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-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 OPPOSITION TO RECEIVER'S OBJECTION TO ORDER ON MOTION TO COMPEL DISCOVERY

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I. INTRODUCTION

In response to The UPS Store, Inc.'s ("TUPSS, Inc.") Request for Production ("RFP") No. 9 seeking all documents between Plaintiff and investors who invested with Lamar Adams, Plaintiff produced ***some*** of the responsive documents, but refused to produce ***all*** the responsive documents based on her own determination of which documents were relevant to TUPSS, Inc.'s defense and which were not. TUPSS, Inc. moved to compel arguing that no lawsuit could be fairly litigated if a party were given the power unilaterally to decide what particular documents sought in discovery were relevant and which were not. TUPSS, Inc. further showed that Plaintiff did not and could not meet her burden of showing the documents called for by RFP No. 9 were irrelevant to any claim or defense in the case. TUPSS, Inc. thus asked Magistrate Judge Ball to order production of ***all*** documents responsive to RFP No. 9, including the ones that Plaintiff had withheld based on her own relevance determinations.

Unsurprisingly, Magistrate Judge Ball rejected Plaintiff's gambit and ordered Plaintiff to produce ***all*** documents responsive to RFP No. 9. (*See* ECF No. 321 ("February 9, 2022 Order").) Plaintiff's objection to that ruling is legally frivolous.

Under the Court's Local Uniform Civil Rule 72(a)(1)(B), "[n]o ruling of a magistrate judge in any matter which he or she is empowered to hear and determine will be reversed, vacated, or modified on appeal unless the district judge determines that the magistrate judge's findings of fact are clearly erroneous, or that the magistrate judge's ruling is clearly erroneous or contrary to law." Magistrate Judge Ball's ruling that Plaintiff could not unilaterally decide what to produce in response to RFP No. 9 was not clearly erroneous or contrary to law. Courts universally agree that the Federal Rules of Civil Procedure do not allow one party the right to decide relevance and to produce only those documents that party believes relevant. *See Patrick v. Teays Valley Trs., LLC*, 297 F.R.D. 248, 259 (N.D. W. Va. 2013) ("communications between

Defendant and Plaintiffs are highly relevant to this case and must be produced. Defendant cannot pick and choose which documents it deems discoverable."); *Burke v. Ability Ins. Co. (In re Estate of Hermsen),* 291 F.R.D. 343, 356 (D.S.D. 2013) ("Defendants do not get to pick and choose which documents they think are relevant to Burke's claim."); *In re Pradaxa (Dabigatran Etexilate) Prods. Liab. Litig*., No. MDL No. 2385, 2013 U.S. Dist. LEXIS 173674, at *40-41 (S.D. Ill. Dec. 9, 2013) ("The defendants do not get to pick and choose which evidence they want to produce from which sources."). Had Magistrate Judge Ball's ruling adopted Plaintiff's position that she, alone, gets to decide what evidence is relevant to TUPSS, Inc.'s defenses, that ruling would have been clearly erroneous and contrary to law.

TUPSS, Inc. submits that the Court does not need to scrutinize Magistrate Judge Ball's relevance ruling further; the February 9, 2022 Order can and should be affirmed based simply on the ground that Plaintiff could not produce some responsive documents (those that favor her) and withhold the documents she does not want to produce. But in all events, Plaintiff does not come close to showing that Magistrate Judge Ball's ruling that the documents are relevant to the claims and defenses in this action was clearly erroneous or contrary to law. "[T]he bar is low—evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Hicks-Fields v. Harris County*, 860 F.3d 803, 809 (5th Cir. 2017) (citation omitted). In deciding discovery matters like that here, a Magistrate Judge's rulings are "afforded broad discretion . . . because no one factor controls discovery disputes." *Barnett v. Tree House Café, Inc*., No. 5:05-cv-195-DCB-JMR, 2006 U.S. Dist. LEXIS 78614, at *8 (S.D. Miss. Oct. 27, 2006). "[F]or the plaintiff to prevail, she must show, not that the magistrate judge

could have exercised his discretion and ruled in her favor, but rather that she is entitled to a ruling in her favor as a matter of law." (*Id.*)

