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

Defendants.

Case No. 3:19-cv-00364-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

NON-CONFIDENTIAL REPLY MEMORANDUM IN SUPPORT OF MOTION TO SEAL

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 submits this non-confidential reply memorandum in support of her motion to seal.

Introduction

The Receiver's Motion to Seal seeks narrow relief. She is not asking for a "blanket order sealing all documents."[1] The motion asks only that UPS refer to victims by number or that their names and identifying information be redacted in the subpoena notices and service returns that UPS files on the public record.

UPS wants the Court to believe that the Court has already considered this issue and that the Court has found that the Receiver "failed to make the showing required under Local Uniform Rule 79 for an order sealing or redacting the names of all investors in all filings."[2] That is not what the Court said.

In its ruling on the Receiver's and UPS's dueling motions for protective order, the Court actually said "the issue is premature":

> In the Receiver's reply, she succinctly describes the issue presented and the parties' respective positions: "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." *The undersigned says that the issue is premature*.[3]

Far from foreclosing the issue, as UPS suggests, the Court expressly afforded the Receiver "an opportunity to file a motion to seal, if she wanted the Court to seal or redact investors' names and identifying information from the public record."[4] That is exactly what the Receiver is doing now.

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[1] Doc. 233 at 3.

[2] Doc. 233 at 2.

[3] Doc. 89 at 2 (emphasis added).

[4] Doc. 89 at 3.

The Receiver's—and victims'—concerns are valid

UPS asks the Court to disregard the Receiver's concerns for victims' privacy. It contends, as it has in other filings, that the Receiver offers only "rank speculation" and a "bald assertion about what investors feel or want."[5] UPS cites no legal authority for the proposition that the Receiver's motion requires an affidavit or declaration. The Receiver trusts that UPS does not intend to suggest that the Receiver's representations to the Court are untruthful. Nevertheless, if it would be helpful, the Receiver would be glad to testify to victims' concerns if the Court holds a hearing on the instant motion.

UPS suggests that victims do not want privacy, pointing to one particular victim who has spoken publicly. Of the 217 victims (184 investors in Madison Timber plus the 33 who invested through the Alexander Seawright Timber Fund), only a small handful of victims have made public appearances: five testified at Lamar Adams's sentencing and three at the hearing on the Receiver's motion for first distribution. If any of these victims' names come up, it is because these victims' names are public. These victims may not mind the publicity, but they do not purport to speak for all victims. The fact that only a very small handful out of 217 victims have made public appearances indicates that on the whole victims value their privacy.

UPS observes that some victims are "corporate entities."[6] That might be true. But it hardly follows that they or any other victim has no right of privacy. UPS is a corporate entity, yet it has requested that the Receiver treat its own information as private in this lawsuit.

[5] Doc. 233 at 3.

[6] Doc. 233 at 3.

UPS offers no legal support for its position

UPS contends that victims' privacy is not a good enough reason to seal (or at least to redact) their names. The cases that UPS cites do not support its position.

UPS paints the *Madoff* case as just like this one, but UPS does not tell the whole story. In *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities, LLC*, a bankruptcy trustee filed adversary complaints against various entities. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, No. 08-01789, 2011 WL 1378602 (Bankr. S.D.N.Y. Apr. 12, 2011). Under a case management and protective order already in place, the trustee filed the adversary complaints either entirely under seal or with certain defendants' and non-party employees' names redacted. When national news outlets requested access to the adversary complaints, the Court reconsidered its protective order.

The Court ultimately unsealed and unredacted certain adversary complaints.[7] Specifically, the Court unsealed and unredacted the identities of employees and principals of defendant financial institutions, many of whom were themselves named defendants. The institutions were not "investors" in the Madoff scheme in the same sense as the investors here. Instead, they were subsequent transferees of funds invested by other people. Their employees and principals certainly were not investors in the scheme; some were allegedly complicit in it.

The *Madoff* court did not buy the argument that employees' and principals' identities should be protected because the trustee's adversary complaints directly quoted from emails and other internal memoranda that the trustee obtained in discovery. This information was created by the defendants' analysts, officers, and executives in the scope of their employment and necessarily

[7] The Court allowed to remain redacted certain proprietary commercial information of JPMorgan and other non-profit organizations. *Sec. Inv. Prot. Corp.*, 2011 WL 1378602 at *3.

disclosed their identities. *See id.* at *3, n. 4. The employees' mere association with the Ponzi scheme was not enough to justify further nondisclosure under Section 107(b) of the Bankruptcy Code.[8]

It should go without saying that the victims here are not defendants. They are not accused of any wrongdoing (although UPS has recently said victims "were not 'victims' at all" but instead "were very wealthy individuals who benefitted" from the Ponzi scheme,[9] and UPS's co-defendants' counsel has recently suggested on a call with the Court that victims should retain counsel to litigate whether "their mistake" embarrasses them). Also here, by contrast, the Receiver does not ask to seal any part of a complaint.

