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, Plaintiffs, 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-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
ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC, Plaintiffs, v. BUTLER SNOW LLP; BUTLER SNOW ADVISORY SERVICES, LLC; MATT THORNTON; BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC; ALEXANDER SEAWRIGHT, LLC; BRENT ALEXANDER; and JON SEAWRIGHT, Defendants. [*Caption Continued on Next Page*]	Case No. 3:18-cv-866-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

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC, Plaintiffs, v. BANKPLUS; BANKPLUS WEALTH MANAGEMENT, LLC; GEE GEE PATRIDGE, VICE PRESIDENT AND CHIEF OPERATING OFFICER OF BANKPLUS; STEWART PATRIDGE; JASON COWGILL; MARTIN MURPHREE; MUTUAL OF OMAHA INSURANCE COMPANY; and MUTUAL OF OMAHA INVESTOR SERVICES, INC., Defendants.	Case No. 3:19-cv-196-CWR-LGI 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
ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC, Plaintiffs, v. TRUSTMARK NATIONAL BANK; BENNIE BUTTS; JUD WATKINS; SOUTHERN BANCORP BANK and RIVERHILLS BANK Defendants.	Case No. 3:19-cv-941-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

THE UPS STORE, INC.'S MOTIONS (1) TO CONSOLIDATE RELATED ACTIONS, AND (2) TO STAY OR TO MODIFY CASE SCHEDULE

Defendant The UPS Store, Inc. ("TUPSS, Inc."), a defendant in *Mills v. The UPS Store, Inc., et al*. Case No. 3:19-cv-364-CWR-FKB (the "Notary Public Action"), hereby moves for an order pursuant to Federal Rule of Civil Procedure 42 to consolidate all of the above captioned actions brought by Alysson Mills, in her capacity as the court-appoint Receiver for the estates of Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"). In all four actions (hereinafter, the Receiver's "Investor Loss Cases"), the Receiver has asserted causes of action that belong to investors—for conspiracy, aiding and abetting and negligence—seeking to hold each of 31 defendants liable for $100 million, the amount the Receiver asserts Adams/Madison Timber owes the victims of his Ponzi scheme. As detailed in TUPSS, Inc.'s Memorandum of Law in support of this Motion, these cases raise common issues of law and fact, including the Receiver's standing and the comparative negligence of the defendants in all four cases—as well as of Adams and the investors in his Ponzi scheme. Consolidating these actions for discovery purposes makes perfect sense, in large part to ensure ruling are consistent and to avoid duplicative document discovery and depositions.

In addition, TUPSS, Inc. respectfully asks that the Court stay the Investor Loss Cases or, in the alternative, modify the case schedule in the Notary Public Action to extend the discovery cut-off date by one year. A stay is warranted because two key witnesses, Mr. Alexander and Mr. Seawright, were indicted on federal criminal charges based on the same allegations raised against them in the Investor Loss cases. Accordingly, they will be unavailable for deposition and discovery until their criminal cases are resolved. If the Court does not stay the Notary Public Action, however, it should extend the current October 21, 2021 discovery deadline and April 4, 2022 trial

dates by one year in light of: (1) the Receiver's repeated failures to comply with her discovery obligations (2) several pending discovery motions, including TUPSS, Inc.'s motion to compel and the Receiver's motion to quash TUPSS, Inc.'s subpoenas to 32 investors in Adams' Ponzi scheme; and (3) the complexity of coordinating numerous depositions—including of Lamar Adams, who due to COVID-19 protocols at the federal prison where his is incarcerated is essentially unavailable for the foreseeable future. In short, coordinating discovery across all four of the Investor Loss Cases in a fair, efficient manner to ensure that no witnesses are unnecessarily burdened and that counsel for all of the 31 defendants have an adequate opportunity obtain the discovery they need will require months of work.

Accordingly, for the foregoing reasons and those set forth in TUPSS, Inc.'s accompanying Memorandum of Law, TUPSS, Inc. respectfully asks that the Court: (1) consolidate the Investor Loss Cases and schedule a consolidated case management conference, and (2) stay the Investor Loss Cases or, in the alternative, modify the scheduling order in this action by extending all unexpired case deadlines by twelve months.

Dated: August 10th, 2021

By: *s/ Mark R. McDonald*

Mark R. McDonald (CA Bar No. 137001)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: 213.892.5200
Facsimile: 213.892.5454
Email: MMcDonald@mofo.com

Adam J. Hunt (NY Bar No. 4896213)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: 212.468.8000
Facsimile: 212.468.7900
Email: AdamHunt@mofo.com

Reuben V. Anderson, MSB #1587
LaToya C. Merritt, MSB #100054
Mallory K. Bland, MSB #105665
PHELPS DUNBAR, LLP
4270 I-55 North Jackson
Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: 601-352-2300
Telecopier: 601-360-9777
Email: Reuben.Anderson@phelps.com
LaToya.Merritt@phelps.com
Mallory.Bland@phelps.com

Attorneys for *Defendant*
THE UPS STORE, INC.

