

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

RECEIVER'S OPPOSITION TO MOTION TO COMPEL

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 opposition to the "Motion to Compel Discovery and Disclosures from Plaintiff and for Other Relief Pursuant to Federal Rule of Civil Procedure 37" filed by Defendant The UPS Store, Inc. [Doc. 242] and joined by Defendants Rawlings & MacInnis, P.A., Tammy Vinson, and Jeannie Chisolm [Doc. 248] and Herring Ventures, LLC and its notaries [Doc. 249].

INTRODUCTION

Litigation is often grueling. No one would expect two adverse parties to agree on everything. But discovery necessarily requires some give and take, presumably the parties share the same goal: discerning the truth. There are tools for discovery, and also rules. It's not fun or easy, but it's a precondition to trial.

There is nothing the Receiver or her counsel can say, and nothing they can do, no matter how helpful, that defendants, and UPS in particular, will accept. UPS itself refuses to participate in discovery—it will not produce documents; it will not make UPS employees available for deposition—all the while insisting that the Receiver produce every scrap of paper she ever held and answer every request for admission and interrogatory using UPS's own words.

UPS's motion to compel distorts the facts.¹ The Receiver's efforts to satisfy UPS and, in fact, all defendants, are substantial. The Receiver addresses UPS's multiple misrepresentations more specifically herein. But the real takeaway is the Receiver long ago gave UPS any information relevant to this case and, more recently, tried to give it much, much more. The Madison Timber Receivership virtual data room has in it, with a few exceptions, all the records the Receiver obtained in the course of her investigation, whether relevant to UPS or not. UPS refuses even to look at it.²

¹ As is UPS's habit. UPS distorts case law (UPS said "the Fifth Circuit did not even address standing in *Zacarias*" [Doc. 139 at 14]; it did—"There is no dispute that the receiver and Investors' Committee had standing to bring their claims against Willis and BMB." *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 899 (5th Cir. 2019)) and even orders of this Court (UPS said this Court already held 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" [Doc. 233 at 2]; in fact, at the time this Court said "the issue is premature." [Doc. 89 at 2]).

² Defendants did not like the data room's terms of access because defendants said the terms would make them "comply with the proposed protective order that [the S.E.C. and the Receiver] have requested be entered in the S.E.C. v. Adams, et al., No. 3:18-cv-252 matter." That's not what the terms of access say.

Make no mistake. UPS is not interested in exchanging discovery. It is interested solely in obstructing the progression of this case. Despite being invited by the Court to do so, UPS never filed an early dispositive motion on the merits of what it claimed was its primary defense—whether UPS controls its franchisee.³ Apparently UPS has abandoned that defense. The many pages of filings and correspondence by UPS over the past several months make no mention of UPS’s control over its franchisee and UPS adamantly refused to respond to discovery addressing that issue. It is clear that UPS has decided that it will instead employ strategy of delay. UPS has filed two motions to dismiss and has moved to stay discovery. In every conference call with the Court, it represents that it needs extensions of discovery deadlines. (Interestingly, notwithstanding the Court’s invitation, it has not yet filed a motion for continuance.). The Receiver herself has proceeded, without the benefit of any meaningful discovery from UPS itself. Nevertheless, a continuance at this point would only reward UPS for bad behavior.

This is a case about the notarization of fake timber deeds. This Court already said that discovery in this case “should not be overly complex.”⁴ But UPS needlessly makes it so. There is no reason the parties cannot be ready for trial in April 2022, unless UPS, through its obstruction, succeeds at postponing it. It’s been two years since the Court ordered the parties to discovery. The instant motion and the numerous letters to the Court that preceded it are not genuine complaints but instead part of an overall strategy frustrate and delay. That UPS, in the instant motion, asks for sanctions against the Receiver is offensive. The Receiver has given UPS everything it needs and more. All she has ever asked is for UPS to treat victims’ names as confidential. That is a very small ask, but it has not stopped the Receiver from producing documents. Nevertheless, UPS has used

³ The Court and the parties even discussed, but ultimately rejected, bifurcating the case to address this issue.

⁴ Doc. 49, *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.).

even that small request to its advantage. So long as the issue is undecided, UPS pretends this entire case is stayed.

Meanwhile it batters the Receiver with litigation of UPS's own overbroad discovery requests, most of which are calculated to harass the Receiver at the expense of Madison Timber's victims. The Receiver has fairly responded to UPS's discovery requests and has produced a significant number of documents. UPS's motion should be denied.

ARGUMENT

1. UPS has had the information it seeks, and now it has even more.

Despite UPS's habit of itself producing little to nothing while demanding far more than it is entitled, the Receiver has been providing information to UPS since the beginning of this case.

Long before UPS issued formal discovery requests, the Receiver produced to UPS in her initial disclosures any promissory notes and timber deeds that she had received from investors, which amounted to over 4000 pages.⁵ Contrast that with UPS's initial disclosures, which identified only a single person with knowledge of the facts of this case and attached no documents. Almost exactly a year ago, the Receiver produced a spreadsheet of a preliminary accounting of outstanding investors notes, which contained investors' names.⁶ In December 2020, the Receiver made available to UPS and its co-defendants a digital forensic image of Lamar Adams's computer. At that time, UPS had produced a whopping three pages of documents that had not already been produced by one of its co-defendants. It still has not fully responded to the Receiver's discovery

⁵ The Receiver first produced promissory notes and timber deeds with victims' names redacted in November 2019. Per the Court's order, the Receiver re-produced these same notes without redactions in July 2020. None of the notary stamps or attestations at issue were ever redacted.