The Receiver only asks to use numbers to identify victims in public filings. UPS cannot dispute that there is precedent for protecting victims' identities. *See, e.g.*, Docs. 1766, 1877, *Securities and Exchange Commission v. Stanford Int'l Bank Ltd., et al.*, No. 3:09-cv-0298 (N.D. Tex.) (after the *Stanford* receiver was made aware "that confidentiality concerns exist[ed]," the court granted the receiver's request to use claim ID numbers so as not to disclose in public filings "information from which the individual Investor CD Claimants can be identified"); *see also Caxton Int'l Ltd. v. Rsrv. Int'l Liquidity Fund, Ltd.*, No. 09-cv-782, 2009 WL 2365246, at *6–7 (S.D.N.Y. July 30, 2009) (redacting information "reflecting the identity of actual or potential [non-

[8] *In re Analytical Systems, Inc.* falls even further afield. In that case, one bankruptcy creditor sought to unseal a settlement agreement between the debtor-in-possession and another creditor that resolved a lawsuit between them. Both the debtor-in-possession and settling creditor were corporations and both were seeking to prevent the disclosure of "highly-sensitive" settlement arrangements. *In re Analytical Systems, Inc.*, 83 B.R. 833, 834 (Bankr. N.D. Ga. 1987). The court ordered the settlement agreement unsealed because the agreement did not contain any trade secrets or confidential commercial information. The possibility of harming the corporation creditor's reputation alone was not enough to overcome the policy of public disclosure because the "greater the motivation a corporation has to shield its operations, the greater the public's need to know." *Id.* at 836 (quoting *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179–80 (6th Cir. 1983)).

[9] Doc. 299 at 5. In fact, only approximately 40 of the 184 investors in Madison Timber (not counting the additional 33 who invested through the Alexander Seawright Timber Fund) did not qualify for a first distribution because they received, over time, interest that exceeded any principal still due to them under their promissory notes. Doc. 265 at 9–10.

party] investors" and directing the parties "to file their motion papers under seal and then, to the extent those papers identify any non-party investor, file copies in the public court files with the minimum amount of redactions necessary to protect the identity of non-party investors"); *Druck Corp. v. The Macro Fund (U.S.) Ltd.,* No. 02-cv-6163, 2002 WL 31415699, at *1 (S.D.N.Y. Oct. 28, 2002) (requiring that "any reference to the non-party investors shall identify them only as John Doe, Richard Roe, etc."; that affidavits or exhibits be filed under seal "to the extent they identify any non-party investor"; and that copies be filed "in the public court files with the minimum amount of deletions necessary to protect the identity of the non-party investors"); *see also, e.g.*, Doc. 75, *Securities and Exchange Commission v. Joseph F. Forte, et al.*, No. 09-63 (E.D. Penn.) (to protect victims' privacy interests, protective order required the use of numbers to identify victims).[10]

UPS also cites *Equal Emp. Opportunity Comm'n v. Halliburton Energy Servs.*, No. 3:16-cv-00233, 2018 WL 3061973 (S.D. Miss. May 17, 2018), for the general proposition that the public has a right to view court documents. No one disputes that general proposition. But in *Halliburton* the plaintiff "asked to seal every document related to its opposition to [the defendant's] motion for summary judgment." *Id.* at *2. *Halliburton* is not this case. This motion that requests only that UPS redact investor names from, or refer to investors by numbers in, subpoena notices and returns filed on the public record is the kind of "surgical sealing that carefully balances the public's right to inspect documents against [victims'] right of privacy" that the Court in *Halliburton* contemplated.

[10] UPS says *Forte* is "unavailing" because there, the receivership court entered a protective order protecting investors' identities in all receivership cases, which UPS contends is not allowed here. The Receiver disagrees with that, but in any event, the instant motion seeks much narrower relief.

In all aspects of the Receiver's cases, but certainly for this limited purpose, victims' identities are not necessary for, or relevant to, the public's ability to monitor the federal courts—the pursuit upon which the right of access is predicated. *See Equal Emp. Opportunity Comm'n v. Halliburton Energy Servs.*, No. 3:16-cv-00233-CWR-FKB, 2018 WL 3061973, at *1 (S.D. Miss. May 17, 2018).

There is precedent and good cause for the Receiver's request, and it prejudices no one. The Receiver respectfully submits that her motion should be granted.

July 21, 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: July 21, 2021 */s/ Kristen D. Amond*