

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

**CIVIL ACTION NO. 8:20-cv-325-T-35AEP**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>BRIAN DAVISON, et al.,</b>	)	
	)	
<b>Defendants, and Relief</b>	)	
<b>Defendants.</b>	)	
	)	

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**BARRY M. RYBICKI’S RESPONSE TO ORDER TO SHOW CAUSE**

**I. INTRODUCTION**

Defendant Barry M. Rybicki, by and through the undersigned, respectfully submits the following Response to Order to Show Cause. This Court should deny the pending Motion for Preliminary Injunction and reconsider its orders granting the Commission’s emergency *ex parte* motions for appointment of receiver and for temporary restraining order, asset freeze, and other injunctive relief as they relate to Mr. Rybicki. For the reasons set forth below, the Commission is not likely to succeed on the merits in its claims against Mr. Rybicki, who relied upon bad advice of counsel. Moreover, as the evidence shows, Mr. Rybicki immediately took steps to cease any improper conduct as soon as he learned that the advice upon which he relied was faulty, and thus poses no danger of repeated conduct.

**II. MEMORANDUM OF LAW**

A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly established the ‘burden of persuasion’” as to each of the four prerequisites.

*McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). To obtain a preliminary injunction, the SEC must first establish, as a threshold matter, that there have been violations of the securities laws. *SEC v. Telecom Marketing, Inc.*, 888 F.Supp. 1160, 1166 (N.D.Ga.1995). In analyzing the need for injunctive relief, courts must then focus on whether there is a reasonable likelihood that the defendant, if not enjoined, will again engage in the illegal conduct. *SEC v. Blatt*, 583 F.2d 1325, 1334 (5th Cir.1978). Factors to be considered are the degree of scienter involved, the isolated or recurrent nature of the infraction, the sincerity of the defendant's assurances against future violations, and the likelihood, based on the defendant's occupation, that future violations might occur. *SEC v. Bonastia*, 614 F.2d 908, 912 (3rd Cir.1980). In its showing of a defendant's reasonable likelihood of future violations of securities laws, it is not enough for the SEC to show mere past violations. Rather, the SEC must move beyond that and offer positive proof of the likelihood of further violations in the future. *SEC v. Warner*, 674 F. Supp. 841, 844 (S.D. Fla. 1987). Moreover, the more onerous the injunction sought by the Commission, the more severe its burden. *See SEC v. Compania Internacional Financiera S.A.*, No. 11 CIV 4904, 2011 WL 3251813, \*7 (S.D.N.Y. July 29, 2011) ("Like any litigant, the Commission [is] obliged to make a more persuasive showing of its entitlement to a preliminary injunction the more onerous are the burdens of the injunction it seeks."). As demonstrated below, the Commission is not entitled to a preliminary injunction here. First, even if the Commission could demonstrate a substantial likelihood of success on the merits, it has not presented and cannot offer positive proof that of a reasonable likelihood Mr. Rybicki will commit future violations. Absent this evidence, a preliminary injunction cannot be entered against him. *Warner*, 674 F. Supp. at 844.

**A. The Commission Cannot Show a Substantial Likelihood of Success on the Merits**

To prevail on the relief sought, the Commission must demonstrate a substantial likelihood of success that Mr. Rybicki violated the registration and antifraud provisions of the securities laws cited in the Commission's *ex parte* motion. See Pl. Mot. for TRO (DE 4) at 22-35.

As presented, the Commission's brief and supporting exhibits do not demonstrate any likelihood of success despite the Commission's statement that it has provided a "more than an adequate basis to make a threshold finding" of violations. See Pl. Mot. at 22. The current record does not support the Commission's allegations that EquiAlt is a Ponzi scheme. Instead, the record, as crafted by the Commission and rebutted by this brief, consists exclusively of conclusory allegations and inaccurate interpretations of evidence. These allegations and interpretations serve as central pillars to the Commission's case against EquiAlt, and yet the Commission made no effort to provide specific citations to the underlying support. Indeed, the evidence obtained by Commission prior to filing undermines the Ponzi scheme allegation.