⁶ This spreadsheet is Bates labeled as MTP.UPS_004088 – MTP.UPS_004119 (Confidential).

requests propounded over a year ago.⁷ UPS's tactics beg the question who really has "ignored [its] discovery obligations" and "stonewalled" discovery. [Doc. 243 at 7].

More recently, the Receiver has made Madison Timber's records available to all defendants in all the Receivership Estate's lawsuits in the Madison Timber Receivership virtual data room. The purpose of the virtual data room is to efficiently facilitate discovery by making Madison Timber's records available to everyone in one place. The virtual data room houses, with few exceptions, all of Madison Timber's records that the Receiver has obtained—documents that the Receiver obtained from the FBI; Madison Timber's Quickbooks files that the Receiver obtained from Madison Timber's CPA; records that the Receiver obtained from third parties, including Madison Timber's recruiters, banks, and law firms; records from the notaries in this case who notarized fake timber deeds for Adams and Madison Timber; and the recently completed accounting of the Receivership Estate's damages, along with its underlying documents.⁸

UPS complains that the Receiver should have produced this information sooner, but the reality is that UPS has long had the documents that are relevant to this straightforward case. UPS now has access even to those documents in the Receiver's possession that are not relevant.

2. UPS's discovery requests are overbroad and seek irrelevant documents.

Despite that the Receiver has produced over 4000 pages of documents directly to UPS and 353,000 more in the virtual data room, UPS is not satisfied. UPS will never be satisfied; it does not want to be satisfied. It phrases its discovery requests impossibly broadly, to encompass

⁷ UPS's failure to produce documents evidencing its franchise relationship is the subject of a pending motion to compel that the Receiver filed in February of this year. [Doc. 167].

⁸ See Exhibit A. The Receiver had not previously produced a detailed accounting of the Receivership Estate's damages because the accounting was only recently completed when the Receiver sought approval for the first interim distribution to investors. That accounting and the underlying documents are now accessible through the virtual data room.

documents, if they even exist, that are wholly irrelevant to either the Receiver's claims or UPS's defenses. Such sweeping requests are improper. *See* Fed. R. Civ. P. 26(b)(1).

UPS seems to think that it is entitled to every document having anything even tangentially to do with Madison Timber or the Receiver's administration of the Receivership Estate. Rule 26 may be broadly construed, but it is not limitless. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (“[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries.”); *Sandres v. Louisiana Div. of Admin.*, No. 08-cv-145, 2009 WL 2615819, at *1 (M.D. La. Aug. 25, 2009) (“Although discovery is broad, it is not limitless.”); *see also Hopkins v. Sumrall Holdings, Inc.*, No. 1:19-cv-418, 2020 WL 1698353, at *2 (S.D. Miss. Mar. 18, 2020) (quoting *Barnes v. Tumlinson*, 597 Fed. App'x 798, 799 (5th Cir. 2015)) (“Indeed, discovery is not a license for the parties to ‘go fishing’ and is limited to information that is relevant to any party’s claim or defense.”) (internal quotation marks and alterations omitted).

“[T]he scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). When, as here, a party’s discovery requests run afoul of the limits of Rule 26, the Court may “tailor discovery narrowly” to find a “just and appropriate balance.” *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (“Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery.”); *Willis v. City of Hattiesburg*, No. 2:14-cv-89, 2016 WL 918038, at *2 (S.D. Miss. Mar. 10, 2016) (“Finding a just and appropriate balance in the discovery process is one of the key responsibilities of the Court . . .”).

Notwithstanding their irrelevancy to this case, the Receiver has made hundreds of thousands of pages of documents available to UPS via the Madison Timber virtual data room. “At

some point, however, discovery yields diminishing returns, needlessly increases expenses, and delays the resolution of the parties' dispute." *Willis*, 2016 WL 918038, at *2.

3. The Receiver's responses to UPS's requests have been proper.

UPS insists that the Receiver produce any document that UPS's sweeping requests might possibly ask for, without any objection, simply because UPS says so. The federal rules require no such thing. *See* Fed. R. Civ. P. 34(b)(2). As discussed above, the Receiver has not "unilaterally" decided what "she is willing to produce." [Doc. 243 at 9]. She has produced virtually all of Madison Timber's records in her possession. The Receiver's responses to UPS's requests for production of documents have been proper under Rule 34.

The Receiver addresses the responses about which UPS continues to complain below:

Request for Production Nos. 2 and 3

UPS requests "all documents that describe or otherwise relate to" assets of Adams and Madison Timber (RFP No. 2) and "all documents that relate to the 'accounting' that you performed for the estate of Madison Timber" (RFP No. 3). These requests are overbroad.⁹ For example, a document responsive to RFP No. 2 could include everything from Madison Timber promissory notes and timber deeds to the buyer's manual of a kitchen appliance in the home that Adams once owned.