CERTIFICATE OF SERVICE

I, Mark R. McDonald, do hereby certify that I electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

THIS, the 10th day of August, 2021.

s/ Mark R. McDonald
MARK R. MCDONALD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
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ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC, Plaintiffs, 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 & MACINNNIS, 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

THE UPS STORE, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTIONS (1) TO CONSOLIDATE ACTIONS, AND (2) TO STAY OR TO MODIFY CASE SCHEDULE

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I. INTRODUCTION

The Receiver has thus far brought six actions against more than 40 defendants arising out of Lamar Adam's Ponzi scheme. In this action (the "Notary Public Action"), the Receiver has sued seven notaries public, their two employers, and franchisor The UPS Store, Inc. ("TUPSS, Inc."). In the Notary Public Action and in three other actions (hereinafter, the Receiver's "Investor Loss Cases"), the Receiver has asserted causes of action that belong to investors—for conspiracy, aiding and abetting and negligence—seeking to hold each of 31 defendants liable for $100 million, the amount the Receiver asserts Adams/Madison Timber owes the victims of his Ponzi scheme. Although in each of the Investor Loss Cases, defendants have moved to dismiss on the ground the Receiver lacks standing to pursue those investor claims, and thus that the Court lacks subject matter jurisdiction, those motions were denied. The Court has denied the request by defendant Trustmark National Bank to appeal the denial of its motion to dismiss; TUPSS, Inc.'s motion for leave to appeal the denial of its motion to dismiss for lack of subject matter jurisdiction remains pending.

Under Mississippi law, the alleged conduct of each of the 31 defendants in these related actions is relevant to the liability of every other defendant. Furthermore, the conduct and fault of each investor is relevant to each defendant's liability. There are consequences to the Receiver suing 31 different defendants in four different actions on the theory that each of those defendants' negligence caused the same $100 million in damages to investors. First, there are obviously common issues of law and fact among the Investor Loss Cases, and it has become clear that consolidation and coordination among the cases should be ordered pursuant to Federal Rule of Civil Procedure 42. The Receiver has recently acknowledged that coordination is appropriate in a letter that her

counsel sent to this Court on July 26, 2021. TUPSS, Inc. has filed this Motion on each party in the Investor Loss Cases, and each of those parties should likewise be heard on exactly what orders should be entered per Rule 42. Given that depositions have not begun in any of the Investor Loss Cases, and that the Receiver has only two weeks ago conditionally offered to make the same core documents available to each defendant in the Investor Loss Cases, now is the right time to coordinate discovery and other pre-trial matters.

Second, this Notary Public Action should be stayed at least until the criminal proceedings against Mr. Seawright and Mr. Alexander, who are also defendants in *Mills v. Butler Snow et al.*, No. 3:18-cv-866 ("*Butler Snow*"), are final. On June 30, 2021, this Court stayed the *Butler Snow* action after, in May 2021, the indictments against Alexander and Seawright were unsealed and, in June 2021, their criminal trial was set for January 18, 2022. The logic behind a stay of the *Butler Snow* action applies fully to each of the other Investor Loss Cases. Alexander's and Seawright's conduct is highly relevant in the Notary Public Action and all of the Receiver's Investor Loss Cases, but they will be unavailable for deposition and discovery until their criminal cases are resolved. Further, because criminal actions are still proceeding, the Government has objected to subpoenas that Defendants in the Notary Public Action have served, which has and will spawn collateral litigation. The Notary Public Action should be stayed until litigation involving government subpoenas are resolved.

Third, and in all events, even if the Notary Public Action is not stayed, the current discovery cut-off date of October 21, 2021 (and all other scheduling dates) are patently unrealistic for numerous reasons. The Receiver has refused to accept that—because of

the claims and theories she herself elected to pursue—the conduct of other defendants and the investors is both relevant and the proper subject of discovery. Rather than comply with her disclosure obligations and defendants' discovery requests in the Notary Public Action, the Receiver has moved to quash all subpoenas that TUPSS, Inc. has served on investors, has failed to turn over required disclosures, and has refused to produce core documents. That conduct is the subject of several motions that are pending before the Court. Further, on July 26, 2021—less than three months before the discovery cut-off date—the Receiver admitted that she is holding hostage approximately 350,000 pages of material that she deposited into a so-called "virtual data room." Those materials should have been produced in this action in November 2019 pursuant to her Rule 26 disclosure obligations or by at least August 2020 in response to the various parties' discovery requests. Although Magistrate Judge Ball entered a protective order in July 2020 that governs how material a party believes is confidential must be handled, the Receiver has simply elected to ignore that order. Instead of producing the 350,000 pages of material with a confidentiality designation per the Court's July 2020 Order, the Receiver has refused to allow access to materials she believes are confidential unless that party agrees to conditions that the Court rejected in its July 2020 ruling on the protective order. Thus, TUPSS, Inc. and the other defendants in the Investor Loss Cases have still not been authorized to review those materials.

TUPSS, Inc. and the other defendants in the Notary Public Action have been badly prejudiced by the Receiver's misconduct, which cannot be remedied by an order merely requiring the Receiver to produce all the materials immediately that should have been produced starting in November 2019, so an extension of the discovery cut-off date

by a year from the date the Receiver finally complies with her disclosure and discovery obligations is appropriate. Further, because the Receiver immediately moved to quash the first wave of subpoenas to investors, TUPSS, Inc. has not been able even to review any investors' documents or take any depositions. Until those issues are resolved, TUPSS, Inc. has stood down from serving more subpoenas. And due to Covid 19, Lamar Adams is essentially unavailable for deposition for the foreseeable future. Although Magistrate Judge Ball ordered that Defendants could have four days of deposition with Adams, the prison will only allow his deposition one day per week, meaning all counsel would have to travel to Bastrop, Texas once a week for a month to complete Adam's deposition. That is patently unreasonable.