The Commission's allegations regarding Mr. Rybicki's role in EquiAlt fare no better. The Commission's allegations are either unsupported by evidence or contradicted by the testimony they obtained from Mr. Davison and fail to take into account that Mr. Rybicki acted pursuant to legal advice provided by counsel. There is a reason that the Receiver in this case took the highly unusual step of moving this Court, even before the hearing on the Preliminary Injunction, for an order appointing outside counsel to investigate and pursue claims against law firms that provided services to EquiAlt. Rec'r Mot. for Leave to Appoint Counsel (DE 121).

## **B. The Commission's Ponzi Scheme Analysis is Flawed**

The Commission's first allegation of fraud is that EquiAlt is a Ponzi scheme. Amended Complaint (DE 138), ¶ 2 (“[w]ithout sufficient revenues to pay the money owed to investors, the Defendants, in classic Ponzi scheme fashion, resorted to using new investor money to pay the returns promised to existing investors.”) The Ponzi scheme, according to the Commission, operated by “paying investors their monthly interest payments for the debentures by raising and using new investor funds to pay old investors.” *Id.* at ¶48. However, the Commission's allegations that EquiAlt was operated as a Ponzi scheme are flawed.

The SEC's allegations plainly contradict its assertions that the Defendants operated EquiAlt as a Ponzi scheme. Amend. Compl. ¶48. The Eleventh Circuit has described a Ponzi scheme as a “phony investment plan in which monies paid by later investors are used to pay artificially high returns to the initial investors, with the goal of attracting more investors.” *United States v. Silvestri*, 409 F.3d 1311, 1317 n.6 (11th Cir. 2005). Black's Law Dictionary defines a Ponzi scheme as:

A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments. Money from the new investors is used directly to repay or pay interest to old investors, usually *without any operation or revenue-producing activity* other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the later 1920s was convicted for fraudulent schemes he conducted in Boston.

Black's Law Dictionary (7th ed.1999) at 1180 (emphasis added).

However, instead of a “phony investment plan” “without any operation or revenue producing activity,” the Commission's allegations establish that EquiAlt's and Mr. Davison's use of investor proceeds generated real estate and cash holdings totaling at least \$145 million. Amend. Compl. ¶ 45. Additionally, the Commission even concedes that “in December 2016 non-investor revenues for the Funds for that month were \$1.6 million,” demonstrating that the



investor proceeds were generating real estate and cash holdings. *Id.* at ¶ 49. Moreover, the Commission’s \$145 million estimate of EquiAlt’s real estate and cash holdings does *not* include those of Fund III, Amend. Compl. ¶ 6, which stopped raising investor proceeds in December 2015 and is now closed, Amend. Compl. ¶ 15. The Commission alleges that Funds I, II, III, and EA SIP raised \$170 million but “only” have real estate and cash holdings totaling \$145 million; however, they fail to account for the real estate and cash holdings Fund III generated before it closed.

Given the Commission’s allegations of a Ponzi scheme, this omission is critical. Even *excluding* the assets in Fund III, EquiAlt *still* held cash and real estate valued at more than 85% percent of the total deposited by investors (\$145/170 million), and bears little resemblance to the “phony investment plan” contemplated by the Eleventh Circuit in *Silvestri*, or the investment “without any operation or revenue producing activity” described by Black’s Law Dictionary.

This is not the only instance the Commission fails to properly characterize the true nature of the Funds. The Commission alleges that by December 2020, investors in Fund I, II, and EA SIP “will be owed approximately \$68.9 million in revenue.” Amend. Compl. ¶ 50. But the Commission’s description of the debentures sold to investors in those Funds—which define what investors are owed and when—undermines its own allegation. The Commission alleges that Defendants sold investors “3-year or 4-year debentures providing fixed annual returns of 8-10%.” Amend. Compl. ¶46. As such, Defendants would be obligated to pay back principal to investors three or four years from the date of investment. However, the investors did not all invest at the same time. Absent some warp in the space-time continuum, there is simply no way that all the debentures (signed at different times and with different terms) *could* mature in

December 2020 as the Commission alleges. Aside from being temporally flawed, this allegation is also internally inconsistent with other allegations.

