

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO. 8:20-cv-325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants,

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

Relief Defendants.

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**NOTICE OF FILING AND REQUEST FOR ENTRY OF PROPOSED AGREED ORDER  
EXTENDING AND MODIFYING ASSET FREEZE**

1. Defendant Barry Rybicki hereby files a proposed Agreed Order Extending and Modifying Asset Freeze, which has been agreed to by Barry Rybicki, the Commission and the Receiver. In support whereof, Defendant Rybicki states as follows:

2. On Feb. 28, 2020, this Court entered an agreed order extending and modifying an asset freeze in the case. In the order, the Court carved out \$85,000 of money held in a J.P. Morgan Chase bank account, \$75,000 of which would be applied to attorneys' fees "incurred or to be incurred on behalf of Barry Rybicki." Agreed Order Extending and Modifying Freeze (DE 31) at 5.

3. Thereafter, on March 11, 2020, this Court issued an order clarifying that the \$75,000 referenced in its Feb. 28, 2020 Agreed Order could be used to pay legal fees incurred on or after February 14, 2020. Mar. 11, 2020 Order on Rybicki's Motion to Modify Asset Freeze (DE 48) at 2. The Order further provided that counsel would prepare a budget for the Court for *in camera* inspection, and that the Court would "determine whether additional funds are needed and should be paid from the assets frozen by the Court's prior Orders." *Id.* at 3.

4. The undersigned counsel herewith provides, under separate cover, a revised budget for the Court for *in camera* inspection.

5. Leaving the detailed breakdown for the revised budget filed with the Court, the undersigned can represent that all of the \$75,000 initially allotted by the Court on February 28, 2020 has been expended on attorneys' fees incurred after February 14, 2020 and that an additional \$34,000 in attorneys' fees have been incurred.

6. There are hundreds of thousands of pages of documents to review in this case and counsel for Mr. Rybicki has already expended dozens of hours alone on reviewing these documents, a process which remains ongoing. In addition, counsel for Mr. Rybicki has expended

dozens of hours interviewing the client and speaking with client's previous counsel, reviewing prior research, work product and filings in this case. Over the past three months, Mr. Rybicki's counsel has also spent at least 20 hours on this case cooperating with both the Receiver and counsel for the SEC and obtaining requested information and documentation from the client.

7. The Complaint alleges that Rybicki was involved in three separate schemes to defraud investors over a nine-year period. Specifically, Rybicki is alleged to have made multiple misrepresentations and omissions during the course of the alleged schemes, which involved the raising of approximately \$170 million dollars through four (4) separate funds, each of which had multiple versions of offering materials. The Complaint requires Rybicki to defend against nine separate counts, in which the SEC alleges Rybicki violated nine separate securities laws and regulations.

8. In response to Rybicki's Motion to Dismiss (DE 118), filed with this Court on June 18, 2020, the SEC filed an Amended Complaint, which will require additional analysis and response.

9. In light of the work that remains prior to the July 31, 2020 preliminary injunction hearing, including document review, preparing and filing a response to SEC's motion for a preliminary injunction, preparation for and participation in the preliminary injunction hearing, and other stages of pre-trial preparation, the undersigned moves the Court to modify the asset freeze order to allow for an additional amount of \$30,000 to be set aside for legal fees that have already been incurred as legal fees in the case. This amount does not cover all legal fees incurred in the case since February 14, 2020, and obviously does not cover legal fees for work yet to be performed prior to the preliminary injunction hearing, currently set for July 31, 2020, and the undersigned

reserves all rights to seek further modifications of the asset freeze for legal fees should this Court ultimately issue the preliminary injunction sought by SEC.

10. The undersigned has consulted with counsel for Plaintiff, Trial Attorney Alise Johnson, and with counsel for the Receiver, Kacy Donlon, who agree with the relief sought herein.

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

WHEREFORE, Defendant Barry Rybicki respectfully requests that this Court grant the instant motion.

Respectfully submitted,

/s/ Adam S. Fels  
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Attorney for Defendant Barry Rybicki

**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 17<sup>th</sup> day of July, 2020.

s/Adam S. Fels