UPS says that, because "defendants increased the debts of the Receivership Entities, which those Entities cannot pay," it is "entitled to learn everything there is to know about the assets and liabilities of Adams and Madison Timber." [Doc. 243 at 14]. But Rule 26 does not entitle UPS to "learn everything there is to know" about, for instance, the medical expenses, property taxes, or

⁹ UPS's definition of "relate to" is as broad as can be: "The term 'RELATE TO' means in whole or in part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon."

health insurance premiums paid by Lamar Adams and his wife. *See* Fed. R. Civ. P. 26(b)(1).¹⁰ Those things have nothing to do with this case. The Receiver alleges that UPS and its co-defendants contributed to Madison Timber's success over time and therefore to the *Receivership Estate's* liabilities today. Lamar Adams's and Madison Timber's assets and liabilities have long been liquidated, the details of which are a matter of public record, having been documented every 60 days in the Receiver's reports.

The Receivership Estate's liabilities today are the amounts due under outstanding promissory notes. As promised in the Receiver's response to RFP No. 3 and in various other communications with defendants' counsel, the Receiver has produced an accounting of the Receivership Estate's damages with the documents used to prepare that accounting. The Receiver has been clear with everyone what documents she reviewed to create her accounting,¹¹ and she has produced all of those documents.

Request for Production No. 7

UPS seeks to obtain documents produced or received by the Receiver in her other lawsuits. As far as the Receiver's productions, every defendant in each of the Receiver's cases has access to the same information through the virtual data room.

With respect to documents produced by defendants in other cases, those documents are irrelevant to this case because this case, uniquely, is about the notarization of fake timber deeds. That being said, the Receiver is willing to make available in the virtual data room documents received from other defendants or third parties, barring special circumstances and assuring

¹⁰ The case cited by UPS does not change the result. There, the court ordered the receiver to produce certain documents for the purpose of testing the receiver's damages expert's opinions on "increased rescission liability damages" to the receivership entities. *Taylor v. Rothstein Kass & Co., PLLC*, No. 3:19-cv-1594, 2020 WL 7321174 (N.D. Tex. Dec. 11, 2020).

¹¹ *See, e.g.*, Doc. 265 at 4, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.) (Memorandum in Support of Motion to Approve First Distribution).

everyone's consent. The Receiver has not received documents in discovery in her other cases because this case is the only one at this stage.¹²

The only documents that have been produced to the Receiver from other defendants that she has not yet produced to everyone are the internal emails of BankPlus, Trustmark, and RiverHills and Alexander Seawright's records. BankPlus's, Trustmark's, and RiverHills's internal emails were produced to the Receiver pre-lawsuit. Given how strenuously UPS sought to protect from disclosure its own production, UPS certainly does not suggest that the Receiver should turn over documents that another party might deem confidential. The Receiver has given BankPlus, Trustmark, and RiverHills an opportunity to object to the production of internal emails and if they do not, she will make them available to UPS and all defendants.

As for Alexander Seawright's records, the Receiver has informed all defendants that, given the criminal indictments of Brent Alexander and Jon Seawright, and the stay of civil litigation against them, she will confer with their counsel before making the records available to everyone.

Request for Production Nos. 8, 9, 10, and 11

UPS makes a series of overlapping requests for "all documents that relate to" the Receiver's "investigation" (RFP No. 8) and for "all documents" exchanged with anyone with knowledge of Madison Timber (RFP No. 11). UPS specifically seeks documents exchanged with and communications between the Receiver and victims (RFP No. 9) and the Receiver and the government (RFP No. 10). Each of these requests exceeds the scope of legitimate discovery allowed under Rule 26 because each is overbroad and seeks information that has no relevance to this case. *See* Fed. R. Civ. P. 26(b)(1) ("[p]arties may obtain discovery regarding any nonprivileged

¹² The Trustmark and BankPlus cases have only just entered the discovery period, and no party has issued formal requests or, excepting the Receiver, made productions.

matter that is relevant to any party's claim or defense . . . "). This is particularly true because the requests seek documents that necessarily were generated after Madison Timber's fall.

The Receiver's "investigation" (RFP No. 8)

As the Receiver explained in her response to the request, the word "investigation" in her report means the wholistic investigation of Madison Timber that has been ongoing since her appointment.¹³ As written, UPS's request demands that the Receiver detail every conversation with every person who the Receiver or her counsel has talked to about Madison Timber since June 2018. Such request is grossly overbroad and impossibly burdensome.

In its order appointing the Receiver, the Court charged the Receiver with finding and liquidating the assets and liabilities of Adams and Madison Timber, investigating and bringing legal actions against third parties, and managing the Receivership Estate.¹⁴ In fulfilling those responsibilities, the Receiver has filed multiple lawsuits and communicated with hundreds of people in the course of administering the Receivership Estate's business. UPS seeks "all documents" related to each and every act that the Receiver has taken.

The Receiver does not hide her actions. Indeed, the best source of the information that UPS seeks is the Receiver's website, which has documented her efforts since the Receivership's inception.

Especially given UPS's expansive definition of "relate to,"¹⁵ which could include every document that even mentions Madison Timber or Lamar Adams, creating a log of every document and communication within the reach of UPS's overbroad request would be virtually impossible.

¹³ The Receiver's statement that UPS references reads in full: "Investors provide information that is useful to my investigation and, in turn, I hope that I demystify the receivership process for them." Doc. 204 at 13, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.).

¹⁴ Doc. 33, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.).

¹⁵ See note 9, *supra*.

Nothing under the federal rules entitles UPS to such information and the Receiver's refusal to log every aspect of the Receiver's and her counsels' work on the Madison Timber Receivership for the past three years does not constitute a waiver. *See* Fed. R. Civ. P. 26(b)(5), advisory committee notes to 1993 amendment, ("Details concerning time, persons, general subject matter, etc., may be appropriate if only a few items are withheld, but may be unduly burdensome when voluminous documents are claimed to be privileged or protected, particularly if the items can be described by categories.").