II. BACKGROUND FACTS

This action is one of six pending in this Court that the Receiver has filed in her capacity as the court appointed receiver for the estates of Arthur Lamar Adams and Madison Timber. These six actions fall into two categories.

The first category includes two actions against "recruiters"—Michael Billings, Terry Wayne Kelly, William McHenry, and Stuart Anderson—who were paid commissions to funnel investors into Adams' Ponzi scheme. (*See* Complaint, *Mills v. Billings et al.*, No. 3:18-cv-679 (S.D. Miss. Oct. 1, 2018), ECF No. 1; Complaint, *Mills v. Anderson et al.*, No. 3:20-cv-427 (S.D. Miss. June 25, 2020), ECF No. 1.) In those actions, the Receiver is seeking the commissions that these recruiters were paid by Adams and Madison Timber. (*See id*.) Although these recruiters are alleged to have worked directly with Adams and "identified new investors" to grow the Ponzi scheme, the Receiver is not seeking to holds these recruiters liable for any losses suffered by investors. (*See id*. at 2.)

In the second category are the four Investor Loss Cases, where the Receiver has sued 31 different individuals and entities alleging that they "contributed to the success" of Adams' Ponzi scheme in various ways and is seeking to recover $100 million in alleged investor losses. In *Butler Snow*, the Receiver sued two law firms and several individuals working with those firms based on allegations that they "lent their influence, their professional expertise, and even their clients to Adams." (Complaint at 1, (S.D. Miss Dec. 19, 2018), ECF No. 1.) Similarly, in *BankPlus* and *Trustmark*, the Receiver sued several financial institutions and individuals working with those institutions based on allegations that they "lent their influence, their professional services, and even their customers to Madison Timber." (Complaint at 2, *Mills v. BankPlus et al.*, No. 3:19-cv-00196 ("*BankPlus*") (S.D. Miss. Mar. 20, 2019), ECF No. 1; Complaint, *Mills v. Trustmark et al.*, No. 3:19-cv-941 ("*Trustmark*") (S.D. Miss. Dec. 30, 2019), ECF No. 1.) In this Notary Public Action, the Receiver sued five individuals who were notaries public employed by an independent The UPS Store® franchisee in Madison, MS, their employer, TUPSS, Inc. as the franchisor, as well as a law firm, Rawlings & MacInnis and two individuals who worked there and provided notary services (the "R&M Parties"). (ECF No. 14.) According to the Receiver, the notary defendants notarized timber deeds that Adams had forged and which he included in materials that he provided to investors. In all four Investor Loss Cases, the Receiver asserts claims for civil conspiracy, aiding and abetting, and negligence. (*See*, ECF No. 14; *Butler Snow*, ECF No. 1; *BankPlus*, ECF No. 1; *Trustmark*, ECF No. 1.) And in all four of those cases, the Receiver is seeking to recover the "debts to investors" as reflected on "outstanding promissory notes." (*Id*.)

There is substantial overlap of substantive and procedural issues across the Receiver's Investor Loss Cases, which underscores the complexity of litigating them in a fair, efficient manner. The outstanding motions, discovery, and other proceedings highlighting these overlapping issues and impacting the trajectory of this and the Receiver's other Investor Loss Cases are detailed below.

III. THE COURT SHOULD ENTER A CONSOLIDATION ORDER

Federal Rule of Civil Procedure 42(a) provides:

> If actions before the court involve a common question of law or fact, the court may:
>
> (1) join for hearing or trial any or all matters at issue in the actions;
>
> (2) consolidate the actions; or
>
> (3) issue any other orders to avoid unnecessary cost or delay.

Here there is no question that there are common questions of law or fact among the Investor Loss Cases.[1] For example, the issue of the Receiver's standing to assert claims that belong to investors has already been the subject of several different motions and that issue will recur on summary judgment. (*See, e.g.*, ECF No. 138; Order Denying Motion to Certify for Interlocutory Appeal, *Trustmark*, ECF No. 94.) And the issues related to discovery will obviously involve common questions of law or fact. For example, will investors be subject to discovery and if so, on how many different occasions? TUPSS, Inc. has served subpoenas on a small fraction of the investors seeking documents and depositions. The Receiver has moved to quash all those subpoenas arguing that their evidence is irrelevant to the Receiver's claims for

[1] TUPSS, Inc. does not take a position at this time as to whether there is any reason to consolidate *Mills v. Billings, et al.*, No. 3:18-cv-679 and *Mills v. Anderson et al.*, No. 3:20-cv-427 with the Investor Loss Cases.

conspiracy, aiding and abetting and negligence or to damages. (ECF No. 213.) That issue will recur in every one of the Investor Loss Cases. Further, because the Receiver is pursuing negligence claims against so many different parties in several different actions, there will have to be discovery in each case into the conduct of every other defendant accused of misconduct, as well as the investors. *See Dunnam v. Abney*, 137 So. 3d 876, 879 (Ct. App. 2013) (apportioning fault between joint tortfeasors is appropriate "if there is some evidence that at least two people were potentially at fault."); *Howell v. Holiday*, 155 So. 3d 839, 846 (Ct. App. 2013) (upholding jury instruction allowing the allocation of fault between defendants whose potential liability was supported by evidence at trial). Discovery from all of the Investor Loss Cases is necessarily relevant to the comparative fault analysis and all of these cases should proceed together in an efficient manner.

