

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 Compel Discovery and Disclosures from Plaintiff and for Other Relief Pursuant to Federal Rule of Civil Procedure 37 [242] filed by Defendant The UPS Store, Inc. (“TUPSS”), along with a supporting memorandum [243] and declaration [244] of TUPSS’s defense counsel Mark R. McDonald.<sup>1</sup> The Receiver, Allyson Mills, filed a response [260] in opposition, to which TUPSS filed a reply [275] supported by another declaration [276] from McDonald and a later supplemental declaration [281] from McDonald. In response to TUPSS’s reply, the Receiver filed a Motion for Leave to File Surreply [289], which TUPSS opposed [294]. Defendants Rawlings and MacInnis, P.A., Tammy Vinson, and Jeannie Chisholm filed a joinder [248] to TUPSS’s motion to compel. Defendants Herring Ventures, LLC, Austin Elsen, Tammie Elsen, Courtney Herring, Diane Lofton, and Chandler Westover filed joinders to TUPSS’s motion to compel, TUPSS’s reply, and TUPSS’s opposition to the Receiver’s motion to file surreply. *See* [249], [278], [295]. Having reviewed the parties’ submissions, the

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<sup>1</sup> Counsel are hereby instructed that any document submitted in support of a motion, response, or rebuttal must be filed as an exhibit to the motion, response, or rebuttal to which it relates, not as a separately docketed filing. *See* L.U.Civ.R. 7(b)(2). The supporting memorandum must be filed as a separate docket item from the motion or response and supporting exhibits, but the rebuttal and its exhibits must be filed as a single docket item. *See id.*

Court finds that TUPSS's motion [242] to compel should be granted in part and denied in part, and that the Receiver's motion [289] to file surreply should be denied.

TUPSS's motion [242] to compel urges the Court to order the Receiver to supplement its responses and produce documents in response to the following written discovery: Request for Production of Documents Nos. 2, 3, 7, 8, 9, 10, and 11; Request for Admissions Nos. 1, 3, 4, 5, 6, 7, 8, 9, 11, 13, and 14; and Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 22. The motion [242] also requests sanctions and other relief, primarily related to allegations involving the Receiver's initial disclosures.

After TUPSS filed the instant motion, 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. To that end, the Court entered a Case Management Order in *In Re Consolidated Discovery*, which *inter alia* set a new initial disclosures deadline of February 21, 2022. See *In Re Consolidated Discovery*, at [7] at 2. Since the filing of the instant motion, the Court has also sought input from the parties on initial disclosures and discovery and held multiple case management conferences in which the Court has given the parties guidance and instruction on disclosures and discovery. Under the circumstances, the Court finds that TUPSS's requests for sanctions and similar relief against the Receiver pursuant to Fed. R. Civ. P. 37 should be denied.

The remainder of the motion [242] regarding TUPSS's written discovery is granted in part and denied in part, as set forth below.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 2: The motion is granted as to Request for Production No. 2. The Court orders the Receiver to supplement its response to this request and produce the responsive documents in its possession, custody, or control. If the Receiver has already produced all such documents, her supplemental response shall so state. For all such documents withheld from production, the Receiver

must produce a privilege log in compliance with L.U.Civ.R. 26(e) and specifically identify all withheld documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3: The motion is granted as to Request for Production No. 3. The Court orders the Receiver to supplement its response to this request and produce the responsive documents in its possession, custody, or control. If the Receiver has already produced all such documents, her supplemental response shall so state. For all such documents withheld from production, the Receiver must produce a privilege log in compliance with L.U.Civ.R. 26(e) and specifically identify all withheld documents responsive to this request.

REQUEST FOR PRODUCTION NO. 7: The motion is denied as to Request for Production No. 7. The Court finds that this request is overly broad.

REQUEST FOR PRODUCTION NO. 8: The motion is denied as to Request for Production No. 8. The Court finds that this request is overly broad.

REQUEST FOR PRODUCTION NO. 9: The motion is granted as to Request for Production No. 9. The Court orders the Receiver to supplement its response to this request and produce the responsive documents in its possession, custody, or control. If the Receiver has already produced all such documents, her supplemental response shall so state. For all such documents withheld from production, the Receiver must produce a privilege log in compliance with L.U.Civ.R. 26(e) and specifically identify all withheld documents responsive to this request.