The Amended Complaint, alleges that “[w]hile Fund 3 is now closed, Fund 1, Fund 2, and the EA SIP Fund have collectively been raising from investors \$2-3 million per month since January 2018, and have raised more than \$170 million from investors.” *Id.* at ¶ 48. Even if true, EquiAlt will owe principal to those investing in January 2018 in three or four years (depending on the language of the debenture), meaning in six months from the filing of this document and nearly a full *year* after the Commission filed the original Complaint in this case. Those investing after January 2018 would not be eligible to receive their principal until 2021 or 2022. *None* of the principal raised in 2018 and 2019 (about 28-42% of the total amount EquiAlt raised) would be owed by the December 2020 date asserted in the Amended Complaint. Simply put, the Commission’s allegations regarding the December 2020 date and EquiAlt’s “inability” to meet its payment obligations by that date are subverted by other allegations that deliver a self-inflicted mortal wound to the Commission’s Ponzi scheme theory.

**C. The Commission’s Allegations Regarding Mr. Rybicki’s Role at EquiAlt Are Undermined by The Evidence It Collected.**

In pursuit of its Ponzi scheme theory, the Commission has made a number of incorrect and unfounded allegations about Mr. Rybicki, including that: (1) Mr. Rybicki exercised a degree of control over EquiAlt or the Funds; (2) Mr. Rybicki was solely responsible for the content and substance of EquiAlt’s marketing materials, including the private placement memoranda for the Funds; (3) Mr. Rybicki knew (or was extremely reckless in not knowing) that third-party sales agents were not registered; (4) Mr. Rybicki and BR Support Services, LLC received approximately \$24 million of payments from investors; (5) Mr. Rybicki improperly took cash distributions, between 2017 and 2018 totaling \$3.7 million for “return on principal payments”

and (7) Mr. Rybicki made certain specific misrepresentations to investors. These allegations either are “supported” by out-of-context and cherry-picked citations to exhibits or, worse, completely unmoored to evidence or the facts. A careful study of the exhibits used by the Commission to support their untrue allegations reveals that the allegations are without merit.

As will be discussed below in further detail, the facts demonstrate that Mr. Rybicki did not knowingly violate any registration or anti-fraud provisions of the securities laws.

**1. Mr. Rybicki Has Not Exercised Any Degree of Control over EquiAlt or the Funds**

In its motion for a temporary restraining order, the Commission states that Mr. Rybicki is a principal and “Director of the Funds,” that Mr. Rybicki handled investor relations, including relationships with various financial advisors who promoted the Funds, and that Mr. Rybicki spoke directly with prospective investors about investing in the Funds. Pl. Mot. for TRO (DE 4) at 11; Pl. Mot. for TRO, Ex. 4, Davison Tr. at 72-76, 88-89, 94-95. The Commission further asserts that Mr. Rybicki signed subscription agreements with investors and was in charge of the marketing materials and offering documents for the Funds. Pl. Mot. for TRO at 33. Through these allegations, the Commission painted a false picture that Mr. Rybicki exercised control over EquiAlt and the Funds, but, once again, the Commission’s own allegations and investigation undermine the Commission’s characterization of Mr. Rybicki as a control person.

First, Mr. Rybicki did not exercise any control over the general affairs and specific corporate policies of EquiAlt or the Funds, as that responsibility lay solely with Mr. Davison. As Mr. Davison testified to the Commission, Mr. Rybicki never had any ownership interest in EquiAlt. Pl. Mot. for TRO, Ex. 4, Davison Tr. at 46. Mr. Davison also testified that Mr. Rybicki did not have access to EquiAlt’s accounting software and was not involved in the day-to-day management of the Funds. *Id.* at 54, 55, 74. According to the Amended Complaint, it is Mr.

Davison, not Mr. Rybicki, who had signature authority over and controlled the Funds' bank accounts. Amend. Compl. ¶ 10, 39. Indeed, when asked by the Commission to describe EquiAlt's reporting structure, Mr. Davison said that Mr. Rybicki "technically reports to me." *Id.* at 76.

