

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 ELSÉN; TAMMIE ELSÉN;  
COURTNEY HERRING; DIANE LOFTON;  
CHANDLER WESTOVER; RAWLINGS &  
MACINNIS, PA; TAMMY VINSON; and  
JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-00364

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

**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 seeks relief under Federal Rule of Civil Procedure 26(c). In support, she states as follows:

1.

The Court has broad discretion to provide relief under Federal Rule of Civil Procedure 26(c), and there is good cause to provide such relief here.

2.

Defendant The UPS Store Inc. recently issued subpoenas to at least 32 investor-victims. The subpoenas seek information that is not relevant to any claim or defense in this case. The

subpoenas seek information that is private (for instance, information relating to investor-victims' taxes). UPS also unilaterally scheduled depositions of investor-victims in multiple cities to take place over the course of 17 days, with multiple depositions taking place on each day.

3.

Because of tactics like these, this case—and likely all the Receiver's cases against third parties—warrant special attention, in the form of either a protective order establishing a coordinated discovery plan, special master, or both. A coordinated discovery plan could minimize stress on the parties, third parties, and the Court.

4.

The Receiver also requests that the Court enter a protective order precluding UPS from pursuing certain discovery from investor-victims by quashing, or at least limiting, the scope of UPS's subpoenas duces tecum. The Court may issue an order under Rule 26(c)(1) "for good cause" precluding any type of discovery and protecting any party (or non-party) from "annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

5.

Subpoenas are subject to the discovery limitations of Rule 26(b), and to be enforceable, must seek information that is relevant to a party's claims or defenses, proportional to the needs of the case, not overly burdensome, and not unreasonably duplicative. *See* Fed. R. Civ. P. 26(b). Much of the information that UPS seeks from investor-victims is wholly irrelevant to the Receiver's claims against UPS or UPS's defenses to those claims. UPS's overbroad requests also place an undue burden on investor-victims.

6.

The Receiver also objects to the public disclosure of investor-victims' identifying information and has designated that information as confidential under the current protective order. [See Doc. 90]. UPS's notices of subpoenas and subpoena returns, both of which will presumably be filed in the Court's record, contain investor-victims' names and addresses. Pursuant to Paragraph 6 of the protective order and Local Rule 79, the Receiver requests that any subpoena notice or return be filed under seal or redacted before filing.

7.

Finally, the Receiver requests expedited consideration of this motion. UPS will likely soon file its subpoena notices and returns in the Court's record and because UPS's subpoenas command investors to produce documents by July 8 at 10:00 a.m.

**WHEREFORE**, for the reasons stated in the accompanying memorandum, the Receiver respectfully requests that the Court enter an order providing the requested relief under Federal Rule of Civil Procedure 26(c).

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June 22, 2021

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: June 22, 2021

*/s/ Kristen D. Amond*

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**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, files this memorandum in support of her motion for relief under Federal Rule of Civil Procedure 26(a).

The discovery process in this matter has been unique, to say the least. Despite that this case has been pending since May 2019, UPS has produced few documents (and the ones they have produced were produced only after multiple conferences with the parties and the Court) and has identified only one witness likely to have discoverable information. UPS’s most recent action was to unilaterally schedule at least 32 depositions of investor-victims in multiple cities to take place over the course of 17 days, with multiple depositions taking place on each day. Because of tactics

like these, this case—and likely all the Receiver’s cases against third parties—warrant special attention, in the form of either a protective order establishing a coordinated discovery plan, special master, or both. A coordinated discovery plan could minimize stress on the parties, third parties, and the Court.

UPS’s subpoenas seek information from investor-victims that is private and that otherwise far exceeds information that is relevant here. For these reasons and those discussed below, the subpoenas should be quashed, or at least limited. Investor-victims’ identities also should be protected from public disclosure. To the extent that the Court allows UPS to move forward with its subpoenas of investor-victims, the Receiver moves for any subpoena notices and returns to be filed under seal or redacted.

Investors have already been victims once at the hands of Lamar Adams. They should not be re-victimized by the very entities who helped sustain the Madison Timber Ponzi scheme. Because the issues raised in this motion are time-sensitive, expedited consideration is warranted.

**1. The Court should fashion a coordinated discovery plan.**

The Receiver has been waiting ten months for The UPS Store, Inc. to produce documents that fully respond to her first set of discovery requests. She filed a motion to compel the production of those documents on February 25, 2021, and the motion remains pending. She still awaits complete responses to her second set of discovery requests of UPS, which were filed over six months ago.