REQUEST FOR PRODUCTION NO. 10: The motion is granted as to Request for Production No. 10. The Court orders the Receiver to supplement its response to this request and produce the responsive documents in its possession, custody, or control. If the Receiver has already produced all such documents, her supplemental response shall so state. For all such documents withheld from production, the Receiver must produce a privilege log in compliance with L.U.Civ.R. 26(e) and specifically identify all withheld documents responsive to this request.

REQUEST FOR PRODUCTION NO. 11: The motion is denied as to Request for Production No. 11. The Court finds that this request is overly broad.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: The motion is granted as to Request for Admission No. 1. The Court orders the Receiver to conduct a search for any original Timber Deeds in her possession and provide a supplemental response indicating the results of the search. *See* Fed. R. Civ. P. 36(a)(4) (“The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.”).

REQUEST FOR ADMISSION NO. 3: The motion is denied as to Request for Admission No. 3. The Court finds that the Receiver has sufficiently responded to Defendant’s request. *See* Fed. R. Civ. P. 36(a)(4) (“If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter.”).

REQUEST FOR ADMISSION NO. 4: The motion is denied as to Request for Admission No. 4. The Court finds that the Receiver has sufficiently responded to Defendant’s request. *See* Fed. R. Civ. P. 36(a)(4).

REQUEST FOR ADMISSION NO. 5: The motion is denied as to Request for Admission No. 5. The Court finds that the Receiver has sufficiently responded to Defendant’s request. *See* Fed. R. Civ. P. 36(a)(4).

REQUEST FOR ADMISSION NO. 6: The motion is denied as to Request for Admission No. 6. The Court finds that this request, as worded, is vague and ambiguous.

REQUEST FOR ADMISSION NO. 7: The motion is denied as to Request for Admission No. 7. *See Duncan v. Nunez*, No. 1:17-cv-1623-P, 2019 WL 5862001, at \*4 (W.D. La. Nov. 7, 2019) (citing *Nat’l Semiconductor Corp. v. Ramtron Int’l Corp.*, 265 F.Supp. 2d 71, 74 (D.D.C. 2003) for proposition that “validity of a qualified answer to a request for admission must await the trial”); 7 Moore’s Federal Practice, § 36.12 (2019) (“A motion to determine the sufficiency of a response to a request for admission is not to

be used as an attempt to litigate the accuracy of a response. Rule 36 does not authorize the court to make determinations on the accuracy of responses before trial.”).

REQUEST FOR ADMISSION NO. 8: The motion is granted as to Request for Admission No. 8. The Court orders the Receiver to provide a response in conformity with the answering requirements of Fed. R. Civ. P. 36(a)(4).

REQUEST FOR ADMISSION NO. 9: The motion is granted as to Request for Admission No. 9. The Court orders the Receiver to provide a response in conformity with the answering requirements of Fed. R. Civ. P. 36(a)(4).

REQUEST FOR ADMISSION NO. 11: The motion is denied as to Request for Admission No. 11. *See Duncan*, 2019 WL 5862001, at \*4; 7 Moore’s Federal Practice, § 36.12 (2019).

REQUEST FOR ADMISSION NO. 13: The motion is granted as to Request for Admission No. 13. The Court orders the Receiver to provide a supplemental response in conformity with the answering requirements of Fed. R. Civ. P. 36(a)(4).

REQUEST FOR ADMISSION NO. 14: The motion is denied as to Request for Admission No. 14. The Court finds that the Receiver has sufficiently responded to Defendant’s request. *See Fed. R. Civ. P. 36(a)(4)*.

#### INTERROGATORIES

INTERROGATORY NO. 2: The motion is granted as to Interrogatory No. 2. The Court orders the Receiver to provide a supplemental response that identifies by Bates number all documents received from law enforcement agencies. To the extent the Receiver objects to identifying any such documents on a claim of any privilege, the Receiver must produce a privilege log as to all such documents in compliance with L.U.Civ.R. 26(e) and sufficiently identify the documents “in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A)(ii).

INTERROGATORY NO. 3: The motion is denied as to Interrogatory No. 3. The interrogatory requests “information and belief,” and the Receiver represents that she “responded with the information known to her.” [260] at 19.

INTERROGATORY NO. 4: The motion is denied as to Interrogatory No. 4. The Receiver represents that she “responded with the information known to her.” [260] at 19.