Mr. Davison's testimony to the Commission about Mr. Rybicki's limited role at EquiAlt was verified in testimony the Commission obtained from Denver Stoddart, EquiAlt's controller of accounting. Stoddart Tr., attached as Exhibit "1" at 26. Ms. Stoddart first confirmed to the Commission the reporting structure Davison laid out in his testimony. She testified that she had been interviewed and hired by Davison and that Rybicki played no role in either hiring or supervising her. *Id.* at 30, 35. When asked about Mr. Rybicki's involvement with various financial reports she testified that she had prepared for Davison, Ms. Stoddart testified that she had not discussed the reports with Mr. Rybicki, that he never asked her to provide those financial reports to him, and indeed, that he had not received them. *Id.* at 40. When asked who makes strategic decisions for the funds, Ms. Stoddart replied, "Mr. Davison." *Id.* at 50. When asked who was responsible for analyzing the financial performance of the funds, she identified Tony Kelly, not Mr. Rybicki. *Id.* at 53. Simply put, EquiAlt's CEO and Accounting Controller's testimony to the Commission contradicts the Commission's allegations that Mr. Rybicki had access to or knowledge of EquiAlt's financial records or performance.

## **2. Mr. Rybicki Is Not in Charge of EquiAlt's Investor Documents.**

The Commission relies on the testimony of Mr. Davison to allege that Mr. Rybicki was in charge of the content and substance of EquiAlt's marketing materials and offering documents, including the PPMs and subscription agreements. Pl. Mot. for TRO at 33. However, the Commission cherry-picks from Mr. Davison's testimony while ignoring other, clearly

contradictory testimony he provided in this regard. Worse still, the Commission ignores the testimony of other witnesses that support Mr. Davison's account that Mr. Rybicki was *not* in charge of the content and substance of the marketing materials and offering documents.

The evidence collected by the Commission demonstrates that Mr. Rybicki played no role in drafting the investor documents. When asked about the PPMs, Mr. Davison testified: "[g]enerally speaking, on a transactional basis, I created documents like these with counsel about the time period of 2000—I'm sorry—2011, private placement memorandum generally." Pl. Mot. for TRO, Exh. 4, Davison Tr. at 92. It was Mr. Davison who contacted counsel "to help generate th[e] private placement memorandums," because—according to Davison—Mr. Rybicki did not have the "life experience" to help set up EquiAlt first fund. *Id.* at 99-100. When asked to describe Mr. Rybicki's role, Davison said this: "Barry's job literally was to take our package, go out and see if anybody would carry our product or if met the thresholds that they would put our product on the shelf." *Id.* at 83.

Mr. Davison went on to explain that Mr. Rybicki had "full authorization to provide documents to the prospective investors." *Id.* at 93. Essentially, Mr. Davison is explaining that *he* (along with EquiAlt's legal counsel, Mr. Wassgren) imbued Mr. Rybicki with the "full authorization to provide documents to the investors. As Mr. Davison described it, the "final authority" that Mr. Rybicki had with respect to Fund I was limited to the "framework of the paper that has been provided to us by counsel on a day-to-day basis, yes." *Id.* at 97).<sup>1</sup>

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<sup>1</sup> For Fund 2, both the Commission's investigative testimony and its own allegations make clear that another individual named Andre Sears—not Mr. Rybicki—was responsible for Fund 2 sales. Davison testified that Andre Sears was, "on I believe its fund II's private placement. So he raises money for that fund from time to time." *Id.* at 97. Mr. Sears is identified in the Amended Complaint as the "President of Business Development and Marketing," the same title attributed to him in the Fund 2 PPM described by Davison. Def. Rybicki's Mtn. to Diss. Exhibit A (DE 118-1). Denver Stoddart, EquiAlt's controller, said the same: "Andre Sears is like Barry; but he's over like, he gets Fund II investments so to speak; like the middleman between us and the investors." Exh. 1, Stoddart Tr. at 57. The allegations of the Amended Complaint confirm Mr. Sears' role in Fund 2, as all of the false statements therein