Plaintiff's Motion for Review fails to show that the documents requested are irrelevant to TUPSS, Inc.'s defenses in this action; indeed, Plaintiff does not even address that issue. Instead, Plaintiff asserts that she does not intend to use the responsive documents to prove the elements of her claim—somehow overlooking that a defendant has a right to take discovery related to its defense as well. *See* Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery . . . relevant to any party's claim ***or defense*** . . .") (emphasis added). Plaintiff falsely asserts that TUPSS, Inc. argued that the documents were relevant only to damages, when in fact TUPSS, Inc. showed Magistrate Judge Ball that the documents were relevant to liability issues including issues of the investor's negligence and whether the timber deeds at issue were the proximate cause of any investor's losses. Indeed, Your Honor acknowledged at the hearing regarding a proposed investor distribution that investor knowledge and sophistication were appropriate areas for discovery. Plaintiff does not even address or challenge that the Magistrate Judge's ruling should be affirmed because the documents are responsive to topics other than damages. For good measure, however, Plaintiff's argument that investor's damages are irrelevant is likewise meritless. Plaintiff asserts she has standing to recover damages that are the Plaintiff's (Receiver's) liabilities caused by Adams' Ponzi scheme, but that does not mean that discovery into investor's losses is somehow irrelevant. The Plaintiff/Receiver's alleged liabilities ***are*** the losses allegedly incurred by investors, so to evaluate the Receiver's alleged damages, TUPSS, Inc. (and the other defendants) must conduct discovery into those alleged investor losses. Furthermore, Plaintiff asserts she has standing to bring these claims on the alternative grounds that she has received investor assignments. But since an assignee steps into the shoes of the

assignor, subject to all the same defenses the assignor would be subject to, TUPSS, Inc. is entitled to discovery about investor losses for that independent reason.

Plaintiff's Motion ignores the great deference a Magistrate Judge's discovery rulings are given, ignores the low bar for relevance, ignores that she bore the burden of establishing irrelevance, ignores the relevance arguments presented to Magistrate Judge Ball, and ignores the unbroken case law holding that a party cannot pick and choose what documents it will produce based on its own undefined views of what evidence is relevant. Plaintiff's Motion should be denied.

II. BACKGROUND

A. TUPSS, Inc.'s RFP No. 9 for Plaintiff's Communications with Investors

TUPSS, Inc. propounded the following request for production on Plaintiff:

> **RFP No. 9:**
>
> All DOCUMENTS that YOU received from or provided to any INVESTORS, including, but not limited to (a) COMMUNICATIONS between YOU and any INVESTORS "through [YOUR] website, email, phone, and letters" as stated on page 13 of YOUR June 26, 2020 Report filed as ECF No. 204 in *SEC v. Adams, et al.*, Case No. 3:18-cv-00252-CWR-FK[B]; (b) any "information that "investors provide[d]" to YOU as stated on page 12 of YOUR February 26, 2021 Report filed as ECF No. 251 in *SEC v. Adams, et al.*, Case No. 3:18-cv-00252-CWR-FK; and (c) the letter dated February 19, 2021 to INVESTORS "enclose[ing] information regarding each investor's investments and losses" as stated on page 12 of YOUR February 26, 2021 Report filed as ECF No. 251 in *SEC v. Adams, et al.*, Case No. 3:18-cv-00252-CWR-FK[B].

After an initial response that Plaintiff quickly fell back from, Plaintiff served a supplemental and amended response to RFP No. 9:

> **Supplemental and Amended Response to RFP No. 9:**
>
> The Receiver objects to this request because it seeks documents that are wholly irrelevant to the Receiver's claims against UPS or UPS's defenses to those claims. This case is about whether UPS notaries stamped fake Timber Deeds and whether those actions contributed to the growth of the Madison Timber Ponzi scheme. Individual investors' communications with the Receiver are not relevant to

whether UPS's notaries stamped fake Timber Deeds.

> The Receiver expressly reserves any right to assert, and in no way waives, any privilege that the Receiver may have with assignor-investors or investors generally. The Receiver will not now or in the future produce any communications with investors that are privileged, are work product, or are otherwise confidential.
>
> Without waiving her objection and subject to that reservation of rights, the Receiver answers: The Receiver will produce letters that she sent to all Madison Timber investors, Bates stamped as MTR.UPS_004204 – 004303. Further, the Receiver specifically and expressly disclaims any obligation to produce correspondence sent to investors after the date hereof.

(ECF No. 244-6, at 24-25.)

Plaintiff produced 21 pages of form letters she had sent to investors, plus some court filed documents that were already in the public domain.

