

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CIVIL ACTION NO. 20-cv-00325-MSS-AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.

**RESPONSE IN OPPOSITION TO DEFENDANT BRIAN DAVISON’S MOTION
TO MODIFY AGREED ORDER MODIFYING ASSET FREEZE**

Plaintiff Securities and Exchange Commission (“SEC”) hereby files its opposition to Defendant Brian Davison’s Motion to Modify the Court’s Order Modifying Asset Freeze (D.E. 111). In response, the SEC states:

1. This action was filed on February 11, 2020, following months of investigation by the SEC during which time Defendants were all represented by the same counsel, DLA Piper, LLC. In the months immediately preceding this action (from 9/12/19-1/31/20), DLA Piper was paid more than \$150,000 by EquiAlt and the EquiAlt Funds for their representation of EquiAlt, Davison and Rybicki in the SEC’s investigation.
2. In January 2020, Rybicki retained independent counsel and on February 13, 2020, one day before the asset freeze was entered, Mr. Rybicki paid his new counsel a \$50,000 retainer, which was also paid by EquiAlt and the three EquiAlt Funds’ accounts.
3. On February 14, 2020, the Court entered an Order freezing the Defendants’ assets (D.E. 10). As part of that Order, the Court included a provision that additional attorney’s

fees be provided for the individual defendants, Brian Davison and Barry Rybicki. The Order states 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.” On March 16, 2020, pursuant to the Court’s order, the SEC and Receiver permitted an additional \$75,000 be provided to each of the Individual Defendant’s counsel.

4. Subsequently, in response to Rybicki’s request for additional fees beyond those detailed above, the Court entered an Order outlining the process under which additional fees were to be requested. (D.E. 54). In response, Defendant Davison requests in the instant motion that Defendants be relieved from adhering to some of the provisions set forth in the Court’s Order in future requests for attorney’s fees. As detailed below, the SEC and the Receiver object to the lifting of two of these provisions as they believe the current provisions are well-tailored to protect funds that may be needed to pay back defrauded investors, while at the same time providing an avenue for the Individual Defendants to show the need for additional funds to pay attorney’s fees.

5. Importantly, Defendant Davison wishes to be relieved of the task of providing a budget of his proposed fees *in camera* to the Court, without proposing any alternative for the Court to review whether any future fee request is justified. Proposing a budget is not an undue burden, while at the same time it provides the Court with some assurance as to how the funds will be spent. Thus, the SEC believes the budget requirement should remain.

6. Davison’s assertion that he should not be required to submit a budget because the Receiver is not required to must fail as the Receiver has an even higher burden regarding

his fees. As this Court has Ordered, the Receiver must file quarterly fee applications detailing how he and his attorneys are spending their time, which then must be reviewed and approved by the Court prior to him receiving any attorney's fees. Thus, there are already guard rails in place regarding the Receiver's fees, which are greater than the simple burden asked of Defendants - to propose a budget for attorney's fees beyond the \$350,000 they have already received.

7. The SEC agrees with Defendants that more than two attorneys should be allowed to represent Davison as long as their work is not duplicative, but believes the Order already provides for that. The SEC believes that the Court's Order was meant to prevent multiple attorneys from different firms from attending meetings, hearings and doing duplicative work, but not meant to prevent multiple attorneys from the same firm from doing different task on the file in the most cost efficient manner. If so, the Court may simply clarify its intent and not eliminate entirely that provision.

8. The SEC and Receiver file this opposition not in an attempt to be difficult, but simply to keep in place the few provisions the Court has set forth to ensure that the frozen funds remain frozen to the extent possible. For context, the SEC asserts, and the Receiver has confirmed, that there is approximately \$50,421,531 outstanding and owed to investors in principal and interest payments, and that by December 2020, this amount increases to \$59,255,436. Moreover, the Receiver has demonstrated that Davison personally received more than \$33 Million in direct and indirect payments from the Funds. Ultimately, it is unlikely that the assets currently frozen will be anywhere near sufficient for Davison to satisfy his disgorgement obligation. Thus, the SEC and the Receiver seek to keep as much

of Davison's assets frozen as possible so that they will be available for return to investors, if and when ordered to do so. Thus, the SEC requests that the Court's Order regarding the process for applying for additional attorney's fees remain in place as described above.

July 1, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2020, I electronically filed the foregoing Response with the Clerk of the Court using CM/ECF, which will send a notice of such filing to all counsel of record.