Consolidating these actions for discovery purposes makes perfect sense, in large part to ensure ruling are consistent and to avoid duplicative document discovery and depositions. Given the overlap of issues between the Receiver's Investor Loss Cases, "the amount of time, money, and effort that consolidation would save" clearly outweighs "any inconvenience, delay, or expense that might result." *Axcess Int'l, Inc. v. Savi Techs., Inc.*, No. 3:10-cv-1033-F, 2011 WL 13089393, at *2 (N.D. Tex. Nov. 9, 2011) (internal citations omitted). Indeed, in the *Stanford* Ponzi scheme cases, the court appointed receiver stipulated to consolidation of cases involving overlapping claims. There, the receiver recognized that he was "charged with managing litigation in the most efficient and cost-effective manner so as to maximize recovery for the Receivership Estate" and that "consolidating the claims against [one defendant] into [a related action] will substantially reduce the time and cost of prosecuting a separate case against [each

separately]." (*See* Joint Motion to Consolidate Cases at 8, *Janvey v. Alvardo*, No. 3:10-cv-02584-N-BQ ("*Stanford*") (N.D. Tex. Mar. 15, 2017), ECF No. 132.) The *Stanford* receiver further recognized that "because of the interrelationship among the claims asserted in both cases, there is a risk of differing outcomes that will only serve to prolong the proceedings against both defendants, increase expenses, and delay recoveries that will be distributed to the victims of the Stanford fraud." (*Id*. at 2.)

For all intents and purposes, all of the Investor Loss Cases are at essentially the same—early—stage of discovery. In the Notary Public Action, there have been no depositions taken. (McDonald Decl. ¶ 2.) No defendant has been deposed, the Receiver has not been deposed, Lamar Adams has not been deposed, and no investor has been deposed. (*Id*.) And as mentioned above and explained in more detail below, even document discovery in the Notary Public Action is at the initial stages. As stated, it was not until **July 26, 2021** that the Receiver finally concluded she could not stone wall Defendants and refuse to produce anything. (*Id*. ¶ 3, Ex. A.) So the Receiver adopted a new strategy of offering to make the same set of 350,000 pages available to all defendants in all the cases (provided the defendant would agree to the Receiver's unreasonable and improper conditions). (*Id*.) Because each Defendant in the Notary Public Action, like virtually every other defendant in the other related actions, has refused to capitulate to the Receiver's demands, even those 350,000 pages have not produced in the Notary Public Action. (*Id*.) On **August 5, 2021**—in response to TUPSS, Inc.'s repeated arguments that the Receiver's disclosures under Rule 26 were incomplete—the Receiver finally served Supplemental Disclosures providing information that the Receiver should have produced in November 2019 when initial disclosures were

exchanged. (*Id*. ¶ 5, Ex. B.) In short, now is the time for discovery and other proceedings to be consolidated and coordinated in all the Investor Loss Cases.

The Receiver has likewise acknowledged that these various actions she has filed should be consolidated. As the Receiver recently wrote in a letter to the Court, "given that discovery in all of [her Investor Loss Cases] will necessarily overlap, a coordinated discovery plan is appropriate." (*Id*. ¶ 6, Ex. C at 1.) Despite the Receivers' concession, she refuses to accept the obvious consequence of coordinating discovery in all these actions—including in this action with an October 21, 2021 discovery cut-off date. In her letter to the Court, the Receiver suggested "that the parties to the UPS case can complete discovery within the current schedule, or at least that the trial date should stand." (*Id*. at 5.) But that is flatly infeasible, particularly given the facts that (1) so many discovery motions remain pending, and (2) the Receiver has only recently even offered to produce the hundreds of thousands of pages of material that she should have produced in November 2019 subject to improper conditions. There is no way that all discovery in these various actions can be "coordinated" and yet maintain the October 21, 2021 discovery cut-off date in this case.

TUPSS, Inc. believes that discovery in the various actions should be consolidated and coordinated; the Receiver apparently concurs in principle. At this point, TUPSS, Inc. does not believe all the cases should be consolidated for trial, but further discovery and pre-trial proceedings might cause TUPSS, Inc. to come to a different conclusion as proceedings play out. TUPSS, Inc. submits that the exact scope of the orders entered pursuant to Rule 42 should be the subject of discussion and input from all parties in all the cases after an omnibus Case Management Conference.

IV. THIS NOTARY PUBLIC ACTION, AND ALL THE OTHER RELATED ACTIONS, SHOULD BE STAYED

A. The Court Has Broad Discretion To Enter A Stay

A "[d]istrict [c]ourt has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 684 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). "The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation, which includes authority to control the scope and pace of discovery. . . . This authority has been held to provide the court the 'general discretionary power to stay proceedings before it in control of its docket and in the interests of justice.'" *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) (citations omitted). "Courts may grant a stay 'for good cause shown' and have broad discretion to control discovery." *Belmonte v. MedStar Mobile Healthcare*, No. 3:19-CV-1867-N, 2020 U.S. Dist. LEXIS 199843, at *2 (N.D. Tex. Apr. 3, 2020) (quoting Fed. R. Civ. P. 26(c)). "'A case need not be in its infancy to warrant a stay.' Where 'a significant amount of work' remains for the parties and the court, a stay may be warranted." *Cypress Lake Software, Inc. v. Samsung Elecs. Am., Inc.*, No. 6:18-cv-30-JDK, 2019 U.S. Dist. LEXIS 229613, at *6-7, *11 (E.D. Tex. Aug. 28, 2019) (citations omitted) ("[T]he Court finds that a stay is appropriate here. [The plaintiff] will not be unduly prejudiced by a stay, a significant amount of work remains in the case, and a stay will simplify the issues and trial.")