B. TUPSS, Inc.'s Motion to Compel Briefing

On July 15, 2021, TUPSS, Inc. moved to compel. (ECF No. 243.) Regarding Plaintiff's relevance objections, TUPSS, Inc. showed:

> "To be relevant under Rule 26(b)(1), a document or information need not, by itself, prove or disprove a claim or defense or have strong probative force or value." *Samsung Elecs. Am., Inc. v. Chung*, 321 F.R.D. 250, 280 (N.D. Tex. 2017). Further, "Rule 26(g)(1) does not impose on a party filing a motion to compel the burden to show relevance and proportionality in the first instance." *Samsung Elecs. Am. Inc. v. Yang Kun "Michael" Chung*, 325 F.R.D. 578, 594 (N.D. Tex. 2017). Rather, "[t]he party resisting discovery must show specifically how each discovery request is not relevant or otherwise objectionable." *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 580 (N.D. Tex. 2018).

(ECF No. 243 at 2.)

TUPSS, Inc. argued that Plaintiff could not meet her burden to show the documents responsive to RFP No. 9 were irrelevant to any claim or defense in the action. TUPSS, Inc. argued investors communications were relevant to "whether the timber deeds that Adams forged was a proximate cause of any investor losses; whether liability for negligence should be reduced

due to any negligence by an investor; and what the investor's damages might be, among other matters . . .". (ECF No. 275 at 13.)

TUPSS, Inc. also showed that Plaintiff's privilege objections were baseless and, in all events, Plaintiff had waived privilege by not providing any privilege log.

In her August 6, 2021 Opposition, Plaintiff defended only her relevance objection, abandoning any claim that her communications were somehow privileged. Plaintiff argued that "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" and "[t]he 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." (ECF No. 260 at 11-12.) That same day (August 6, 2021), Plaintiff produced another 165 pages, which she described as "information [she received] in response to [her] February 19, 2021 letter [to investors]" (the "August 6 Production"). (ECF No. 276-6.) Plaintiff did not represent that she had then produced all documents responsive to RFP No. 9 or even all information she had received from investors. Obviously she has not, or else she would not be maintaining her objection to producing ***all*** responsive documents. Thus, although Plaintiff argued to Magistrate Judge Ball that communications "after-the-fact" of an investor's investment were categorically irrelevant, she picked through those documents and produced some of them, but chose other such documents she did not want anyone to see.

C. The Magistrate Judge's Order Granting TUPSS, Inc.'s Motion to Compel with Respect to RFP No. 9

The Magistrate Judge granted TUPSS, Inc.'s motion to compel as to RFP No. 9 (ECF No. 321), ordering Plaintiff 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.

(*Id.* at 3.)

III. LEGAL STANDARD

28 U.S.C. § 636(b)(1)(A) provides that a district judge "may reconsider any pretrial matter [ruled on by a magistrate judge] . . . where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *See also* Fed. R. Civ. P. 72(a) ("The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law."); L.U. Civ. R. 72(a)(1)(B) ("No ruling of a magistrate judge in any matter which he or she is empowered to hear and determine will be reversed, vacated, or modified on appeal unless the district judge determines that the magistrate judge's findings of fact are clearly erroneous, or that the magistrate judge's ruling is clearly erroneous or contrary to law.").

"The 'clearly erroneous' standard has been described as extremely deferential," *Jenkins v. Robotec, Inc.*, No. 1:09cv150HSO-JMR, 2009 U.S. Dist. LEXIS 122996, at *3 (S.D. Miss. Dec. 9, 2009), and "requires that the court affirm the decision of the magistrate judge unless 'on the entire evidence [the court] is left with a definite and firm conviction that a mistake has been committed.'" *C.H. v. Rankin Co. Sch. Dist.*, No. 3:08cv84-DPJ-JCS, 2010 U.S. Dist. LEXIS 37888, at *19 (S.D. Miss. Apr. 16, 2010) (alteration in original) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

"A legal conclusion is contrary to law when the magistrate fails to apply or misapplies relevant statutes, case law, or rules of procedure." *H.R. v. Double J Logistics, LLC*, No. 3:16CV655TSL-RHW, 2017 U.S. Dist. LEXIS 151851, at *8 (S.D. Miss. Sept. 19, 2017)

(citation omitted). "[A] magistrate judge's decision is contrary to law only where it runs counter to controlling authority." *Pall Corp. v. Entegris, Inc.*, 655 F. Supp. 2d 169, 172 (E.D.N.Y. 2008).