Now, without first coordinating with the Receiver or her counsel, UPS issued at least 32 subpoenas to investor-victims, demanding that they produce 13 categories of documents by July 8 and that they appear for depositions across the United States.

The subpoenas caught everyone by surprise. UPS's counsel emailed the Receiver's counsel copies of subpoenas on Thursday, and the Receiver's counsel asked to confer regarding their dates. Unbeknownst to the Receiver, however, UPS did not wait. On Friday evening, investor-victims started calling the Receiver to report that they had been served with the subpoenas. Many are elderly and were confused and upset.

The subpoenas are heavy-handed. They seek information that is not relevant to any claim or defense in this case. They seek information that is private (for instance, information relating to investor-victims' taxes that is no one's, including even the Receiver's, business). Investor-victims understandably have a lot of concerns. The Receiver currently is at a loss to address those concerns, and it is unfair to expect every investor-victim to hire a lawyer to help them understand their rights and obligations else risk the penalty of jail or fine.

The Receiver is concerned that UPS intends to file the subpoena returns in the court's record and thereby embarrass investor-victims by disclosing their names. The Receiver sought to avoid this very situation when she requested a protective order in December 2019. The Receiver would have liked to work with UPS to protect investor-victims' identities on the front end—her counsel emailed UPS's counsel about it on Friday night but received no assurance—and still will if UPS will only relent. Such as it is she now requests in this motion to seal the returns, a matter which, unless something changes, this Court will have to decide.

The Receiver would have been glad to coordinate all of this with UPS, but UPS did not give the Receiver the opportunity. Meanwhile UPS continues to shirk its own obligations to respond to discovery requests issued to it more than a year ago.

These frustrations beg the question whether these cases warrant special attention, in the form of either a coordinated discovery plan, special master, or both. As just one example, UPS

recently noticed the deposition of Lamar Adams. Other defendants in other of the Receiver's cases likely also intend to depose Lamar Adams. They might also intend to seek the same information that UPS's subpoenas seek from investor-victims. In the Trustmark case alone, the Receiver faces the threat of defending 250 depositions, all or most of which could be duplicative. A coordinated discovery plan—overseen, if the Court elects, by a special master—could minimize stress on the parties, third parties, and the Court.

This Court has broad discretion to fashion a discovery method that fits the needs of these cases. Fed. R. Civ. P. 26(c)(1) (“[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, including . . . prescribing a discovery method other than the one selected by the party seeking discovery”); *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)) (“District courts have broad discretion in determining whether to grant a motion for a protective order.”); *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 are good reasons for everyone to coordinate before getting too far down the road in this and other of the Receiver's cases. *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)) (“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.’”).



**2. The Court should quash, or at very least limit, the subpoenas.**

The Receiver requests that the Court enter a protective order precluding UPS from pursuing certain discovery from investor-victims by quashing, or at least limiting, the scope of UPS's subpoenas duces tecum.

UPS's subpoenas seek information that is private (e.g., information relating to investor-victims' tax and accounting treatment of their investments) and irrelevant (e.g., investors' communications with the Receiver). The document requests are also grossly overbroad (e.g. "All DOCUMENTS that refer or relate to any meeting or other communications with ADAMS or MADISON TIMBER."; "All DOCUMENTS that RELATE TO your decision to investment [sic] with ADAMS and/or MADISON TIMBER"; "All DOCUMENTS that RELATE TO any other PERSONS who invested with ADAMS or MADISON TIMBER.>"). UPS's attempt to obtain such sensitive and irrelevant information is improper.

On timely motion, the Court may quash or modify a subpoena to protect a person subject to or affected by the subpoena. Fed R. Civ. P. 45(c)(3)(A). Although the general rule is that only the person to whom the subpoena is directed has standing to object to its issuance, an exception applies where the challenging party "has a personal right or privilege in the subject matter or a sufficient interest in it." *Ferris Mfg. Corp. v. Thai Care Co.*, No. 4:17-cv-1024, 2019 WL 8223600, at \*1 (N.D. Tex. Jan. 25, 2019) (internal citations omitted); *Total RX Care, LLC v. Great N. Ins. Co.*, 318 F.R.D. 587, 594 (N.D. Tex. 2017) ("A party, although not in possession or control of the materials sought in a subpoena and not the person to whom the subpoena is directed, has standing to file a motion to quash or modify under Federal Rule of Civil Procedure 45(d)(3) if it has a personal right or privilege in the subject matter of the subpoena or a sufficient interest in it."); *see also Field v. Anadarko Petroleum Corp.*, No. 4:20-cv-00575, 2020 WL 4937122, at \*2 (S.D. Tex.

