UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC,

Plaintiff,

v.

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

Defendants.

Case No. 3:19-cv-00364-CWR-FKB

Arising out of Case No. 3:18-cv-252, *Securities and Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

REPLY TO UPS'S OPPOSITION TO RECEIVER'S OBJECTION TO ORDER ON MOTION TO COMPEL DISCOVERY

Alysson Mills, in her capacity as receiver for Arthur Lamar Adams and Madison Timber, Properties, LLC, respectfully files this reply to The UPS Store, Inc.'s opposition to her objection to Magistrate Judge Ball's order granting UPS's motion to compel.

The Court is already familiar with this case and, by now, the issue. In the interests of time, the Receiver responds only to those assertions or arguments of UPS that are material to her objection.

1.

The Receiver has already produced to UPS almost everything in her possession. Relevant here, the Receiver has produced her several letters to investors, including letters regarding her accountings of their losses; and investors' communications to the Receiver regarding the Receiver's accountings of their losses. The sole question is whether the Receiver must produce any additional emails or other communications between the Receiver and investors, whatever their subject matter.

UPS says it needs individual investors' communications with the Receiver, whatever their subject matter, to show that UPS's "liability for negligence should be reduced due to any negligence by an investor." [Doc. 326 at 10]. UPS cannot credibly contend that investors' communications with the Receiver—which necessarily post-date Madison Timber's collapse—bear on that defense or any other.

Whether defendants are entitled to unlimited (and in many instances, invasive) investor discovery is an increasingly recurring issue. Just two days before Judge Ball granted UPS's motion to compel, he advised in a separate order, which addressed subpoenas to investors, that "unless and until the district judge rules that [their] defenses are not viable or legally cognizable, [defendants] are entitled to conduct discovery on the defenses they are asserting in this case."[1]

The Receiver respects and sympathizes with Judge Ball. We need clarity on this issue. As of this filing, the issue is also before the Court in the separate but related case *Mills v. BankPlus, et al.*[2] and in the consolidated action *In re Consolidated Discovery in Cases Filed By Alysson Mills*.[3] If the Receiver is right, then Judge Ball's order, to the extent that it requires the Receiver to

[1] Doc. 320 at 2.

[2] Doc. 183, *Mills v. BankPlus, et al.*, No. 19-cv-196 (S.D. Miss.).

[3] Doc. 83, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 22-cv-36 (S.D. Miss.).

produce all emails or other communications between the Receiver and investors, whatever their subject matter, is, respectfully, clearly erroneous.

2.

UPS contends that UPS "is entitled to take full discovery about investor losses, to the same extent as if they were parties" [Doc. 326 at 16]—*but it cites no legal authority that proposition*.

UPS argues that "[t]o evaluate what 'the Receiver's damages' are [UPS] must evaluate what Adams and Madison Timber actually owe investors." [Doc. 326 at 16]. Exactly. And UPS already has everything it needs.

UPS already has Madison Timber's QuickBooks files, Madison Timber's Trustmark bank statements, Madison Timber's First National Bank of Clarksdale bank statements, Madison Timber's RiverHills bank statements, and Madison Timber's Southern Bancorp bank statements; promissory notes that Madison Timber gave to investors; the Receiver's several letters to investors, including letters regarding her accountings of their losses; and investors' communications to the Receiver regarding the Receiver's accountings of their losses.

UPS can see the transactions in each of Madison Timber's accounts. It can see, for each investor, principal amounts invested and, for each investment, corresponding monthly payments. It can then calculate, for itself, any amounts still due, whether principal or interest. That accounting, which the Receiver also did herself, is *objective*: money in and money out. Any amounts still due are, objectively, the Receivership Estate's debts, or in the words of *Zacarias* and *Rotstain*, "the unsustainable liabilities inflicted by the Ponzi scheme" or "the additional liability incurred to investors."

When UPS says it needs investor discovery to calculate damages, it does not mean it wants to calculate the Receivership Estate's debts. It does not care about math. It wants to litigate whether any of the 184 investors in Madison Timber, plus the additional 34 investors who invested

through the Alexander Seawright Timber Fund, to whom Madison Timber owes money are entitled to any recovery from the Receivership Estate because they meet UPS's own *subjective* standards. Take UPS at its own words: UPS's strategy is to harass victims.[4]

Undersigned counsel has reviewed the dockets of each of the Stanford receiver's aiding and abetting cases, many of which have been resolved in the Stanford receiver's favor and affirmed on appeal.[5] Undersigned counsel has yet to find a single order which would remotely support UPS's position,[6] and UPS itself does not point to one here.

3.

UPS contends that "no 'controlling' authority" holds that UPS is not entitled to the investor discovery it seeks. [Doc. 326 at 16].

Unquestionably it is instructive that no defendant in any of the Stanford receiver's aiding and abetting cases ever sought the kind of broad, invasive investor discovery that UPS and other defendants seek in these cases.

UPS also utterly fails to distinguish the two cases, both on-point, that the Receiver previously provided.