"[F]or the plaintiff to prevail, she must show, not that the magistrate judge could have exercised his discretion and ruled in her favor, but rather that she is entitled to a ruling in her favor as a matter of law." *Barnett*, 2006 U.S. Dist. LEXIS 78614, at *8. In the discovery context, "[a] magistrate judge is afforded broad discretion . . . because no one factor controls discovery disputes." *Id.* This Court applies an abuse of discretion standard to magistrate judges' decisions on discovery issues. *See, e.g., McReynolds v. Matthews*, No. 1:16-CV-318-HSO-MTP, 2017 U.S. Dist. LEXIS 228747, at *9 (S.D. Miss. Sept. 20, 2017) ("the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law"); *see also Jenkins*, 2009 U.S. Dist. LEXIS 122996, at *3.

IV. THE MAGISTRATE JUDGE'S ORDER WAS NOT CLEARLY ERRONEOUS OR CONTRARY TO LAW

Magistrate Judge Ball did not abuse his discretion in granting TUPSS, Inc.'s Motion to Compel production of ***all*** the documents responsive to RFP No. 9; his ruling that all documents between Plaintiff and investors had to be produced was not clearly erroneous or contrary to law.

A. Plaintiff Cannot Choose to Produce Only Those Documents She Believes Relevant

Plaintiff argues that RFP No. 9 seeks irrelevant material for two reasons both of which are wholly meritless as discussed below. But before turning to arguments about relevance, Magistrate Judge Ball's February 9, 2022 Order should be affirmed for the threshold reason that a party cannot produce some documents in response to a discovery request (thereby waiving any argument that the materials are not discoverable) while simultaneously withholding other responsive documents based solely on the contention that the party believes the withheld

documents are irrelevant. As the cases cited above show, courts simply do not tolerate a party unilaterally producing some, and withholding other, responsive documents based on that party's own determination of what is relevant and what is not. Plaintiff has not, and cannot, cite a single authority countenancing such a plan. Magistrate Judge Ball's February 9, 2022 Order should be affirmed based solely on the ground that he rejected Plaintiff's gambit to be the sole arbiter of relevance on a document by document basis.

B. Plaintiff Failed to Meet Her Burden of Showing RFP No. 9 Seeks Irrelevant Documents

Even if the Court were to consider Plaintiff's two arguments for why documents between Plaintiff and investors are irrelevant, both of Plaintiff's arguments are feeble. Magistrate Judge Ball's ruling that Plaintiff had failed to meet her burden of showing the requested documents are irrelevant to any claim or defense was plainly neither contrary to law nor clearly erroneous.

1. Plaintiff's Notion that TUPSS, Inc. Should Not Be Allowed To Take Discovery Related to Its Defense Is Absurd

Plaintiff first argues that "individual investors' communications with the Receiver are not relevant to any element of any of the ***Receiver's claims*** in this case," and then Plaintiff recites the elements of each of her causes of action to suggest she will not rely on her communications with investors to prove her claims against TUPSS, Inc. (Pl. Mem., ECF No. 324, at 4-6 (emphasis added).) Nonsense.

Federal Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or ***defense*** . . .". (Emphasis added.) Thus, even if it were true that Plaintiff does not intend to rely on communications between Plaintiff and investors in support of ***her claims***, TUPSS, Inc. is entitled to discovery that is relevant to its ***defense***. Plaintiff does not argue that RFP No. 9 seeks documents that are irrelevant to TUPSS, Inc.'s efforts to defend this action. For one example:

Plaintiff concedes she has sent investors questionnaires about their investments with Adams. Obviously what investors stated about their investment is relevant to TUPSS, Inc.'s defenses in this case, including that investors did not rely on the alleged notarizations of timber deeds, or that the investor losses alleged by Plaintiff are grossly overstated. Magistrate Judge Ball's ruling that communications with investors meets the low bar of relevance was not clearly erroneous or contrary to law.

Magistrate Judge Ball's determination that TUPSS, Inc. is entitled to documents that are relevant to its defense—and not merely the documents Plaintiff intends to rely on in support of her claims—is obviously neither contrary to law or clearly erroneous. To the contrary, an opposite ruling would plainly have been inconsistent with Federal Rule of Civil Procedure 26(b)(1).