B. Good Cause Exists to Stay This and the Other Investor Loss Cases

This Notary Public Action (and all the other related Investor Loss Cases) should be stayed for several reasons.

First, on June 30, 2021, this Court ruled that the ongoing criminal case against Alexander and Seawright (which had only recently been unsealed) warrants a stay of the civil action where those two are named as defendants. *See, e.g.*, *Foret v. Progressive Waste Sols. of La., Inc.*, No. 20-467, 2020 U.S. Dist. LEXIS 210680, at *1-2 (E.D. La. Sept. 30, 2020) (granting stay "in Defendants' interests, because proceeding to trial before the criminal investigation concludes could result in certain witnesses invoking their Fifth Amendment privilege.") Unsurprisingly, both Alexander and Seawright moved to stay the Receiver's case against them until the criminal case is resolved given the danger of either testifying in the Receiver's case and risking self-incrimination or having an adverse inference drawn against them if they invoke their Fifth Amendment rights. (Alexander Seawright Defs.' Memo. in support of Unopposed Motion to Stay, *Butler Snow*, ECF No. 80.) The law firm Baker Donelson, which employed both men, then joined the request to stay the *Butler Snow* action given that "[t]he Receiver's claims against Baker Donelson center on the conduct of Alexander and Seawright." (Baker Donelson's Joinder to Unopposed Motion to Stay at 1, *Butler Snow*, ECF No. 81.) On June 30, 2021, the Court stayed the *Butler Snow* case in its entirety pending resolution of the criminal case against Alexander and Seawright. (*See* June 30, 2021 Text Only Order, *Butler Snow*.)

The Receiver has alleged that Alexander and Seawright are fully liable for the $100 million in investor losses, so those two are important material witnesses in the Notary Public Action and each of the other Investor Loss Cases. At minimum, the

Notary Public Action and the other Investor Loss Cases should be stayed until the criminal case against Alexander and Seawright is final.

Second, because the Government contends that its investigation regarding Adams and Madison Timber Ponzi scheme continues, materials that are highly relevant to the Notary Public Action have been withheld thus far by the Government. (McDonald Decl. ¶ 7, Ex. D.) As but one example, the parties in the Notary Public Action have served subpoenas on various governmental agencies seeking any timber deeds with an original signature of a notary and original notary stamp. (*Id*.) Such documents are critical because those documents could show (and TUPSS, Inc. believes they *will* show) that Adams altered documents after he asked notaries to acknowledge his signature. However, in response to those subpoenas, those governmental entities objected to production on the ground that their criminal investigations and prosecutions were ongoing. (*Id*.) The Defendants in the Notary Public Action are prejudiced by the fact that the documents they requested are being withheld. Rawlings & MacInnis has commenced litigation arising out of those subpoenas, and TUPSS, Inc. intends to do so as well. (*See Rawlings & MacInnis v. United States Department of Justice et al.*, No. 3:21-cv-00426 ("*Rawlings & MacInnis*") (S.D. Miss. June 25, 2021).) Until the criminal investigations arising out of the Adams/Madison Timber Ponzi scheme are completed, the Receiver's civil litigations should be stayed.

TUPSS, Inc. requests that the Court stay this Action and vacate the scheduling order in place, with dates reset once the stay is lifted.

V. IF THE SCHEDULING ORDER IS NOT VACATED, IT SHOULD BE SUBSTANTIALY MODIFIED

A. The Scheduling Order Can and Should Be Modified on a Showing of Good Cause

On a party's request, a scheduling order may be modified for "good cause" under Federal Rule of Civil Procedure 16(b)(4). "[T]he district court has broad discretion in controlling its own docket, which includes the ambit of scheduling orders and the like." *See, e.g.*, *Irby v. Fred's Stores*, 967 F. Supp. 187, 190 (S.D. Miss. 1997) (citing *Edwards v. Cass County, Texas*, 919 F.2d 273, 275 (5th Cir. 1990)); *see also Ciena Corp. v. Nortel Networks Inc.*, 233 F.R.D. 493, 494 (E.D. Tex. 2006) ("The Court has broad discretion to allow scheduling order modifications. . ."). "The good cause standard requires the 'party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.'" *Buchanan v. Gulfport Police Dep't*, No. 1:08CV1299-LG-RHW, 2011 U.S. Dist. LEXIS 145261, at *2-3 (S.D. Miss. Dec. 16, 2011) (quoting *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 547 (5th Cir. 2003); *see also* 6A Charles Alan Wright et al., Federal Practice and Procedure § 1522.1 (2d ed. 1990).)

