

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, in her capacity as
Receiver for Arthur Lamar Adams and
Madison Timber Properties, LLC

PLAINTIFF

v.

CIVIL ACTION NO. 3:19-cv-364-CWR-FKB

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

DEFENDANTS

ORDER

This case is before the Court on the Motion to Quash Subpoenas or, Alternatively, Motion for Protective Order [213] filed by the Receiver, Alysson Mills. Defendant The UPS Store, Inc. (“TUPSS”) filed a response [224] in opposition, which was joined [228] by Defendants Herring Ventures, LLC, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton, and Chandler Westover (“Joining Defendants”), and the Receiver filed a rebuttal [230]. The Court finds that the motion [213] should be terminated as moot and that the subject subpoenas should be quashed *sua sponte*, for the reasons stated below.

The Receiver moves the Court to quash or enter a protective order regarding subpoenas *duces tecum* issued by TUPSS to certain investors in the Madison Timber Ponzi scheme.¹ Specifically, the Receiver argues that the requests in the subpoenas are overly broad, seek private and irrelevant information, and are not proportional to the needs of this case.²

¹ The Madison Timber Ponzi scheme is described in the criminal charges against Arthur Lamar Adams in *U.S. v. Adams*, No. 3:18-cr-88-CWR-FKB (S.D. Miss.).

² The Receiver also raises an issue as to whether documents and information provided by investors to the Federal Bureau of Investigations, the United States Attorney’s Office, or other government and investigative agencies are entitled to some protection from disclosure, and the Receiver suggests that the Court inquire of those agencies whether they object to the subject subpoenas. The Court finds any such

TUPSS and Joining Defendants contest whether the Receiver has standing under Fed. R. Civ. P. 45 to file a motion to quash these subpoenas served on non-parties. However, it is unnecessary to decide that issue. The Receiver has also requested a protective order under Fed. R. Civ. P. 26(c). And “a party has standing to move for a protective order pursuant to Rule 26(c) seeking to limit the scope of discovery, even if the party does not have standing pursuant to Rule 45(d) to bring a motion to quash a third-party subpoena.” *Bounds v. Capital Area Family Violence Intervention Center, Inc.*, 314 F.R.D. 214, 218 (M.D. La. 2016). Accordingly, the Court finds that the Receiver has standing under Fed. R. Civ. P. 26(c) to file a motion for protective order seeking to limit the scope of discovery.

Regarding the scope of discovery, Fed. R. Civ. P. 26(b) provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case,” The Receiver argues that the documents subpoenaed by TUPSS are not relevant to any claim or defense in this case. TUPSS counters that the documents sought are relevant to various claims and defenses, especially those related to damages. The Receiver essentially contends *inter alia* that the defenses on which the subpoenas seek documents and information are not viable or legally cognizable defenses. However, unless and until the district judge rules that the defenses are not viable or legally cognizable, TUPSS and the Joining Defendants are entitled to conduct discovery on the defenses they are asserting in this case.

Having reviewed the document requests in the subject subpoenas, the Court finds that they are relevant, at a minimum, to defenses asserted by TUPSS in this case.³ Further, the Court finds that the requests are proportional to the needs of this case and that they are not overly broad, except for Request

inquiry to be unnecessary. Although certain privileges and protections may apply to those agencies’ files, those privileges and protections do not apply to the investors’ own documents merely because they may have provided them to those agencies.

³ As for the Receiver’s argument that some requests in the subpoenas seek private information (specifically, financial, accounting, and tax documents and information), the Receiver has no standing to assert this objection. *Frazier v. RadioShack Corp.*, No. 10-855, 2021 WL 832285, at *1 (M.D. La. Mar. 12, 2012) (“[A] plaintiff cannot challenge a Rule 45 subpoena directed to a third party on the basis that it violates another person’s privacy rights”). The Court notes, however, that the information is relevant and discoverable and that such information may be protected from public disclosure by the subpoenaed investor designating the information as confidential under the protective order already entered by this Court.

No. 13. Therefore, considering the arguments made by the Receiver, the Court would deny the motion as to Request Nos. 1-12 in the subject subpoenas, but would grant it as to Request No. 13.

However, considering the Case Management Order now governing discovery in this case, the Court finds that the subpoenas should be quashed and that the Receiver's motion is, therefore, moot. After these subpoenas were issued and the instant motion was filed, this Court created a new case for consolidated discovery in cases filed by the Receiver. *See In Re Consolidated Discovery in Cases Filed by Alysson Mills, in Her Capacity as Receiver for Arthur Lamar Adams and Madison Timber Properties, LLC* ("In Re Consolidated Discovery"), Civil Action No. 3:22-cv-36-CWR-FKB. The purpose of consolidating discovery in the Receiver's cases was to avoid duplicative discovery, including duplicative subpoenas to Madison Timber investors. To that end, the Court entered a Case Management Order in *In Re Consolidated Discovery*, which sets forth a procedure for Madison Timber investors to be served with only one subpoena. *See In Re Consolidated Discovery*, at [7] at 3-4. To avoid duplicative discovery and since TUPSS will have another opportunity to seek documents from investors, the subject subpoenas should be quashed.⁴

IT IS, THEREFORE, ORDERED AND ADJUGED that the Receiver's Motion to Quash Subpoenas or, Alternatively, Motion for Protective Order [213] is hereby terminated as moot, and for the reasons stated above, the Court orders *sua sponte* as follows:

1. The subpoenas previously issued by TUPSS to Madison Timber investors are hereby quashed.
2. With respect to any documents TUPSS received in response to the subject subpoenas prior to entry of this Order, TUPSS must return to each producing investor all documents produced by that investor. If TUPSS receives any additional documents in response to the subject subpoenas after entry of this Order, TUPSS must likewise return those documents to the producing investor. Along with the documents, TUPSS must also provide each producing investor with a

⁴ The Receiver also raises a concern in the motion [213] regarding the number of investor depositions. Pursuant to the governing Case Management Order, discovery is presently in Phase I, which is limited to initial disclosures, written discovery, and subpoenas *duces tecum* only. *See In Re Consolidated Discovery*, at [7] at 2. Depositions will not be allowed until Phase II. Accordingly, issues related to investor depositions are not ripe at this time; the Court will afford the Receiver an opportunity to file any motions related to investor depositions at a later date.

copy of this Order, when returning the investor's documents. TUPSS must comply with this Order by February 25, 2022.

3. The investors receiving returned documents from TUPSS are hereby instructed that they shall not in any way alter or destroy any returned documents and shall safely and securely keep them for production in response to another subpoena with which they may be served in the future.

SO ORDERED, this the 7th day of February, 2022.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE