

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
Case No. 8:20-cv-00325-T-35AEP**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**BRIAN DAVISON, BARRY M. RYBICKI,  
EQUIALT LLC, EQUIALT FUND, LLC,  
EQUIALT FUND II, EQUIALT FUND III,  
EA SIP, LLC,**

**Defendants, and**

**128 E. DAVIS BLVD, LLC, 310 78<sup>TH</sup>  
AVE, LLC, 551 3D AVE S, LLC, 604  
WEST AZEELE, LLC, BLUE WATERS  
TI, LLC, 2101 W. CYPRESS, LLC, 2112  
W. KENNEDY BLVD, LLC, BNAZ, LLC,  
BR SUPPORT SERVICES, LLC, CAPRI  
HAVEN, LLC, EANY, LLC, BUNGALOWS  
TI, LLC, EQUIALT 519 3<sup>RD</sup> AVE S., LLC,  
MCDONALD REVOCABLE LIVING TRUST,  
5123 E. BROADWAY AVE, LLC, SILVER SANDS  
TI, LLC, TB OLDEST HOUSE EST. 1842, LLC,**

**Relief Defendants.**

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**MOTION BY DEFENDANT BRIAN DAVISON TO MODIFY  
AGREED ORDER MODIFYING ASSET FREEZE**

Defendant Brian Davison (“Davison”), by and through his undersigned counsel, hereby files this Motion to Modify Agreed Order Modifying Asset Freeze (the “Motion”) and in

support states:

1. On February 14, 2020, the Court entered an Order Granting Emergency *Ex Parte* Motion for Temporary Restraining Order, Asset Freeze and Other Injunctive Relief (ECF No. 10). The Order provides that “The Commission and the Receiver appointed by this Court shall provide the Individual Defendants access to reasonable amounts of their personal assets for necessary living expenses and legal fees.” (Order at 9).

2. On March 13, 2020, the Plaintiff filed a Notice of Filing and Request for Entry of Proposed Agreed Order Extending and Modifying Asset Freeze (ECF No. 52).

3. On March 16, 2020, the Court entered an Agreed Order Modifying Asset Freeze (the “Agreed Order”) (ECF No. 54).in which the Court included additional provisions in the proposed Agreed Order (ECF No. 52) submitted by Plaintiff as to Davison and his counsel regarding i) hourly rates on attorney’s fees paid from unfrozen receivership funds; ii) arguably limiting Davison to two counsel being paid from receivership funds; iii) submission of a legal budget *in camera* by the Court; and iv) the requirement that the unfrozen assets may only be used by counsel who intend to stay on for the defense of this case. (Id. at pg. 4 – 5).

4. Subsequent to the entry of the Agreed Order, Davison’s counsel has received a check from the Receiver for \$75,000.00 pursuant to the terms of the Agreed Order but has not negotiated this check and does not intend to until he receives clarification of the terms of the Agreed Order as it relates to paragraph 3.ii, 3.iii and 3.iv above.

5. Davison has no objection to Court’s requirement as to the local hourly rates for attorney’s fees paid from unfrozen receivership funds.

6. The Court should permit more than two attorney’s to represent Davison and be

paid from Receivership funds as long as the work is not duplicative. For example, associates hourly rates are often more appropriate for legal research and initial drafting and whose hourly rates are less than the \$320.00 per hour rate the Court has set for Davison's second lawyer. Davison notes that the Receiver's First Quarterly Fee Application seeks approval of payment of legal work performed by four attorneys in addition to Burt Wiand (EDF No. 88).

7. Davison contends that it should be relieved of providing a budget *in camera* to the Court as the same is an undue burden and very difficult based on the size of the case as evidenced by the magnitude of the Receiver's First Quarterly Fee Application (ECF No. 88). The Court also has not placed a similar budget requirement on the Receiver. This is a complex multimillion-dollar case in which the SEC has asserted claims against Davison including under Sections 5(a), 5(c) and Section 17(a) of the Securities Act, as well as under Sections 10(b), 15(a) and 20(a) of the Securities Exchange Act. Providing a budget for such a complex case is extremely difficult. Indeed, when the Receiver sought permission from the Court to engage PDR for the purpose of providing a limited engagement for accounting services, the Receiver noted that it was impossible to predict the hours that would be expended. See Docket Entry 87 at 3.

8. Davison also requests clarification as to the Agreed Order (page 5 ¶2) which provides "[f]urther the unfrozen assets may only be used by counsel who intend to stay on for the defense of this case." Counsel for Davison is concerned that the Court is in advance prohibiting any counsel of Davison that accepts payment of attorney's fees from unfrozen receivership funds from subsequently withdrawing from the case even if a good cause is shown.

9. Plaintiff by agreeing to this Motion is not agreeing in advance to future applications by Davison for the release of funds to pay his attorney's fees but will consider the same if such an application is made.

10. This Motion is accompanied by a proposed Order attached hereto as Exhibit "A."

WHEREFORE, Defendant, Brian Davison, respectfully requests that this Court grant his Motion relieving his counsel of the requirement to provide the Court a budget, permit engagement of more than two attorneys to be paid from receivership funds and clarifying whether counsel who is paid from unfrozen funds is barred from subsequently withdrawing from this case if good cause is shown.

**LOCAL RULE 3.01(g) CERTIFICATE**

Pursuant to Local Rule 3.01(g), counsel or Defendant Brian Davison has conferred with counsel for Plaintiff, Alise M. Johnson, who did not agree to the requested relief in this Motion.

/s/ Gerald D. Davis  
GERALD D. DAVIS, ESQ.  
Florida Bar No. 764698  
[gdavis@trenam.com](mailto:gdavis@trenam.com)  
[bshepard@trenam.com](mailto:bshepard@trenam.com)  
[ohoeppner@trenam.com](mailto:ohoeppner@trenam.com)  
CHARLES M. HARRIS, JR., ESQ.  
Florida Bar No. 967459  
TRENAM, KEMKER, SCHARF,  
BARKIN, FRYE, O'NEILL & MULLIS,  
P.A.  
200 Central Avenue, Suite 1600  
St. Petersburg, FL 33701  
Tel: (727) 896-7171  
Attorneys for Defendant Brian Davison

/s/ Howard Fischer  
GREGORY J. FLEESLER, ESQ.  
New York Bar No. 2810745  
[gfleesler@mosessinger.com](mailto:gfleesler@mosessinger.com)  
HOWARD FISCHER, ESQ.  
New York Bar No. 2644052  
[hfisher@mosessinger.com](mailto:hfisher@mosessinger.com)  
MOSES & SINGER, LLP  
405 Lexington Avenue  
New York, NY 10174  
Telephone: 212-554-7800  
Attorneys for Defendant Brian Davison

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been filed via the Court's CM/ECF system, which will send an electronic copy of the foregoing and a notice of filing same to all counsel of record, on this 17th day of June, 2020.

/s/ Gerald D. Davis  
Attorney

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**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
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**Relief Defendants.**

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**ORDER ON BRIAN DAVISON’S MOTION  
TO MODIFY AGREED ORDER MODIFYING ASSET FREEZE**

THIS MATTER came before the Court upon consideration of Defendant, Brian Davison’s Motion to Modify Agreed Order to Modify Asset Freeze (the “Motion”), and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED that the Motion is GRANTED and the Agreed Order Modifying Asset Freeze (ECF No. 54) is modified as follows:

1. Davison's counsel shall not be required to provide the Court with a legal budget *in camera*.
2. Davison may engage more than two attorneys being paid from receivership funds as long as the work of his attorneys is not duplicative unless the complexity of the issue requires multiple attorneys.
3. The Court is not prohibiting in advance any motion by Davison's counsel to withdraw from this proceeding but shall consider any such motion on the merits existing at that time.

DONE AND ORDERED in Tampa, Florida this \_\_\_\_ day of \_\_\_\_\_, 2020.

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The Honorable Mary S. Scriven  
United States District Judge

Copies to:  
Counsel of Record  
Any Unrepresented Parties