

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Case No. 8:20-cv-00325-MSS-AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON,  
BARRY M. RYBICKI,  
EQUIALT LLC, et al.,

Defendants,

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**CASE MANAGEMENT REPORT**

The parties have agreed on the following dates and discovery plan pursuant to Fed.R.Civ.P. 26(f) and Local Rule 3.05(c):

DEADLINE OR EVENT	AGREED DATE
Mandatory Initial Disclosures (pursuant to Fed.R.Civ.P. 26(a)(1) as amended effective December 1, 2000)	August 4, 2020
Certificate of Interested Persons and Corporate Disclosure Statement	COMPLETED
Motions to Add Parties or to Amend Pleadings	August 31, 2020
Disclosure of Expert Reports Plaintiff: Defendant: Depositions of Experts to be concluded:	April 12, 2021 May 12, 2021 June 18, 2021
Fact Discovery Deadline	March 12, 2021 (except for Expert discovery)

DEADLINE OR EVENT	AGREED DATE
Dispositive Motions, <i>Daubert</i> , and <i>Markman</i> Motions	July 23, 2021
Meeting <i>In Person</i> to Prepare Joint Final Pretrial Statement	December 6, 2021
Joint Final Pretrial Statement ( <i>Including</i> a Single Set of Jointly-Proposed Jury Instructions and Verdict Form, Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form)	December 16, 2021
All Other Motions Including Motions <i>In Limine</i> ]	January 5, 2022
Final Pretrial Conference	If needed, the Court will set a date that is approximately 4 weeks before trial
Trial Briefs and Deposition Transcripts	January 14, 2022
Trial Term Begins	February 7, 2022
Estimated Length of Trial [trial days]	15 days
Jury / Non-Jury	JURY
Mediation Deadline:	September 1, 2021
All Parties Consent to Proceed Before Magistrate Judge	Yes ___ No <u> x </u>  Likely to Agree in Future ____

**I. Meeting of Parties in Person**

Due to the COVID 19 pandemic and the location of counsel in different states and cities, counsel for the parties were unable to meet in person but instead met via a web based video conference. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held via video conference on June 24, 2020 at 10:30 a.m. and was attended by:

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*Counsel for Defendant Brian Davison*

Gerald D. Davis, Esq.  
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*Co-counsel for Defendant Brian Davison*

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*Counsel for Defendant Barry Rybicki*

Alise Johnson, Esq.  
U.S. Securities and Exchange Commission  
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*Counsel for Plaintiff U.S. Securities and Exchange Commission*

**II. Brief Description of the Case**

The following is a brief description of the specific nature and relative complexity of the case:

The Commission brought an emergency action to halt an alleged ongoing fraud conducted by EquiAlt LLC (“EquiAlt”), a private real estate investment company. The Commission alleges that beginning in 2011 to February 2020, Defendants EquiAlt, Brian Davison (“Davison”) and Barry Rybicki (“Rybicki”) conducted a scheme raising more than \$180 million from over 1,100 investors nationwide, through fraudulent unregistered securities offerings and that Davison and Rybicki operated a Ponzi scheme and misappropriated millions in investor funds for their own personal benefit.

Defendants deny the allegations in the complaint.

This is a relatively complex case due to the large number of documents to be reviewed, the length of time involved, the number of claims involved, the large dollar amounts involved, and the large number of possible witnesses (including the fact that potential witnesses are spread out across the United States).

### **III. Pre-Discovery Initial Disclosures of Core Information**

#### **Fed.R.Civ.P. 26(a)(1)(A) - (D) Disclosures**

Fed.R.Civ.P. 26, as amended effective December 1, 2000, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties \_\_\_\_ have exchanged \_\_x\_\_ agree to exchange information described in Fed.R.Civ.P. 26(a)(1)(A) - (D) by August 04, 2020.

Below is a description of information disclosed or scheduled for disclosure,

including electronically stored information as further described in Section III below.

The parties agree that initial disclosure under Fed. R. Civ. P. 26(a)(1) is limited in this case to the disclosures described by Rule 26(a)(1)(i) and (ii). The other two categories of initial disclosure, computation of damages claimed by an injured party and liability insurance coverage, are inapplicable in a Commission enforcement action seeking injunctive and other equitable relief.