Dale Tenhulzen, a sales agent for EquiAlt, corroborates this point. Mr. Tenhulzen testified that he spoke with Mr. Wassgren directly about the PPMs and discussed with Mr. Wassgren how Mr. Tenhulzen would be compensated for selling EquiAlt securities. Tenhulzen Tr. at 27, attached as Exhibit “2”. Mr. Tenhulzen testified that he had these conversations with Mr. Wassgren because Mr. Wassgren had informed him “that he wrote the PPM.” *Id.* at 30. In short, Mr. Rybicki’s alleged authority over the marketing materials and offering documents was limited to whatever Mr. Davison and Mr. Wassgren made available to him.

More importantly, the Commission fails to consider whether Mr. Rybicki had the access, knowledge, and capacity necessary to develop EquiAlt’s marketing materials and offering documents. The Commission’s evidence suggests otherwise. As previously stated, Mr. Davison testified that Mr. Rybicki did not have access to EquiAlt’s accounting software, that Mr. Rybicki had no day-to-day role in the management of the Funds, and that Mr. Rybicki’s “job would be to take our packages and offer them to financial advisors to see if they would, you know, carry us a product.” Pl. Mot. for TRO, Exh. 4, Davison Tr. at 55, 74, 73. The Commission’s evidence demonstrates that Mr. Rybicki did not have access to any of the underlying information necessary to draft, review, or authorize any of the marketing materials or offering documents.

Mr. Rybicki also did not have the knowledge and capacity to develop EquiAlt’s marketing materials and offering documents on his own. Mr. Davison acknowledged as much when he testified that he (Mr. Davison) came up with the idea of raising money for the Funds through PPMs, that he hired Mr. Wassgren to provide legal advice on all matters related to the

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related to Fund 2 are attributable to Mr. Sears. *See* Amend. Compl. ¶ 69 (alleging that EquiAlt’s President of Business Development and Marketing made false statements to investors related to management fees); Amend. Compl. ¶79 (referencing false statements made to Fund 2 investors regarding its purported registration with the Commission “since 2009”); *see* Investor James Conley Decl. ¶¶ 8, 20 (representations that the Fund was registered since 2009 were made by Andre Sears, who sold EquiAlt’s Fund 2 securities to Mr. Conley.) Thus, it stands to reason that since Mr. Rybicki did not draft the PPMs for Fund I, then *a fortiori* he did not draft offering materials for Fund 2, which was created for Mr. Sears’ sales and marketing team.

Funds, and that that he did not think that Mr. Rybicki had the “life experience” to develop such a concept. *Id.* at 99, 107, 100. Moreover, as Mr. Rybicki is not a lawyer, it stands to reason that he would rely on Mr. Wassgren’s advice with respect to the marketing materials and offering documents Mr. Wassgren (and Mr. Davison) created.

### **3. Mr. Rybicki Relied on Counsel When Dealing with Third-Party Sales Agents**

The Commission alleges that Mr. Rybicki aided and abetted the primary violations of Section 15(a) of the Exchange Act by providing substantial assistance to unlicensed sales agents knowing or in extremely reckless disregard of the fact that they were not registered. Pl. Mot. for TRO at 35. The Commission’s allegations in this regard are undermined by evidence that Mr. Rybicki’s interactions with third-party sales agents were guided by advice he received from EquiAlt’s legal counsel, Mr. Wassgren. Mr. Wassgren repeatedly advised Mr. Rybicki and third-party sales agents that unregistered agents could receive a marketing fee or finders’ fee in return for selling EquiAlt securities. Affidavit of James Gray, ¶¶ 10-12, attached as Exhibit “3”. Dale Tenhulzen, a former sales agent for EquiAlt, testified that Mr. Wassgren had told him that he did not need a license to legally sell and get paid for the sale of these securities. Exh. 2, Tenhulzen Tr. at 28.

