS Store, Inc. portrays as gamesmanship is honest miscommunication or oversight. A protective order such as the Receiver seeks will make it easier for the parties to share information going forward.

For the reasons stated here, in the memorandum accompanying the Receiver’s motion [Doc. 58], and in the memorandum responding to the UPS Store, Inc.’s motion [Doc. 61], the Receiver respectfully requests that the Court enter the Receiver’s proposed protective order.

January 3, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
LaToya T. Jeter, Miss. Bar No. 102213
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver’s counsel

/s/ Kristen D. Amond

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
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: January 3, 2020

/s/ Kristen D. Amond