Victims (RFP No. 9)

UPS specifically seeks documents that Madison Timber's victims have provided to the Receiver and also any communications between the Receiver and individual victims. UPS made the same request in its subpoenas to 32 victims. UPS already has any promissory notes and timber deeds that victims provided to the Receiver. UPS even has a copy of every letter that the Receiver has sent to Madison Timber's victims since her appointment.

With respect to individual investors' communications with the Receiver, what Madison Timber's victims might have told the Receiver after-the-fact—after Adams surrendered; after the Receiver was appointed—is not relevant to whether UPS notaries stamped fake timber deeds. *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580, 2018 WL 7893052, at *8 (D. Or. Dec. 10, 2018), *aff'd*, 2019 WL 1442222, at *6 (D. Or. Feb. 21, 2019) (motion to compel production personal communications between investor-plaintiffs and receiver denied, where "they have provided all direct, personal communications with the Receiver related to their personal Aequitas investments" and "any remaining responsive documents are communications between them and the Receiver concerning litigation and settlement strategies that are protected by various privileges and confidentiality agreements, or are not relevant to any claims in dispute in this case and

Deloitte’s motion must be denied.”).¹⁶ The information that UPS seeks cannot constitute evidence of whether its notaries stamped fake timber deeds because the communications necessarily occurred months or even years after the events in question. UPS points to no rule or law requiring the Receiver to produce a log of documents being withheld based on a relevance objection.

Government agencies (RFP No. 10)

UPS seeks documents that the Receiver received from or produced to the following federal and state authorities: the FBI, the Securities and Exchange Commission, the Department of Justice, the U.S. Attorneys’ Office, the Federal Bureau of Prisons, the Mississippi Secretary of State’s Office, and the Mississippi Department of Banking and Consumer Finance. [*See* Doc. 243 at 21].

To start, UPS’s request is overbroad because it seeks “all documents” that “relate to,” among other things, Madison Timber and Lamar Adams. This request would include any letter to or from a government agency to the Receiver about, for instance, the Receiver’s appointment or the details of Lamar Adam’s incarceration, neither of which have anything to do with this case.

Even so, the Receiver has responded to UPS’s request. Far from being “obviously evasive” or engaging in “an attempt to obfuscate,” the Receiver explained what she has, and where she got it. There is a common misconception among defendants that the government gave the Receiver a big file with a bow on it. The reality is the Receiver obtained almost all the records on which her complaints rely herself, from third parties (many now defendants themselves). The Receiver

¹⁶ *See, also id.* at *8 (“Deloitte has not established that any documents (beyond the investor packets Plaintiffs already have provided) evidencing communications between Plaintiffs and the Receiver are relevant to any claim or defense at issue in this case. Deloitte has not demonstrated that documents created by Receiver (appointed in April of 2016) are relevant to whether Aequitas sold securities to Plaintiffs in violation of Oregon Securities law and whether Deloitte participated or materially aided in the sale of those securities. And, Deloitte has not offered any argument to explain how the requested documents from Plaintiffs that concern the Receiver’s asset recovery strategy after Aequitas entered receivership is probatively tied to Plaintiffs’ underlying securities fraud claims. Deloitte’s motion to compel these documents is denied.”).

explained the origins of her records in a letter, which attached supporting documentation.¹⁷ The Receiver obtained from the FBI a digital forensic image of Lamar Adams's computer and certain records that the FBI seized from Madison Timber's office. Any documents that the Receiver received from the FBI she has produced. The Receiver received very few documents (less than handful) from the U.S. Attorney's Office or the S.E.C. She received those documents pursuant to court order (until recently sealed) that restricts her ability to produce them. (For what it is worth, those documents are not relevant here but the Court might wish to review them itself.). The Receiver has conferred with the Mississippi Secretary of State's Office and the Mississippi Department of Banking and Consumer Finance, but she has not received from them any records of Madison Timber or any documents on which she has relied in either her investigation or preparation of any complaint.

Other persons with knowledge (RFP No. 11)

UPS requests "all documents" and communications that the Receiver has received from anyone with knowledge of "matters bearing on the Receivership Estate." Again, UPS's request would capture information that has nothing to do with this case. A lot of people have knowledge of "matters bearing on the Receivership Estate," but know nothing of whether the defendant notaries stamped fake timber deeds. There is no reason why UPS is entitled to, for instance, the Receiver and her counsels' communications with the appraisers of land once owned by one of Adams's LLCs or the realtor that assisted the Receiver in selling Adams's house, all of which UPS's request encompasses.

Putting the breadth of UPS's request aside, as detailed above, the Receiver has already produced responsive documents that are in any way relevant to this case. She has produced

¹⁷ See Exhibit A.

documents in her possession from victims and government agencies. The Receiver has also produced documents obtained from Madison Timber's "recruiters," banks, and law firms, and has offered to produce documents provided pre-lawsuit by defendants in other cases, with their consent.