Another EquiAlt sales agent, John Friedrichsen, received the same advice from Mr. Wassgren. When he first began selling debentures for EquiAlt, Mr. Friedrichsen was advised by Mr. Rybicki that Mr. Wassgren had advised him that they did not need to be registered to sell EquiAlt Funds. Affidavit of John Friedrichsen, ¶ 8., attached as Exhibit “4”. After Davison and Wassgren created EquiAlt’s REIT Fund, Mr. Friedrichsen wondered whether he could receive commissions for selling the REIT Fund and, at Mr. Rybicki’s suggestion, called Mr. Wassgren to inquire. *Id.* at ¶ 10. During the call, Mr. Wassgren, who “knew I [Friedrichsen] was a sales agent

for EquiAlt Funds... explained that financial agents needed to acquire a Series 7 license to sell debentures for the REIT Fund.” *Id.* at ¶¶ 11-13. Mr. Friedrichsen therefore “understood him to mean that a Series 7 license was necessary to sell the REIT Fund, but not the other EquiAlt Funds.” *Id.* at ¶ 13. Having relied on the advice of counsel with respect to whether unregistered sales agents could sell debentures for the Funds, Mr. Rybicki did not have the scienter to believe his actions were wrong with counsel guiding him every step of the way. *See SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2008).<sup>2</sup>

#### **4. Mr. Rybicki Did Not Improperly Take Cash Distributions.**

The Commission re-alleges that Mr. Rybicki misappropriated millions of dollars from the Funds for his personal benefit by “pa[ying] [himself] millions from EquiAlt companies . . .” Amend. Compl. ¶ 1, 2, 5, 51. As Mr. Rybicki argued in his motion to dismiss the initial complaint, (DE 118 at 8), this allegation is replete with inconsistencies and conclusory statements. The Commission still does not provide any factual support for this allegation, but instead presumes once again that Mr. Rybicki received improper cash distributions by virtue of his association with Mr. Davison.

There are several reasons why Mr. Rybicki could not have taken cash distributions with the knowledge and scienter that the distributions were improper. First, as previously set forth *supra*, Mr. Rybicki did not exercise any degree of control over the general affairs and specific corporate policies of EquiAlt or the Funds, as that responsibility lay solely with Mr. Davison. In addition to Mr. Rybicki’s limited role in EquiAlt’s day-to-day affairs, Mr. Rybicki did not have

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<sup>2</sup> Mr. Rybicki’s lack of scienter regarding the use of unregistered sales agents is also evident given the way he handled the new REIT Fund. First, he directed sales agents to speak directly with Mr. Wassgren to avoid having them run afoul of what he then understood to be the rules they needed to follow. *See* Exhibit 3, Gray Aff. ¶¶ 10-12; Exhibit 4, Friedrichsen Aff. ¶¶ 10-12. Moreover, after receiving this advice, he did not allow unregistered sales agents to sell the REIT Fund. *Id.* Consequently, the SEC did not charge Mr. Rybicki with aiding and abetting unregistered sales agents to sell the EquiAlt REIT Funds because no unregistered sales agents sold REIT securities.



access to, nor any authority over, EquiAlt’s bank accounts, as again, that authority and access was exclusive to Mr. Davison. *See* Pl. Mot. for TRO, Exh. 4, Davison Tr. at 76 (Mr. Rybicki “technically reports to me.”) Finally, the Commission even acknowledges in its own Amended Complaint that Mr. Davison—not Mr. Rybicki—“personally controlled the accounting, finances, bank accounts, and real estate strategy.” Amend. Compl. ¶10; *see also* Stoddard Tr. at 50 (Davison made strategic decisions for the funds).

The Commission’s allegations and evidence demonstrate that the authority to decide the amount, the time, and the place for receipt of a cash distribution from EquiAlt resided with Mr. Davison, not Mr. Rybicki. Amend. Compl. ¶ 10; Pl. Mot. for TRO, Exh. 4, Davison Tr. at 54, 55, 74. By alleging that Mr. Rybicki somehow directed, caused, or authorized these distributions with knowledge that they were improper, or much less did so with an “intent to deceive, manipulate or defraud,” the Commission improperly imputes allegations against Mr. Davison to Mr. Rybicki. *See Aaron v. S.E.C.*, 446 U.S. 680, 685-86 (1980).