#### **IV. Electronic Discovery**

The parties have discussed issues relating to disclosure or discovery of electronically stored information (“ESI”), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

No party anticipates the disclosure or discovery of ESI in this case;

One or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:

A. The form or forms in which ESI should be produced.

B. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.

D. The various sources of ESI within a party’s control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably

accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

E. The characteristics of the party's information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party's computer systems.

F. Any issues relating to preservation of discoverable ESI.

G. Assertions of privilege or of protection as trial-preparation materials, including whether the parties can facilitate discovery by agreeing on procedures and, if appropriate, an Order under the Federal Rules of Evidence Rule 502. If the parties agree that a protective order is needed, they shall attach a copy of the proposed order to the Case Management Report. The parties should attempt to agree on protocols that minimize the risk of waiver. Any protective order shall comply with Local Rule 1.09 and Section IV. F. below on Confidentiality Agreements.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Please state if there are any areas of disagreement on these issues and, if so, summarize the parties' position on each:

Whenever feasible, the parties will produce all electronically stored information in bates-stamped, OCR text or tiff format. Alternatively, if unable to produce electronically stored information in such a manner, the parties will produce the information in the currently stored format. The parties further agree that they will maintain all relevant electronically stored information in its original format until final resolution of this matter, and that discovery of ESI need not be conducted in phases, limited, or focused upon particular issues.

The parties further agree that if any party inadvertently produces electronically stored information or other documents, that the producing party claims after production are privileged, they will notify the opposing party within a reasonable time of learning that an inadvertent production has occurred. Further, the party who receives such information shall promptly return, sequester or destroy it, and must take reasonable steps to retrieve the information from third- parties, including expert witnesses. However, the parties reserve their right to claim the information disclosed was not privileged or the privilege was waived.

If there are disputed issues specified above, or elsewhere in this report, then (check one):

One or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions.

Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

**If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed. R. Civ. P.**

All parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

**V. Agreed Discovery Plan for Plaintiffs and Defendants**

**A. Certificate of Interested Persons and Corporate Disclosure Statement**

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This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek

discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

  X   Yes                               No

**B. Discovery Not Filed —**

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. *See* Local Rule 3.03 (e). The parties further agree as follows: that they will produce discovery requests in word format for ease of drafting a response.

**C. Limits on Discovery —**

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties'



agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29.

In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions: 10 per party
2. Interrogatories –no additional limits.
3. Document Requests-no other limits
4. Requests to Admit – no other limits.
5. Supplementation of Discovery-None anticipated.

**D. Discovery Deadline —**

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows:

**E. Disclosure of Expert Testimony —**

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness.

**F. Confidentiality Agreements —**

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a

public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. *See* Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows: that they work together on any such agreement should they be necessary.

**G. Other Matters Regarding Discovery —None.**

**VI. Settlement and Alternative Dispute Resolution.**

**A. Settlement —**

The parties agree that settlement is

\_\_\_\_\_ likely   x   unlikely (check one)

The parties request a settlement conference before a United States

Magistrate Judge.    yes \_\_\_\_\_    no \_\_\_\_\_    likely to request in future   x  

**B.    Arbitration —**

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

yes \_\_\_\_\_    no   X      likely to agree in future: No.

**C.    Mediation —**

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court’s Local Rules. The parties have agreed to use a mediator mutually agreed upon by the parties (but not necessarily from the Middle District’s approved list of mediators), and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court’s web site at <http://www.flmd.uscourts.gov>.

**D.    Other Alternative Dispute Resolution —**

The parties do not intend to pursue any other methods of alternative dispute resolution.

Date: 07/13/2020

Signature of Counsel (with information required by Local Rule 1.05(d)).

<p><u>s/ Howard Andrew Fischer</u>  Howard Andrew Fischer  New York Bar No.: 2644052  Moses &amp; Singer, LLP  405 Lexington Ave  New York, NY 10174  Tel. No.: 212-544-7872</p>	<p><u>s/ Gerald D. Davis</u>  Gerald D. Davis  Florida Bar No.: 764698  Trenam Law  200 Central Ave Ste 1600  St Petersburg, FL 33701-3960  Tel. No.: 727-824-6141</p>
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