B. There Is Good Cause to Modify the Scheduling Order

1. Through No Fault of Defendants in this Action, Discovery Cannot Possibly Be Completed By October 21, 2021

There is simply no way that all discovery can be completed by the current October 21, 2021 discovery cut-off date, and it is certainly not due to a lack of diligence by TUPSS, Inc. or the other Defendants.

a. The Receiver Has Stonewalled Discovery and Has Only Very Recently Realized that Strategy Is Untenable

On July 15, 2021, TUPSS, Inc. filed a comprehensive Motion to Compel and for Sanctions detailing how the Receiver has, from the outset of this action, stubbornly refused to fulfill her disclosure obligations under Rule 26, and her obligations to comply with Defendants various discovery requests. (ECF No. 242.) Her conduct since TUPSS, Inc. filed that Motion proves the merits of TUPSS, Inc.'s Motion. In the last few weeks, the Receiver and her counsel have realized and essentially conceded that she did not meet her disclosure and discovery obligations, and have served "supplemental" disclosures and discovery responses proving that information and documents should have been produced almost two years ago. Her offer, finally, to allow access to 350,000 pages of materials improperly withheld since November 2019 less than three months before discovery cut-off date is grounds alone for extending the deadlines by at least twelve months. Prior to this proposed production, the Receiver had produced fewer than 1,000 documents to Defendants. This eleventh hour offer by the Receiver, finally, to provide information is still incomplete, but, in all events, establishes the need to modify the scheduling order.

(i) The Receiver Has Not Provided Access to a "Data Room" of Documents That Should Have Been Produced Long Ago

TUPSS, Inc. has been warning the Receiver for more than a year that her initial disclosures, which were never supplemented, were woefully inadequate. During the required pre-motion meet and confer, TUPSS, Inc. advised that it would be filing a motion to compel and for sanctions due to those inadequate disclosures. Yet the Receiver refused to supplement those disclosures. Thus, on July 15, 2021, TUPSS, Inc. filed its Motion to Compel and for Sanctions.

On July 26, 2021, the Receiver advised defendants in each of the related actions that she had created a "virtual data room" where about 350,000 pages of relevant material would be made available to each defendant—if that defendant capitulated to the Receiver's improper "Terms of Access" unilaterally imposed by the Receiver. (McDonald Decl. ¶ 3, Ex. A.) Although more than 30 defendant parties were asked to submit to the Receiver's Terms of Access, only two have acquiesced. (*Id*. ¶ 4.) None of the Defendants in the Notary Public Action have capitulated. (*Id*.) The Receiver's position that she will only allow access to the "virtual data room" to defendants who agree to her Terms of Access is obviously improper—the Federal Rules of Civil Procedure do not authorize a party unilaterally to impose conditions on access to discovery materials.

Although TUPSS, Inc. does not know exactly what is in the "virtual data room" since TUPSS, Inc. is unwilling to agree to the "Terms of Access" about how those documents can be used, it is clear from the Receiver's description that the proposed production includes material that was required to be disclosed, per Rule 26, in November 2019 without any need for a discovery request; and in all events, the proposed production includes material that was requested by Defendants in this action in mid-2020 but which was improperly withheld without the Receiver advising Defendants that such materials were being withheld.

There is no way that Defendants can complete discovery by October 21, 2021 given the Receiver's recent admission that she has withheld, and continues to withhold, 350,000 pages of relevant material.

(ii) The Receiver Has Withheld the Identities and Addresses of Investors, and Has Moved to Quash Investor Subpoenas

A fundamental reason that there is no way discovery can be completed by October 21, 2021 is that the Receiver **still** has refused and failed to provide the names and addresses of every investor on whose behalf she has asserted claims. It is the Receiver's theory that investor information is irrelevant. But that is just her theory, and this Court has rejected it. Given that the Court has thus far accepted that the Receiver can assert causes of action that are properly asserted only by investors (for conspiracy, aiding and abetting and negligence), then it necessarily follows that defendants must be allowed to conduct discovery of the investors, including depositions and document discovery. Yet, the Receiver has refused to disclosure their names and addresses although the Federal Rules of Civil Procedure required disclosure of that information. Thus far TUPSS, Inc. has spent more than $30,000 trying independently to obtain that information so it could serve subpoenas on a first wave of investors. In response to those subpoenas, the Receiver moved to quash all of them, and this Court entered an order precluding TUPSS, Inc. from reviewing the documents that investors produced without objection. *See* Text Only Order, June 30, 2021. TUPSS, Inc. requested expedited resolution of the Receiver's Motion to Quash but that request was denied. Although not a single investor has objected to TUPSS, Inc.'s subpoenas, TUPSS, Inc. cannot review the documents that have been produced, nor can TUPSS, Inc. move forward with depositions of these investors until there is a ruling on the Receiver's motion to quash or for a protective order. TUPSS, Inc. has reasonably held off on serving any further subpoenas on investors until this Court rules on the motions to quash filed by the Receiver. Thus, even when this Court rules that the Receiver's motions to quash are meritless, it will take many

months to get all investors served with subpoenas and deposed. And, as discussed above, it makes no sense and would be wildly inefficient and inconvenient if each investor were deposed over and over by the defendants in the Investor Loss Cases. Coordinating those depositions in sensible manner will take many months and require working with all counsel in these cases.