Aug. 24, 2020) (“Parties unquestionably have limited standing to quash subpoenas served on non-parties pursuant to Rule 45.”).

The Court need not rely solely on Rule 45, however, because any party has standing to move for a protective order to limit discovery under Rule 26(c). *Summit Health & Rehab Servs., Inc. v. Baker, Donelson, Bearman, Caldwell & Berkowitz*, No. 3:17-cv-127, 2017 WL 9360856, at \*1 (S.D. Miss. Aug. 21, 2017); *Bounds v. Cap. Area Fam. Violence Intervention Ctr., Inc.*, 314 F.R.D. 214, 218 (M.D. La. 2016) (“[A] party has standing to move for a protective order pursuant to Rule 26(c) seeking to limit the scope of discovery, even if the party does not have standing pursuant to Rule 45(d) to bring a motion to quash a third-party subpoena.”). The Court may issue an order under Rule 26(c)(1) “for good cause” precluding any type of discovery and protecting any party (or non-party) from “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1).

Subpoenas are subject to the discovery limitations of Rule 26(b). *Coleman v. Swift Transportation Co. of Arizona, LLC*, No. 3:13-cv-3, 2013 WL 12178160, at \*2 (N.D. Miss. Aug. 23, 2013). To be enforceable, subpoenas must seek information that is relevant to a party’s claims or defenses, proportional to the needs of the case, not overly burdensome, and not unreasonably duplicative. *See* Fed. R. Civ. P. 26(b).

Much of the information that UPS seeks from investor-victims is wholly irrelevant to the Receiver’s claims against UPS or UPS’s defenses to those claims. This case is about whether UPS notaries stamped fake timber deeds and whether those actions contributed to the growth of the Madison Timber Ponzi scheme. UPS’s overbroad requests also place an undue burden on investor-victims. An order quashing, or at the very least limiting, UPS’s subpoenas is proper here.

**3. Any subpoena notices or returns should be filed under seal.**

UPS's notices of subpoenas and subpoena returns, both of which will presumably be filed in the Court's record, contain investor-victims' names and addresses. The Receiver has made known throughout these proceedings that victims' identifying information should be designated as confidential under the current protective order. [See Doc. 90]. The protective order requires the parties to "take reasonable efforts to prevent unauthorized and inadvertent disclosure of documents as containing Confidential Information." [Doc. 90 at 4].

The Receiver objects to public disclosure of victims' identifying information and, pursuant to Paragraph 6 of the protective order and Local Rule 79, requests that any subpoena notice or return be filed under seal or redacted before filing.

There is good cause to seal or redact UPS's subpoena notices and returns to the extent that they contain investors' identifying information. *See Equal Emp. Opportunity Comm'n v. Faurecia Auto. Seating, LLC*, No. 4:16-cv-00199, 2017 WL 564051, at \*2 (N.D. Miss. Feb. 10, 2017) ("[P]ersonal information (name, date of birth, social security number, address, work history, telephone number) triggers a privacy right that creates good cause for sealing.") (internal citations and quotation marks omitted); *see also In re 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"); *Zysman v. Zanett Inc.*, No. 13-cv-02813, 2014 WL 1320805, at \*4 (N.D. Cal. Mar. 31, 2014) (permitting 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"); *see also, e.g., Doc. 75, Securities and Exchange Commission v. Joseph F. Forte, et al.*, No. 09-63 (E.D. Penn.) (protective order that applied in all

pending receivership cases and any future ancillary actions brought by the receiver allowed receiver to identify investor-victims by numbers). Public exposure is a revictimization. Sealing or redaction are small efforts to avoid making a victim feel like a victim twice.

**4. Expedited consideration is warranted here.**

Because UPS will likely soon file its subpoena notices and returns in the Court's record and because UPS's subpoenas command investors to produce documents by July 8 at 10:00 a.m., the Receiver requests expedited consideration of this motion. Although Local Rule 7 provides for responses to motions to be filed within 14 days, an expedited briefing schedule is warranted so that the Court can consider these issues expeditiously.

**CONCLUSION**

The Court has broad discretion to enter protective orders generally, and there is good cause to enter such an order here. Coordinated discovery in all the Receiver's lawsuits against third parties will ensure "the just, speedy, and inexpensive determination" of the issues in these cases. *Merrill Scott & Associates, Inc.*, 600 F.3d at 1272. In the meantime, relief from the now-issued subpoenas is warranted.

June 22, 2021

Respectfully submitted,

*/s/ Lilli Evans Bass*

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*/s/ Kristen D. Amond*