4. The Receiver's responses to UPS's requests for admission are proper.

"The purpose of requests for admission is to eliminate from the trial matters as to which there is no genuine dispute. Therefore, requests for admissions are not principally discovery devices." *Superior Sales W., Inc. v. Gonzalez*, 335 F.R.D. 98, 105 (W.D. Tex. 2020) (quoting *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998) (internal alterations omitted)). UPS, however, fashioned its requests for admission more like interrogatories and takes the position that, if the Receiver responds to UPS's requests for admission in any way different than what UPS wants, the answer is improper. The Federal Rules do not allow UPS to dictate the Receiver's responses. What the rules do allow is for the Receiver to "fairly respond to the substance of the matter" and to qualify an answer when necessary. Fed. R. Civ. P. 36(a)(4); *Thomason v. Metro. Life Ins. Co.*, No. 3:14-cv-00086, 2015 WL 1914557, at *2 (N.D. Tex. Apr. 27, 2015) ("However, Rule 36 does not require a party to give wholly unqualified responses to requests for admission. *See* Fed. R. Civ. P. 36(a)(4). So long as the party's responses fairly meet the substance of the requests, the responses are effective to avoid the result of a deemed admission."); *U.S. ex rel. Dyer v. Raytheon Co.*, No. Civ. A. 08-cv-10341, 2013 WL 5348571, *5 (D. Mass. Sept. 23, 2013) (response to request for admission not "evasive" if party qualifies answer to address what it sees as a "potentially problematic ambiguity").

The Receiver addresses each response about which UPS complains below:

Request for Admission Nos. 1, 3, 4, 5, 6

UPS's Requests for Admission Nos. 1, 3, 4, 5, and 6 ask for admissions related to originals of timber deeds stamped by its notaries. Although each of the Receiver's responses to these requests requires qualification, every response "fairly responds" to the request. Fed. R. Civ. P. 36(a)(4).

As the Receiver explained in her responses, the FBI seized any documents, including any timber deeds that it found in Adams's office. It later gave a copy of what it seized to the Receiver, and the Receiver put it all in the virtual data room. It is the Receiver's understanding that the FBI is retaining any originals it seized, which is why she could not give an unqualified admission or denial to UPS's requests. *See* Fed. R. Civ. P. 36(a)(4); *Thomason*, 2015 WL 1914557, at *2; *Dyer*, 2013 WL 5348571, *5. Instead of attempting to force an admission from the Receiver as to whether the FBI possesses timber deeds with original signatures, UPS can simply ask the question of the FBI. The Receiver has not and will not stand in UPS's way if it wants to ask the FBI's permission to inspect any original documents that it may have.

Investors who hold Madison Timber promissory notes with outstanding amounts still due may still hold their original timber deeds. If any investor ever sent their original timber deeds to the Receiver, she copied the timber deeds and returned the originals. To the extent that UPS insists that it needs original timber deeds to defend its case, it has already requested that information from investors through its 32 subpoenas.¹⁸ The Receiver has not been "unwilling" to review those documents. She reviewed and produced to UPS in November 2019 the promissory notes and timber deeds she received from investors. Since then, the Receiver has made available to UPS—

¹⁸ And the Receiver's only objection to its specific request of investors is that UPS refuses generally to treat investors' information as confidential.

and every defendant in each of the Receiver's cases—the same information that the Receiver has. UPS is welcome to inspect any timber deeds that the Receiver has in a physical file.

UPS's suggestion that the Receiver has somehow engaged in spoliation of evidence is incendiary. Some investors voluntarily sent to the Receiver promissory notes and timber deeds in their possession. Some were copies, others were originals. Either way, the Receiver made a copy, returned the originals, and gave what she had to UPS. Certainly UPS does not suggest that the Receiver *intentionally destroyed* original timber deeds “with a culpable state of mind,” meaning “a showing of bad faith or bad conduct.” *Barnett v. Deere & Co.*, No. 2:15-cv-2, 2016 WL 4544052, at *1 (S.D. Miss. Aug. 31, 2016). There is no evidence that any investor destroyed original timber deeds after providing copies to the Receiver. Even assuming the worst, the Receiver retained copies of the documents she obtained and has provided them to UPS. UPS's allegations suggest that UPS's motive is not to obtain meaningful discovery, but to smear the Receiver (or victims) and delay these proceedings.

Request for Admission No. 7

UPS next wants the Receiver to admit that she has no knowledge or information that any UPS notary knowingly made a false attestation. The Receiver cannot make that admission. Although the question whether the UPS notaries knew about the Madison Timber Ponzi scheme is an issue to be explored in the notaries' upcoming depositions (assuming they appear; their counsel has objected to their depositions), whether UPS's notaries made knowingly false attestations is indisputable. As the Receiver explained in her responses to UPS's interrogatories, the defendant notaries attested that grantor-landowners personally appeared and signed the timber deeds when no grantor-landowner ever personally appeared. Those attestations were knowingly false.

Request for Admission Nos. 8, 9, and 13

UPS asks the Receiver to admit that UPS was not a Madison Timber “recruiter” who received commissions (RFA Nos. 8 and 9) and that UPS itself did not conspire with Adams (RFA No. 13). As the Receiver explains in her responses, she currently has no knowledge of UPS recruiting investors to Madison Timber or receiving commissions. She also made clear that the Amended Complaint alleges that UPS’s liability is vicarious, as a franchisor of Herring Ventures, LLC. But discovery is not over, and the Receiver has not yet deposed anyone from UPS (UPS has only identified one person with relevant knowledge) or its franchisee. Although the Receiver does not anticipate discovering that UPS’s role in the Madison Timber Ponzi scheme extends beyond what is alleged, she cannot foreclose any avenue before discovery is complete.