(iii) TUPSS, Inc.'s Motion to Compel Has Not Been Decided

In addition to seeking further disclosures and sanctions due to the Receiver's failure to make the disclosures required by Rule 26, TUPSS, Inc.'s July 15, 2021, Motion to Compel also seeks an order requiring the Receiver to provide full and complete responses to TUPSS, Inc.'s written discovery. (ECF Nos. 242-243.) Most of the discovery that is the subject of TUPSS, Inc.'s Motion to Compel should have been produced by mid-2020 at the latest in response to the discovery propounded by other Defendants in the Notary Public Action. TUPSS, Inc. is certain that once the Receiver provides full and complete responses to discovery due to that Motion to Compel it will be obvious that the information and documents (including but not limited to the documents in the "virtual data room") should have been disclosed and produced long ago.

b. Due to COVID Restrictions at FCI Bastrop, Lamar Adams's Deposition Cannot Be Conducted

Obviously Lamar Adams is the key witness in all of these related cases. TUPSS, Inc. submits that any reasonably jury would conclude that Adams is 100% responsible for investor losses, given that he has pleaded guilty to fraud and admitted that he perpetrated his crimes on victims acting alone. On July 6, 2021, this Court entered the parties' agreed order to take Lamar Adams' deposition from August 17, 2021 or, if those dates were not feasible "according to the Federal Bureau of Prisons ('BOP') then at any other

time as agreed to by the Parties." (ECF No. 229 at 2.) After contacting the facility in Bastrop, Texas where Adams is currently incarcerated (FCI Bastrop), prison officials informed counsel for TUPSS, Inc. that the FCI Bastrop's policy is to allow depositions only on Fridays due to the COVID-19 pandemic. (McDonald Decl. ¶ 8.) It would therefore take at least a month of traveling to Texas to depose Adams consistent with the Court's order. Even if there were not multiple other reasons discovery cannot be reasonably concluded by October 21, 2021, the Covid 19 pandemic, and the restrictions in place at FCI Bastrop fully justify a modification of the scheduling order in this case. Furthermore, it would be far more logical to defer Adams' deposition until the Investor Loss Cases are consolidated, and Adam's deposition can be taken on consecutive days by all counsel in the Investor Loss Cases.

c. The Receiver's Motion to Compel Remains Pending

On February 25, 2021, the Receiver filed a motion to compel responses to three requests for production and one interrogatory that she served on TUPSS, Inc. (ECF No. 168.) That motion has been fully brief as of March 18, 2021. (ECF Nos. 176, 177, 178.) A decision is pending. Once that motion is resolved, it will necessarily take time for TUPSS, Inc. to comply with any order requiring any further response by TUPSS, Inc. And only after that motion is resolved and any further production takes place can depositions of TUPSS, Inc. personnel proceed. Furthermore, TUPSS, Inc. anticipates that there will likely be further motion practice regarding depositions of TUPSS, Inc. personnel since counsel for the Receiver has indicated that they want to conduct those depositions via "Zoom," whereas TUPSS, Inc. contends that depositions should occur in person, as the Federal Rules specify, in the location where the witnesses reside. (McDonald Decl. ¶ 9.)

d. The Receiver's Motion for a Protective Order in the SEC Action and to Modify the Protective Order in This Action Are Pending

Unwilling to accept this Court's ruling on competing motions for a protective order filed a year and a half ago, the Receiver recently filed a motion in the SEC Action asking that the Court enter a protective order that would apply in **all** six of the Receiver's related actions. (*See* Joint Motion for Protective Order, *SEC v. Adams*, No. 3:18-cv-00252-CWR-FKB (S.D. Miss. June 30, 2021), ECF No. 290.) Like her failed attempt in this case, the Receiver is asking the Court in the SEC Action to issue a blanket order holding that any investor information must be filed under seal, in contravention of Local Rule 79 and without any showing of "clear and compelling reasons" why any particular investor's information—such as his or her name—should be kept off the public docket. Although there are forty-three defendants in the Receiver's six related cases, they are not parties in that action and there is no formal mechanism for any of them to oppose the Receiver's motion. Nevertheless, TUPSS, Inc. and several other defendants in the six related cases filed briefs in opposition to the Receiver's motion for a protective order in the SEC action. (*See SEC v. Adams*, ECF Nos. 299, 301-304.) The Court has not yet announced how it will proceed with the Receiver's Motion, including whether it will request oppositions from all parties.

Similarly, the Receiver is attempting to re-litigate the protective order in this case. She filed a motion nearly identical to what she submitted in the SEC Action (ECF No. 223), even though this Court has already considered and rejected her arguments for such a sweeping protective order that would mandate sealing any and all investor names, regardless of whether certain investors have already been identified publicly or are corporate entities.

2. TUPSS, Inc.'s Request to Certify the Court's Order Denying the Motion to Dismiss for Interlocutory Appeal Remains Undecided

TUPSS, Inc. moved to dismiss the Receiver's complaint for lack of subject matter jurisdiction on August 26, 2020, arguing that the Receiver lacks standing to assert claims that belong to the investors in Adams' Ponzi scheme and to recover those investors' losses as damages in this case. (ECF Nos. 138-139.) The Court issued an order denying that motion on March 1, 2021 and TUPSS, Inc. timely filed a request that the Court certify the order for immediate appeal under 28 U.S.C. § 1292(b) so that the Fifth Circuit can resolve the threshold question of the Receiver's standing. That request for certification has been fully briefed since April 19, 2021. (ECF Nos. 183, 187, 190.) A decision is pending. If the Court grants TUPSS, Inc.'s motion for leave to appeal, then this action should be stayed pending resolution of TUPSS, Inc.'s application to appeal.

