

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.’S¹ REPLY MEMORANDUM IN SUPPORT OF
DEFENDANTS’ JOINTLY PROPOSED PROTECTIVE ORDER**

Plaintiff acts as though its proposed protective order is routine because (1) there will be no need for Defendants to file anything under seal *if this Court orders all Defendants to redact from every filing the names of each investor*, (2) redacting information is common in litigation, and (3) courts enter protective orders all the time. There should be no mistake that what Plaintiff requests is *not* routine. Indeed, Plaintiff’s proposed protective order is inconsistent with the Federal Rules of Civil Procedure, this Court’s Local Rules, and case law in this Court and this Circuit. Plaintiff has not provided any precedent for a court to enter a sweeping order requiring parties to redact the names of alleged victims of a financial crime from all court filings, and, in

¹ The Herring Ventures Defendants and Rawlings & MacInnis Defendants join The UPS Store, Inc. (“TUPPS, Inc.”) in this reply.

virtually identical circumstances (e.g., the Madoff Ponzi scheme litigation), courts have rejected such a request. *See, e.g., Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (BRL), 2011 Bankr. LEXIS 1390, at *7 (Bankr. S.D.N.Y. Apr. 12, 2011) (denying a request to redact the names of non-party investors in Bernie Madoff's Ponzi scheme, holding that "the Defendants have not adequately established any harm beyond merely 'embarrassing or prejudicial' association with these Ponzi scheme proceedings, which is not sufficient cause for sealing").

Most of Plaintiff's Opposition is devoted to questioning the motives of the TUPSS, Inc. and the other Defendants for not capitulating to Plaintiff's demanded protective order and to suggesting that TUPSS, Inc. and the other Defendants must want to publish investor names for some nefarious purpose. Those accusations are offensive and unfounded. Under Defendants' jointly proposed Protective Order, if any Defendant seeks to file a document that contains the name of one or more investors, Plaintiff can follow the procedure laid out in Local Rule 79(a) and seek an order from the Court requiring the document to be filed under seal – if Plaintiff can show there is a compelling need for confidentiality and that sealing is narrowly tailored to those needs. The Local Rules thus provide ample opportunity for this Court to consider – based on concrete argument and evidence – the reasons for a particular proposed filing and any competing concerns about confidentiality.

Plaintiff has not submitted any evidence or authority that would permit the Court to rule *now* that, for the duration of this case, all investor information is presumptively entitled to be redacted. Indeed, that is inconsistent with, and would improperly expand, the limited categories of personal identifying information that can be redacted under Federal Rule of Civil Procedure 5.2. *See* Fed. R. Civ. P. 5.2 (identifying four limited categories of personal identifying

information, such as all but the last four digits of a social security number, that can be redacted). Moreover, Plaintiff's argument that unredacted versions need not be filed under seal *would prevent the Court* from viewing investor names – a position that Plaintiff does not even attempt to justify. And to the extent Plaintiff attempts to argue that her proposed protective order would permit the Court to view investors' names, the only mechanism to do so would be to file that information under seal. But Plaintiff cannot obtain leave to file any materials under seal based solely on her proposed protective order because that plainly violates Local Rule 79. *See BG v. Rob Banks*, No. 4:16-CV-64-DMB-JMV, 2016 U.S. Dist. LEXIS 179732, at *5 (N.D. Miss. Dec. 29, 2016) (“Rule 79 explicitly states that a protective order governing discovery will not justify sealing under the rule.”).

The protective order that TUPSS, Inc. proposed – and which all of the other Defendants joined – is fully consistent with the Local Rules and case law: it places the burden of seeking to keep investor names from the public record on Plaintiff, who will need to meet well-established standards to do so. *See* ECF Nos. 59, 62. Further, Plaintiff is dead wrong that Defendants' proposed protective order would violate Local Rule 79 because TUPSS, Inc. may designate some material as confidential and “would want [Plaintiff] to protect [TUPSS, Inc.'s] privacy by redacting that information from her publicly filed documents.” *See* ECF No. 61. To the contrary, Defendants' proposed protective order would require *any party that designates material in discovery as confidential – including Plaintiff* – to submit an appropriate sealing motion to the extent information that such material will be referenced in court filings. *See* ECF No. 59-1 at 5. If the Court grants the sealing motion, redacted versions can be filed on the public docket at that point if the Court so orders, consistent with Local Rule 79(f).

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CERTIFICATE OF SERVICE

I, ADAM J. HUNT, do hereby certify that I electronically filed the above and foregoing MEMORANDUM IN SUPPORT OF DEFENDANTS' JOINTLY PROPOSED PROTECTIVE ORDER with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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THIS, the 3rd day of January 2020.

/s/ Adam J. Hunt

Adam J. Hunt