Request for Admission No. 11

RFA No. 11 asks the Receiver to admit that she has no knowledge or evidence that Adams presented forged timber deeds to UPS’s notaries. The Receiver denied the request, as she must given the facts known to her and to UPS, and also provided an explanation for her denial. The Receiver explained that no grantor-landowner ever appeared before a defendant notary. UPS cannot credibly argue with that. It follows that notaries acknowledged either a forged signature or a blank signature line. To the extent that UPS asserts as a defense that Adams altered every timber deed stamped by UPS notaries after their notarization, the Receiver is unaware of facts to support that theory but such information, if any exists, presumably will be revealed in discovery.

The Receiver’s response might not be exactly what UPS wants to hear, but it does “fairly respond to the substance” of UPS’s request, which is all the federal rules require. Fed. R. Civ. P. 36(a)(4).

Request for Admission No. 14

UPS asks the Receiver to admit that investors did not rely on notarizations by UPS's notaries. UPS then says the Receiver failed to "state all facts supporting her claim that any investor relied in any way on notarizations by the Herring Notaries when deciding whether to invest with Madison Timber." [Doc. 243 at 36]. Reliance is not an element of any causes of action asserted in the Amended Complaint.

5. The Receiver's responses to UPS's interrogatories are proper.

UPS's interrogatories suffer from the same flaws as its other requests—they are overbroad—and, still, again UPS attempts to dictate the Receiver's responses.

The Receiver provided a narrative response to each interrogatory even if it was objectionable. The Receiver addresses each interrogatory response about which UPS complains below:

Interrogatory No. 2

Interrogatory No. 2 asks the Receiver to identify "each and every document" that she received from the Securities and Exchange Commission, the FBI, the Mississippi Secretary of State, and the Mississippi Department of Banking and Consumer Finance. [See Doc. 243 at 37]. Because this interrogatory mirrors UPS's Request for Production No. 10 (and suffers from the same deficiencies), the Receiver's response to Interrogatory No. 2 likewise mirrors her response above to Request for Production No. 10.

The Receiver as amended her response to Interrogatory No. 2 to leave no room for doubt.

Interrogatory Nos. 3, 4, and 5

Interrogatory Nos. 3 and 5 ask the Receiver to "state all information and belief" that Adams forged grantor-landowners' signatures before presenting timber deeds to the defendant notaries

(Interrogatory No. 3) and that the defendant notaries did not examine the timber deeds to ensure their notarizations were appropriate (Interrogatory No. 5). Interrogatory No. 4 asks the Receiver to state the facts that support her contention that Adams presented to the defendant notaries timber deeds on which the grantor-landowner signature was blank. As requested, the Receiver responded with the information known to her—no grantor-landowner ever appeared before a defendant notary, so the defendant notaries notarized timber deeds with either forged signatures or blank signature lines.

Unsatisfied with the Receiver's responses, UPS posits that the Receiver needed to have solidified all facts before filing her complaint. The Court has already found that the Amended Complaint sufficiently alleges a factual basis for the Receiver's claims. [*See* Doc. 49 (Order Denying Defendants' Motions to Dismiss)]. Development of those facts of course is the purpose of discovery and the defendant notaries and Lamar Adams have yet to be deposed. *See* Fed. R. Civ. P. 33(a)(2) ("An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time." (emphasis added)).

Interrogatory Nos. 6, 7, and 8

In Interrogatory Nos. 6 and 8, UPS asks the Receiver to identify every fake timber deed notarized by UPS's notaries because UPS claims that it is "entitled to know which timber deeds Plaintiff she [sic] contends were improperly notarized by the Herring Ventures Notaries Public." [Doc. 243 at 41]. To be clear, there were no legitimate Madison Timber timber deeds. Every timber deed that UPS's notaries notarized was fake.

Interrogatory No. 7 is largely duplicative of Interrogatory Nos. 3 and 4; it asks the Receiver to state all facts related to the contention that UPS's notaries notarized the signatures of grantor-landowners who were not present. The Receiver incorporates her arguments relating to those Interrogatories here.

The Receiver has identified for UPS documents that its notaries notarized. The Amended Complaint itself includes an example of a document on which a UPS employee notarized the signature of a purported grantor-landowner who was not present. [*See* Doc. 14 at ¶ 30]. Over a year ago, the Receiver produced promissory notes and timber deeds, many of which were notarized by UPS's notaries. Since then, she has made available all the documents that she obtained from the FBI, including any promissory notes and timber deeds found in Madison Timber's office.

Which of those timber deeds were notarized by UPS notaries is equally within UPS's power to discover. UPS has shown that it is capable of identifying which deeds contain its notaries' stamps, because UPS has subpoenaed numerous investors holding notes and deeds with UPS notaries' notarizations. Whether a timber deed was notarized by a UPS notary is easily ascertainable from the face of the deed—the notary seal on each deed includes the notary's name and signature. *See Midwest Feeders, Inc. v. Bank of Franklin*, No. 5:14-cv-78, 2016 WL 3636132, at *3 (S.D. Miss. Feb. 26, 2016) (denying motion to compel when the information requested “is easily discernable on the face of the document itself”).