2. Plaintiff's Argument that Responsive Documents Are Not Possibly Relevant to Damages Is Both Irrelevant and Wrong

Plaintiff next argues that "[i]ndividual investors' communications with the Receiver are not relevant to damages, because damages are the Receivership Estate's, not individual investors." (Pl. Mem., ECF No. 324, at 6.) In support of that argument, Plaintiff repeats the arguments she has made in other briefing in support of her argument that she has standing to bring the claims she has asserted. (*Id.* at 6-8.) Plaintiff's arguments here are likewise feeble.

a. The requested documents are relevant to defenses other than damages

Plaintiff simply mischaracterizes TUPSS, Inc.'s arguments and the record that existed before Magistrate Judge Ball. TUPSS, Inc. never argued that RFP No. 9 sought documents relevant ***only*** to damages. Indeed, in its Motion to Compel, TUPSS, Inc. offered three examples of defenses to which investor communications may be relevant: "whether the timber deeds that Adams forged was a proximate cause of any investor losses; whether liability for negligence

should be reduced due to any negligence by an investor; and what the investor's damages might be, among other matters . . .". (ECF No. 275 at 13.) Plaintiff does not argue that the requested documents are irrelevant to each of TUPSS, Inc.'s defenses in this action. Plaintiff's failure to challenge that the documents are relevant to proximate causation or investor negligence waives any such argument. Thus, even if the Court were to accept Plaintiff's arguments that information about investor losses is irrelevant to TUPSS, Inc.'s potential damages in this action (arguments which are plainly wrong), Magistrate Judge Ball's February 9, 2022 Order should still be affirmed, because Plaintiff does not dispute that the requested documents are relevant to other aspects of TUPSS, Inc.'s defense of this action.

b. Plaintiff's argument that information from the investors themselves is irrelevant to damages is meritless

In all events, Plaintiff's argument that information from investors about their losses is irrelevant to damages is wrong for several reasons.

First, Plaintiff has asserted that one of the reasons she has standing to bring the claims she has asserted, seeking the damages she seeks, is because investors have assigned their claims to her. When the Court denied TUPSS, Inc.'s motion to certify the March 1, 2021 Order for immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the Court referred to the fact that Plaintiff has standing to bring claims based on on the "assignments she has received from victims, as she has in several other cases." (ECF No. 310 at 4.) It is blackletter law in Mississippi that an "assignee . . . essentially 'stands in the shoes' of the assignor and . . . 'takes no rights other than those' which the assignor had possessed." *Great S. Nat'l Bank v. McCullough Envtl. Servs., Inc.*, 595 So. 2d 1282, 1287 (Miss. 1992) (citation omitted). Thus, because Plaintiff has asserted—and the Court has found—she has standing as an assignee of

investor claims, TUPSS, Inc. is entitled to take full discovery about investor losses, to the same extent as if they were parties.

Second, and independently, TUPSS, Inc. has the right to take discovery about investor damages under Plaintiff's alternative theory she has standing because she is seeking to recover Plaintiff's/Receiver's damages. The "Receivers' damages" ***are*** investor losses, under the theories that Plaintiff has asserted in these cases. Plaintiff has relied heavily on *Zacarias v. Stanford International Bank, Ltd.,* 945 F.3d 883 (5th Cir. 2019) for the proposition that a receiver has standing to collect damages for "unsustainable liabilities inflicted by the Ponzi scheme." (Pl. Memo., ECF No. 324, at 7, quoting *Zacarias*). But according to Plaintiff, those alleged "liabilities" of the estates of Adams and Madison Timber are the damages/losses incurred by the investors who were allegedly bilked by Adams. To evaluate what "the Receiver's damages" are TUPSS, Inc. must evaluate what Adams and Madison Timber actually owe investors. The fact that the Court has ruled that Plaintiff has standing to bring the claims she has brought, does not mean that what investors lost—that is, what investor's damages are—is wholly irrelevant to what the damages might be assessed against TUPSS, Inc. in these actions.

The two cases that Plaintiff cites do not support her argument that "courts in similar cases have held defendants are not entitled to the discovery UPS seeks." There is certainly no "controlling" authority holding that in an SEC receivership action, where a receiver is seeking to recover the amounts allegedly lost by investors, discovery about investor losses is categorically irrelevant and not subject to discovery. Thus, Magistrate Judge Ball's ruling cannot possibly by "contrary to law."

