

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

VS

CAUSE NO. 3:19-cv-364-CWR-FKB

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

DEFENDANTS

**DEFENDANTS HERRING VENTURES, LLC, AUSTIN ELSEN, TAMMIE ELSEN,
COURTNEY HERRING, DIANE LOFTON AND CHANDLER WESTOVER'S
JOINDER IN [138] THE UPS STORE, INC.'S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

COME NOW Defendants, Herring Ventures, LLC, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, by and through their undersigned counsel of record, Rushing & Guice, P.L.L.C., and file this, their Joinder in [138] The UPS Store, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction. Defendants hereby incorporate by reference and join in the aforementioned [138] Motion to dismiss and its [139] Memorandum in Support, and all the arguments made and authorities cited therein.

Defendants Herring Ventures, LLC, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover would show that they are entitled to a dismissal of all claims against them based on the same arguments and authorities offered by The UPS Store, Inc. in its [138] Motion to Dismiss. And [139] Memorandum in Support.

WHEREFORE, PREMISES CONSIDERED, Defendants, Herring Ventures, LLC, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, would ask that

this court grant the relief requested in the [138] Motion to Dismiss and dismiss the [14] Amended Complaint with prejudice as to all Defendants, and in particular as to Movants herein. Defendants further pray for any relief the Court may find just and proper in the premises.

Respectfully submitted this 1st day of September, 2020.

RUSHING & GUICE, P.L.L.C.

/s/ William Lee Guice III

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CERTIFICATE

I HEREBY CERTIFY that on the 1st day of September, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all known counsel of record by operation of the Court's electronic filing system.

This the 1st day of September, 2020

/s/ William Lee Guice III

WILLIAM LEE GUICE III

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
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HERRING; DIANE LOFTON; CHANDLER
WESTOVER; RAWLINGS & MACINNIS, PA;
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DEFENDANTS

MEMORANDUM IN SUPPORT OF JOINDER IN MOTION TO DISMISS

COME NOW Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton, and Chandler Westover, by and through their attorneys Rushing & Guice, P.L.L.C. and file this memorandum in support of their joinder [138] The UPS Store, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction, and in support of which would show unto the court the following to wit:

1. Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, would show that Defendant, The UPS Store, Inc. filed its [138] Motion to Dismiss for Lack of Subject Matter Jurisdiction and [139] Memorandum of Law in Support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction on August 26, 2020.

2. Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, would show that the facts of the

case, subject matter and relevant law to their Motion to Dismiss is substantively the same as the Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by The UPS Store, Inc. and would show that Defendants herein are entitled to a dismissal of all claims against them based on the same arguments and authorities presented in the Motion to Dismiss filed by The UPS Store, Inc.

ADOPTION OF ARGUMENTS

3. In the interest of judicial economy and in consideration of the facts above, Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, hereby adopt those arguments made and authorities cited within [139] The UPS Store, Inc.'s Memorandum of Law in Support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction, and incorporate them by reference as though they were fully pled herein.

4. Defendants would show that the [14] Amended Complaint in this matter was filed by Plaintiff in her capacity as Receiver for Arthur Lamar Adams and Madison Timber Properties, LLC.

5. Defendants would show that the [14] Amended Complaint alleges the following causes of action against Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and/or Chandler Westover: I) Civil Conspiracy, II) Aiding and Abetting, III) Recklessness, Gross Negligence, and at a minimum Negligence, and IV) Negligent Retention and Supervision.

6. Defendants would show that, as further pled in the [139] Memorandum in Support of [138] The UPS Store, Inc.'s Motion to Dismiss, the above-stated claims asserted against Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney

Herring, Diane Lofton and/or Chandler Westover do not belong to Receivership estates, but rather to the victims of the Adams/Madison Timber Ponzi scheme.

7. Defendants would show that the damages sought in the Amended Complaint are not damages of the Receivership estate, but rather of the victims of the Adams/Madison Timber Ponzi Scheme.

8. Further, Defendants would show that the allegations in the Amended Complaint are not sufficient to plead a cognizable injury to establish standing under Article III of the United States Constitution and, therefore, this Court lacks subject-matter jurisdiction over the case.

WHEREFORE, PREMISES CONSIDERED, Defendants, Herring Ventures, LLC d/b/a The UPS Store, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton and Chandler Westover, respectfully request that the Court dismiss the [14] Amended Complaint in its entirety with prejudice. Defendants further request any relief which is just and proper in the premises.

Respectfully submitted,

/s/ William Lee Guice III

WILLIAM LEE GUICE III MSBN 5059

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/s/ William Lee Guice III
WILLIAM LEE GUICE III

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