Interrogatory No. 9

The Receiver maintains her objection that Interrogatory No. 9 is vague and confusing. Interrogatory No. 9 asks the Receiver to state “for each document identified in response to Interrogatory No. 8”—timber deeds that UPS notaries notarized for which grantor-landowners' signatures were blank—“the corresponding amount of money currently owed to investors.” As the

Receiver explained in her response, there is no “corresponding amount of money owed” pursuant to a timber deed. To the extent that UPS is asking for the amount owed to investors under outstanding promissory notes (which is not what UPS’s request says), that information can be ascertained from the Receiver’s accounting and underlying documents. All of those documents are available to UPS in the virtual data room.

Interrogatory No. 10

Interrogatory No. 10 asks the Receiver, if she contends that Adams did not alter timber deeds notarized by UPS’s notaries, to state all facts supporting to that contention. The Receiver currently has only the timber deeds themselves, which do not appear on their face to be altered. Neither Lamar Adams nor the UPS notaries have been deposed in this case. The parties have not yet exchanged expert reports. These facts continue to be discovered.

Interrogatory Nos. 12 and 13

UPS, while misrepresenting the Amended Complaint’s allegations, asks the Receiver to state facts showing that the defendant notaries were aware that Madison Timber was a Ponzi scheme (Interrogatory No. 12) and agreed to assist Adams in its furtherance (Interrogatory No. 13). The Amended Complaint, however, does not allege that the defendant notaries were “aware that Adams was engaged in a Ponzi scheme.” It alleges that (1) the defendant notaries attested that grantor-landowners signed timber deeds when they did not, so those attestations were knowingly false, and (2) given the number of knowingly false attestations, the defendant notaries knew or should have known that the timber deeds were fake.

UPS says that the Receiver’s civil conspiracy and aiding and abetting claims require a showing that the defendant notaries “had knowledge and agreed to participate in Adams’ scheme.” [Doc. 243 at 45]. UPS has already litigated that issue and lost. [See Doc. 49 (Order Denying

Defendants' Motions to Dismiss)]. For civil conspiracy, it is enough that the defendant notaries joined Adams's course of conduct by notarizing fake timber deeds with attestations that were knowingly false, all in violation of Mississippi's Notary Law. For aiding and abetting, it is enough that the defendant notaries knew that the attestations were false and should have known that the timber deeds were fake.

While the extent of the defendant notaries' knowledge that Madison Timber was a Ponzi scheme is an issue to be explored in the notaries' upcoming depositions, whether UPS's notaries made knowingly false attestations is indisputable. The Receiver's responses to Interrogatory Nos. 12 and 13 sufficiently state the facts known to the Receiver.

Interrogatory No. 14

Interrogatory No. 14 asks the Receiver to state what damages she contends were caused to the Receivership Estate by each defendant in every one of her lawsuits against third parties. The Receiver has maintained that the Receivership Estate's damages are the amounts due under outstanding promissory notes and that, under Mississippi law, defendants are jointly and severally liable for those damages for aiding and abetting a fraudulent scheme. UPS does not contest this in its motion. Instead, UPS asks the Receiver to apportion fault to UPS and everyone else who had a hand sustaining Madison Timber. But apportionment of fault is the job of the factfinder and the Receiver has not yet commenced, much less completed, discovery in her other lawsuits such that she could calculate on a defendant-by-defendant basis Madison Timber's damages due to their negligence.

Interrogatory No. 22

Interrogatory No. 22 asks the Receiver to state the basis for any denial or qualified answer to UPS's requests for admission. The Receiver explained her denials or qualified answers in her

responses to UPS's requests for admission. To the extent that UPS did not issue an interrogatory on a topic covered by a request for admission that the Receiver denied, Interrogatory No. 22 serves as an end-run around the Court's case management order that allows each party 25 each of interrogatories, requests for production, and requests for admission. [Doc. 67 at 2]. *Cubellis, Inc v. LIFT*, No. 07-cv-7959, 2008 WL 11355010, at *4 (E.D. La. Oct. 27, 2008) (quoting *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998)) (“[A]n interrogatory which requests disclosure of a party's basis for denying individual requests for admission constitutes a multiple interrogator[ies] ‘for the purposes of the numerical limit contained in Rule 33(a).’”); *Telemidia Commc'ns, Inc. v. St. Francis Inv. Properties, L.P.*, No. 8:07-cv-1112, 2007 WL 9723859, at *1 (M.D. Fla. Oct. 3, 2007) (“An interrogatory that asks for an explanation for each denial of a request for admission generally does not count only as a single interrogatory, but rather counts as multiple interrogatories for purposes of the numerical limit contained in Fed. R. Civ. P. 33(a).”).

6. UPS's arguments about the Receiver's initial disclosures are moot.

UPS complains that the Receiver's initial disclosures are deficient because they did not list every investor's name and address, every document upon which the Receiver may rely, and the details of the Receiver's damages.¹⁹ UPS's complaint is without merit, but to save everyone including the Court time and trouble, the Receiver supplemented her initial disclosures to include the documents that the Receiver has made available in the virtual data room, including her accounting of the Receivership Estate's damages. In that accounting spreadsheet are the names

¹⁹ UPS's suggestion that the Receiver has waffled on her damages calculation again distorts the facts. The Receiver explained the difference between the preliminary accounting, which was based on the Government's calculations of losses for the purposes of Lamar Adams's sentencing, and her final accounting in her motion for approval of her first distribution to investors. Doc. 265, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.). UPS undoubtedly read the motion because it lodged an objection to the Receiver's distribution to Madison Timber's victims. Doc. 278, *Securities & Exchange Commission v. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.).

and pre-assigned investor numbers for each investor who held outstanding Madison Timber promissory notes.