Plaintiff's reliance on *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580-AC, 2018 U.S. Dist. LEXIS 225087 (D. Or. Dec. 10, 2018) is particularly surprising, since it proves the

points that TUPSS, Inc. and many of the other Defendants in these matters have made about the Receiver's overreaching and improper litigation strategy in these cases. *Ciuffitelli* —a securities fraud class action brought directly by investors in a corporation's securities against professional firms who allegedly participated in the fraud—was "one of several [lawsuits] following the collapse of Aequitas." *Ciuffitelli*, 2018 U.S. Dist. LEXIS 225087, at *20. One of the other lawsuits was filed by the SEC, which led to the appointment of a receiver, but—unlike here—the SEC receiver did ***not*** bring causes of action that belonged to investors, seeking to recover the amounts lost by investors, against parties like Deloitte and others who allegedly participated in Aequitas' fraud. Indeed, investor Ciuffitelli had to seek relief "from the litigation stay in the SEC action, seeking to assert Oregon Securities Law claims against non-receivership (non-Aequitas) parties." *Id.* Those investors in Aequitas' securities then brought their own action, on their own causes of action, seeking to recover their alleged losses from "non-receivership (non-Aequitas) parties." Thus, the SEC receiver in Aequitas was not trying to do what Plaintiff is doing here (which TUPSS, Inc. and the other defendants have opposed), namely, bringing claims that belong to investors to recover investor losses. In those circumstances where the SEC receiver essentially had no connection to the plaintiff class' claims, the district court found "that on the current record, 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." (*Id.* at *29.) The fact that that district judge found "on the current record" that Deloitte had failed to show the relevance of certain documents does not show or suggest that Magistrate Judge Ball's ruling, on the record here, in this action, was clearly erroneous or contrary to law. Given that Plaintiff here (unlike the receiver in Aequitas) is asserting claims based on what investors lost, and has admittedly been in

communication about those losses, Magistrate Judge Ball was well within his discretion to find that Plaintiff failed to meet her burden of showing irrelevance—particularly since Plaintiff tacitly agreed the documents are relevant and produced some (but not all) responsive document's.

Plaintiff also refers to two orders granting in part and denying in part a motion by the Official Stanford Investor Committee ("OSIC") to quash subpoenas served on two of its committee members. (*See* ECF No. 323-1 (Orders, *Rotstain v. Trustmark Nat'l Bank,* No. 09-cv-2384 (N.D. Tex.), ECF Nos. 695, 709).) There, the court ordered that both committee members had to sit for deposition but that their investment decisions were unrelated to the fraudulent transfer claims at issue in that litigation. (*Id.*) Those rulings are not germane, because that action did not involve an action by a receiver seeking to recover damages from a defendant measured by the investor's losses. Further, the court there noted that the committee member had already been deposed ***twice*** on those very issues and all parties had those transcripts. (*Id.* at 17.) The district court thus found that "***additional*** testimony" on those topics was unnecessary. (*Id.* (emphasis added).) The "narrow protective order" limiting further questioning of those witnesses certainly does not show that Magistrate Judge Ball's order here was clearly erroneous or contrary to law.

V. CONCLUSION

Magistrate Judge Ball's order was not contrary to law or clearly erroneous. Thus, under Local Uniform Civil Rule 72(a)(1)(B), that ruling may not be "reversed, vacated, or modified on appeal." Plaintiff's objections should be denied.

Dated: March 9, 2022

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

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

Email: merrittl@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:

Kristen D. Amond
Brent B. Barriere
Jason W. Burge
Rebekka C. Veith
FISHMAN HAYGOOD, LLP
201 St. Charles Avenue, Suite 4600
New Orleans, LA 70170-4600
(504) 586-5294
(504) 586-5250 (fax)
amills@fishmanhaygood.com
kamond@fishmanhaygood.com
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
rveith@fishmanhaygood.com

ATTORNEYS FOR PLAINTIFF

Lilli Evans Bass
Brown Bass & Jeter, PLLC
P.O. Box 22969
Jackson, MS 39225
(601) 487-8448
(601) 510-9934 (fax)
bass@bbjlawyers.com

G. Todd Burwell
Emily Kincses Lindsay
G. TODD BURWELL, PA
618 Crescent Blvd., Ste. 200
Ridgeland, MS 39157
(601) 427-4470
(601) 427-0189 (fax)
tburwell@gtbpa.com
elindsay@gtbpa.com

ATTORNEYS FOR RAWLINGS & MACINNIS, PA, JEANNIE CHISOLM, AND TAMMY VINSON

William Lee Guice, III
RUSHING & GUICE, PLLC – Biloxi
P.O. Box 1925
Biloxi, MS 39533-1925
1000 Government St., Suite E
Ocean Springs, MS 39564
(228) 374-2313
(228) 875-5987
bguice@rushingguice.com

ATTORNEY FOR HERRING VENTURES, LLC, AUSTIN ELSEN, CHANDLER WESTOVER, COURTNEY HERRING, DIANE LOFTON, AND TAMMIE ELSEN

THIS, the 9th day of March, 2022.

/s/ Mark R. McDonald
MARK R. MCDONALD