INTERROGATORY NO. 5: The motion is denied as to Interrogatory No. 5. The interrogatory requests “information and belief,” and the Receiver represents that she “responded with the information known to her.” [260] at 19.

INTERROGATORY NO. 6: The motion is granted as to Interrogatory No. 6. The Receiver objects, and the Court agrees, that the interrogatory is vague and ambiguous. But it appears that in this interrogatory, TUPSS intended to ask the Receiver to identify all documents on which a Herring Ventures notary public allegedly notarized “‘the signatures of purported grantors-landowners who were not present,’ as alleged [by the Receiver] in Paragraph 65 of the AMENDED COMPLAINT.” [243] at 39. And the Receiver’s responses show that she understood that to be what TUPSS intended to ask. The Court, therefore, orders the Receiver to provide a supplemental response identifying by Bates number all documents on which a Herring Ventures notary public allegedly notarized “‘the signatures of purported grantors-landowners who were not present,’ as alleged [by the Receiver] in Paragraph 65 of the AMENDED COMPLAINT.” *Id.* For any such documents the Receiver cannot identify by Bates number, the Receiver’s supplemental response must explain why they cannot be so identified and must, to the best of the Receiver’s knowledge and belief, identify all such documents.

INTERROGATORY NO. 7: The motion is denied as to Interrogatory No. 7. With respect to this interrogatory, the Receiver incorporated her arguments relating to Interrogatory No. 4, and as stated above, the Receiver represents that she “responded with the information known to her.” [260] at 19-20.

INTERROGATORY NO. 8: The motion is granted as to Interrogatory No. 8. The Court orders the Receiver to provide a supplemental response identifying by Bates number the documents referenced in this interrogatory. For any such documents the Receiver cannot identify by Bates number, the Receiver’s supplemental response must explain why they cannot be so identified and must, to the best of the Receiver’s knowledge and belief, identify all such documents.

INTERROGATORY NO. 9: The motion is denied as to Interrogatory No. 9. The Court finds that the Receiver has sufficiently responded to this interrogatory.

INTERROGATORY NO. 10: The motion is denied as to Interrogatory No. 10. The Court finds that the Receiver has sufficiently responded to this interrogatory.

INTERROGATORY NO. 12: The motion is granted as to Interrogatory No. 12. The Court orders the Receiver to provide a supplemental response that provides the facts responsive to this interrogatory.

INTERROGATORY NO. 13: The motion is granted as to Interrogatory No. 13. The Court orders the Receiver to provide a supplemental response that provides the facts responsive to this interrogatory.

INTERROGATORY NO. 14: The motion is denied without prejudice as to Interrogatory No. 14. The Receiver argues that she “has not yet commenced, much less completed, discovery . . . such that she could calculate on a defendant-by-defendant basis Madison Timber’s damages due to their negligence.” [260] at 22. The Receiver’s argument is well taken, and therefore, the motion should be denied at this time.

INTERROGATORY NO. 22: The motion is denied as to Interrogatory No. 22. The Court finds that this interrogatory is overly broad. Requesting in a single interrogatory the basis for every denial of any Request for Admission is improper.

IT IS, THEREFORE, ORDERED AND ADJUGED that TUPSS’s Motion to Compel Discovery and Disclosures from Plaintiff and for Other Relief Pursuant to Federal Rule of Civil Procedure 37 [242] is granted in part and denied in part, as set forth above, and the Receiver’s Motion for Leave to File Surreply [289] is denied. Specifically, the Court orders that:

1. By February 18, 2022, the Receiver shall provide a sworn verification of each set of responses previously served to TUPSS’s interrogatories.
2. By March 14, 2022, the Receiver shall comply with the Court’s directives above as to Request for Production Nos. 2, 3, 9, and 10; Request for Admissions Nos. 1, 8, 9, and 13; and Interrogatory Nos. 2, 6, 8, 12, and 13.
3. The motion is denied as to Request for Production Nos. 7, 8, and 11; Request for Admissions Nos. 3, 4, 5, 6, 7, 11, and 14; and Interrogatory Nos. 3, 4, 5, 7, 9, 10, 14, and 22.

4. TUPSS's request for sanctions and any other relief not specifically granted above is denied.

SO ORDERED, this the 9th day of February, 2022.

/s F. Keith Ball  
UNITED STATES MAGISTRATE JUDGE