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[4] UPS contends investors "were not 'victims' at all" but instead "were very wealthy individuals who benefited" from the Madison Timber Ponzi scheme. Doc. 299 at 6, *Securities & Exchange Commission v. Arthur Lamar Adams, et al.*, 18-cv-252 (S.D. Miss.).

In fact, to the contrary, of the 184 investors in Madison Timber, only approximately 40 did not qualify for a first distribution because they received, over time, interest that exceeds any principal still due to them under their promissory notes.

[5] Doc. 83-1, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 22-cv-36 (S.D. Miss.) (Exhibit A to Receiver's objection to consolidated Defendants' subpoenas to investors).

[6] Doc. 83-1, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 22-cv-36 (S.D. Miss.) (Exhibit A to Receiver's objection to consolidated Defendants' subpoenas to investors).

UPS contends the Stanford court's rulings in *Rotstain*[7] "are not germane" because "that action did not involve an action by a receiver to recover damages from a defendant measured by the investor's losses." [Doc. 326 at 18]. *But that is false. Rotstain* is one of the Stanford receiver's aiding and abetting cases. The Stanford receiver sued banks, including Trustmark National Bank, for "injury to the Stanford entities in the form of 'additional liability Stanford incurred to its investors' due to [defendants'] participation in the Ponzi scheme." *Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021). *Rotstain* is the same case that the parties and the Court have cited numerous times in these cases. *Of course Rotstain is germane.* It is just like this case in all respects material here. It differs only in that the Receiver was not the only plaintiff—the Official Stanford Investors Committee was a plaintiff, too. *See id.* (explaining that the Receiver assigned claims to OSIC). Relevant here, to the extent there was any investor discovery in *Rotstain*, it was limited to OSIC committee members.

UPS contends *Ciuffitelli*[8] "proves" UPS's "points" because, according to UPS, in that case "the SEC receiver essentially had no connection to the plaintiff class' claims." [Doc. 326 at 16–17]. *But that is false too*: "Deloitte assert[ed] that the Receiver ha[d] played a large and undisclosed role in th[e] litigation"[9]; "the Receiver indicate[d] that he consolidated all digital information into a centralized database to which 250 users have access, including Deloitte and Plaintiffs' counsel"[10]; "Deloitte argue[d] that the Receiver ha[d] been providing information to Plaintiffs to support their allegations, that the Receiver ha[d] assisted Plaintiffs in fulfilling their

[7] Doc. 695 at 17 and Doc. 709 at 18–19, *Rotstain v. Trustmark Nat'l Bank*, No. 09-cv-2384 (N.D. Tex.). *See also* Doc. 709 at 18–19, *Rotstain v. Trustmark Nat'l Bank*, No. 09-cv-2384 (N.D. Tex.) (disallowing TD Bank's questioning of another investors' "personal investment decisions" and "personal investment activity").

[8] *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580, 2018 WL 7893052 (D. Or. Dec. 10, 2018), *aff'd*, 2019 WL 1442222 (D. Or. Feb. 21, 2019).

[9] *Id.* at *4.

[10] *Id.* at *5.

document production obligations, and that the Receiver was a key player in brokering the Tonkon partial settlement currently under the court's review"[11]; "Deloitte contend[d] that the Plaintiffs and the Receiver ha[d] been in communication about the lawsuit and relevant topics since before Mr. Greenspan was appointed as Receiver."[12]

Indeed, the fact that the plaintiffs in *Ciuffitelli* were investors undercuts UPS's position. Even in a case in which investors were parties, the court held the very same investor discovery that UPS seeks here was not relevant to whether a defendant aided and abetted the unlawful sale of securities: "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."[13]

4.

In the end, UPS cites no legal authority for the proposition that UPS is entitled to discovery about investors to the same extent as if they were parties.

UPS cites no legal authority at all, and it fails to either distinguish *Rotstain* or *Ciuffitelli* or otherwise to explain the lack of precedent for the discovery it seeks in the Stanford receiver's own aiding and abetting cases.

UPS cannot credibly expect to find anything in the Receiver's own emails which would relieve UPS of liability. Certainly, UPS does not expect that any investor ever confided in the Receiver: *I always knew those notary attestations were false.* UPS demands the Receiver's personal communications with investors, whatever their subject matter, only to harass.

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[11] *Id.*

[12] *Id.* at *6.

[13] *Id.* at *8.

The Receiver's own emails are just the tip of it: the consolidated Defendants' proposed subpoenas to investors outrageously seek, among other things, all "invoices you received from any attorney from whom you sought advice" and all "documents that relate to any communications you had with any banker, accountant, financial advisor, intermediary, or other professional."[14]

Enough is enough. The Court has to start drawing the line somewhere, and because UPS has failed to offer any legal authority or justification, it should start here.

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Respectfully submitted,

/s/ Lilli Evans Bass

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[14] Doc. 79-2 at 3, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 22-cv-36 (S.D. Miss.).

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: March 16, 2022 */s/ Kristen Amond*