7. Rule 37 sanctions are unwarranted.

UPS seeks the extreme remedy of depriving the Receiver of making her liability case and putting on any evidence of damages because of perceived deficiencies in her initial disclosures. UPS seeks relief under Rule 37 to remedy the “prejudice” it has suffered. [Doc. 243 at 56]. UPS has not demonstrated any prejudice—it has had core documents in this case for over a year and instead of itself properly participating in discovery, it moved to stay discovery, and, when that failed, made victims the object of its ire. That the Receiver has not answered each one of UPS’s requests exactly how it wants does not mean that the Receiver has failed to comply with her obligations under the federal rules and certainly does not warrant the extraordinary relief of sanctions. The Receiver addresses each of UPS’s specific requests for sanctions in turn:

First, UPS seeks to bar the Receiver “from using any documents (other than the promissory notes she has already produced) or witnesses in support of her damages claims at summary judgment or trial.” [Doc. 243 at 55]. The Receiver produced promissory notes and timber deeds, a preliminary accounting of investors’ outstanding notes (with investors’ identities), *and* the digital forensic image of Lamar Adams’s computer long ago. The Receiver did not previously produce the documents underlying the Receivership Estate’s damages because the final accounting was only recently completed. Those documents, along with a detailed accounting—note by note—of the Receivership Estate’s damages has been produced to all defendants in each of the Receiver’s cases.²⁰

²⁰ The Receiver’s counsel offered on a June 30 call with defendants’ counsel to provide the accounting spreadsheet if defendants’ counsel would agree not to disclose investors’ names. They refused.

The Receiver understands her discovery obligations and has complied with them. In fact, the Receiver has produced virtually all of Madison Timber's records in her possession, including many documents that clearly have no bearing on whether UPS's notaries stamped fake timber deeds. The Receiver will not "spring additional documents" on defendants, as UPS fears. Simply put, there's nothing left to spring.

UPS then asks that the Receivership Estate—the very entity from which Madison Timber's victims can recover any losses—pay for UPS's costs and fees for its subpoenas of 32 victims. This is an incredible ask. Neither the Receiver nor victims asked for UPS's heavy-handed subpoenas. Neither should have to pay for them. The Receiver and her counsel invited UPS's counsel to coordinate the depositions of victims, but UPS refused and issued its subpoenas anyway. Had UPS worked with the Receiver's counsel to at least agree on dates for depositions, UPS could have saved everyone a lot of time and money. Further, it is not the Receivership Estate's burden to finance UPS's 50-page motion to compel, much of which seeks information that the Receiver had already produced or information that the Receiver assured UPS would be produced imminently (and is now produced).

UPS cites no legal authority requiring the Receiver to pay the costs of UPS issuing subpoenas, and in discussing the only legal authority on which UPS relies for the proposition that it is owed expenses, UPS overstates its position and misrepresents its holding. The court in *Rivera v. Martin J. Donnelly Antique Tools* did not just "award[] expenses, including reasonable attorneys' fees, in connection with a motion to compel," as UPS would have the Court believe. [Doc. 243 at 55].²¹ Instead, the *Rivera* court was considering a motion to dismiss the entire case

²¹ UPS cleverly attempts to frame the issue in *Rivera* as one "in connection with a motion to compel." Doc. 243 at 55. The more accurate statement is that the *Rivera* court was resolving "one legal question: whether such misconduct [flouting the magistrate judge's discovery order], if indeed true, provides sufficient and compelling justification for the dismissal of an otherwise valid pleading." *Rivera*, 2016 WL 1389984 at *1.

with prejudice for plaintiff's counsel's blatant, continuous shirking of the court's discovery orders. *Rivera v. Martin J. Donnelly Antique Tools*, No. 3:14-cv-667, 2016 WL 1389984 (M.D. La. Apr. 7, 2016). The attorney there, despite being ordered to do so by the magistrate judge, refused to respond to straightforward requests to identify each instance that the defendants breached the contract at issue and the total amount of money the plaintiff contended was owed. *Id.* at *3–4. He then falsified the date of the responses and served his discovery responses beyond the court-ordered deadline. Only then—as an alternative to dismissal of the complaint when the case was at the motion for summary judgment stage—did the *Rivera* court require the plaintiff to pay defendants' attorney's fees. That is not the case here.

Finally, a continuance of the deadlines in this case is unnecessary. UPS has had promissory notes, timber deeds, the digital forensic image of Adams's computer, and a preliminary accounting of outstanding promissory notes for a long time. It could have at any time noticed depositions and retained experts based on that information. The Receiver is committed to moving this case toward resolution and has made clear to UPS and the Court that she is willing to facilitate the depositions of investors sought by UPS within the current schedule. The Receiver's counsel has also attempted to schedule the depositions of the notary defendants, but has been thwarted by their counsel. Despite these tactics, the Receiver is confident that discovery can conclude within the current deadlines.

UPS's discovery requests are transparent attempts to improperly engage in a fishing expedition within every aspect of the Receivership Estate, but the Federal Rules of Civil Procedure do not allow it. The Court should deny UPS's motion and instead "tailor discovery narrowly" to fit the needs of this case. *Crawford-El*, 523 U.S. at 598.

August 6, 2021

Respectfully submitted,

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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: August 6, 2021

/s/ Kristen D. Amond