3. Defendants' APA Action to Compel the Production of Documents From the Government Is in its Infancy

Because the Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI") refused to produce any documents related to Adams and Madison Timber in response to their subpoenas, the R&M Parties filed an action under the Administrative Procedures Act on June 25, 2021 to compel production. (*See* Complaint, *Rawlings & MacInnis*, ECF No. 1.) Among the critical documents in the possession of the FBI and DOJ are original, ink-signature versions of the timber deeds at issue in this case. Obtaining these original deeds is critical to defendants because Adams has admitted that he forged the signatures of the grantor-landowner on these deeds ***after*** they were properly notarized with only his signature on the document. And although the Receiver has inspected and copied these original timber deeds, defendants have not had that

opportunity. DOJ and the FBI have until August 24, 2021 to respond to the R&M Parties' complaint.

VI. CONCLUSION

For the foregoing reasons, TUPSS, Inc. respectfully asks that the Court (1) consolidate the Investor Loss Cases and schedule a consolidated case management conference, and (2) stay this case or, in the alternative, modify the scheduling order in this action by extending all unexpired case deadlines by twelve months.

Dated: August 10, 2021

By: *s/ Mark R. McDonald*

Mark R. McDonald (CA Bar No. 137001)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: 213.892.5200
Facsimile: 213.892.5454
Email: MMcDonald@mofo.com

Adam J. Hunt (NY Bar No. 4896213)
(*Pro Hac Vice*)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: 212.468.8000
Facsimile: 212.468.7900
Email: AdamHunt@mofo.com

Reuben V. Anderson, MSB #1587
LaToya C. Merritt, MSB #100054
Mallory K. Bland, MSB #105665
PHELPS DUNBAR, LLP
4270 I-55 North Jackson
Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: 601-352-2300

Telecopier: 601-360-9777
Email: Reuben.Anderson@phelps.com
LaToya.Merritt@phelps.com
Mallory.Bland@phelps.com

Attorneys for Defendant
THE UPS STORE, INC.

CERTIFICATE OF SERVICE

I, Mark R. McDonald, do hereby certify that I electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

THIS, the 10th day of August, 2021.

s/ Mark R. McDonald
MARK R. MCDONALD

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, Plaintiffs, 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 & MACINNNIS, 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

DECLARATION OF MARK R. MCDONALD IN SUPPORT OF THE UPS STORE, INC.'S MOTIONS (1) TO CONSOLIDATE ACTIONS, AND (2) STAY OR MODIFY THE CASE SCHEDULE

I, Mark R. McDonald, under penalty of perjury, declare as follows:

1. I am a partner at the law firm Morrison & Foerster LLP, attorneys of record for Defendant The UPS Store, Inc. ("TUPSS, Inc."). I have personal knowledge of the statements below and, if called to testify, I could and would competently testify to them.

2. No depositions have been taken in this action. No defendant has been deposed, the Receiver has not been deposed, Lamar Adams has not been deposed, and no investor in Adams' Ponzi scheme has been deposed.

3. Attached hereto as Exhibit A is a true and correct e-mail from Kristen Amond, counsel for Plaintiff, dated July 26, 2021, including the attachments thereto, a letter titled "2021-07-23 Receiver's letter re: virtual data room" and "2021-07-23 Terms of Access to Madison Timber Receivership Virtual Data Room".

4. Among the defendants in this case and Plaintiff's cases against Trustmark National Bank, BankPlus, and Baker Donelson, the Receiver has stated that only two of the thirty one defendants have agreed to Plaintiff's purported "Terms of Access" attached to her counsel's July 26, 2021 e-mail. None of the defendants in this action have agreed to Plaintiff's purported "Terms of Access".

5. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's Supplemental Initial Disclosures, dated August 5, 2021.

6. Attached hereto as Exhibit C is a true and correct of a letter from Brent Barriere, counsel for Plaintiff, to Magistrate Judge Ball dated July 26, 2021.

7. Attached hereto as Exhibit D is a true and correct copy of a letter from Darren J. LaMarca, Acting United States Attorney for the Southern District of Mississippi, to LaToya C. Merritt, co-counsel for TUPSS, Inc., dated April 16, 2021.

8. At my direction, one of my associates contacted the facility in Bastrop, Texas where Adams is currently incarcerated (FCI Bastrop). Prison officials informed my associate that FCI Bastrop's policy is to allow depositions only on Fridays due to the COVID-19 pandemic.

9. On May 10, 2021, counsel for Plaintiff purported to issue a notice of deposition to TUPSS, Inc., seeking a deposition by "Zoom" despite not first obtaining a court order for leave to conduct a deposition by remote means and without TUPSS, Inc.'s consent to proceed with a remote deposition as required under Federal Rule of Civil Procedure 30(b)(4). TUPSS, Inc. contends that depositions of TUPSS, Inc. and TUPSS, Inc. personnel should occur in person, as the Federal Rules specify, in the location where the witnesses reside.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 10, 2021.

/s/ Mark R. McDonald
Mark R. McDonald

CERTIFICATE OF SERVICE

I, Mark R. McDonald, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

THIS, the 10th day of August, 2021.

s/ Mark R. McDonald
MARK R. MCDONALD