#### **5. Mr. Rybicki Did Not Make the Alleged Specific Misrepresentations Alleged**

Under Rule 10b-5, the “maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.” *Capital Corp. v First Derivative Traders*, 564 U.S. 135, 142 (2011). More than one person or entity may have authority over a statement and therefore may be considered the maker of a false statement or responsible for a material omission. *City of Pontiac Gen. Emps’ Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012) (“It is not inconsistent with *Janus Capital* to presume that multiple people in a single corporation have the joint authority to ‘make’ an SEC filing, such that ‘a misstatement has more than one ‘maker.’ ”) (quoting *City of*

*Roseville Emps.' Ret. Sys. v. EnergySolutions, Inc.*, 814 F. Supp. 2d 395, 417 n.9 (S.D.N.Y. 2011)).

The amended Complaint alleges that Mr. Rybicki made the following material misrepresentations:

- Rybicki misrepresented to investors that 90% of their funds would be invested in real estate. Amend. Compl. ¶ 58.
- Rybicki had knowledge of the information concerning the funds real estate investments, liquidity and revenues generated by the funds' real estate holdings. *Id.* at ¶ 59.
- Funds paid EquiAlt a discount fee or difference in list sale price for particular property and the ultimate purchase price paid by fund to acquire property. *Id.* at ¶ 60.
- Rybicki was reckless in not knowing funds were paying undisclosed discount fees to EquiAlt. Rybicki received a profit and loss statement in 2017 which reported EquiAlt had generated discount fee income for Fund 1, and therefore, was privy to financial information about the nature and amount of undisclosed fees. *Id.* at ¶ 61.
- Rybicki's signed subscription agreements that said no commission payments would be paid and that Rybicki determined if these would be paid. *Id.* at ¶ 64.
- As early as 2014, Davison and EquiAlt's accountants provided Rybicki with copies of the Funds' financial statements highlighting the Funds' financial results, financial position, investment interest paid to investors and cash flows. *Id.* at ¶ 66.
- Numerous email communications between EquiAlt's accountant and Rybicki indicate that Rybicki was informed about a wide range of financial matters relating to the Funds, such as transfers of money among the Funds, distributions to investors, commission payments, and redemptions. *Id.* at ¶ 67.
- Rybicki was involved in the daily financial operations and activities, including important matters such as ensuring that the Funds had adequate capital to cover redemptions. *Id.* at ¶ 68.
- Investors for Fund 2 were told management fees were not being paid. *Id.* at ¶ 69.

As explained *supra* in subsection "A," the Commission's allegations that Mr. Rybicki drafted or had authority over the statements the PPMs is undermined and contradicted by other evidence in the record which demonstrates that Mr. Davison and Mr. Wassgren, not Mr. Rybicki, drafted and had authority over the PPMs. It is further undermined by the testimony of Mr. Davison and Ms. Stoddart that Mr. Rybicki's role was limited to sales and marketing, and that he had no access and *no reason* to review EquiAlt financials. Knowing this, the Commission amended its complaint to reference a handful of emails over a nine-year period where Mr.

Rybicki was copied, with attachments that they do not allege he reviewed, much less commented on. They also reference in the Amended Complaint an email where Mr. Rybicki discusses “getting ahead of redemptions” to suggest that he was “involved in matters concerning the Funds’ daily financial operations.” *Id.* at ¶68.<sup>3</sup> But the email does not provide any evidence that Mr. Rybicki had access to EquiAlt’s financial documents, and the testimony of Denver Stoddart and Brian Davison make clear that his role was limited to sales and marketing. In light of Rybicki’s limited role, and in light of the reasonable inference from the Amended Complaint that EquiAlt actually used investor deposits to amass substantial real estate and cash holdings of at least \$145 million, there is an insufficient basis to find that Rybicki had knowledge of or was severely reckless in not knowing about EquiAlt’s use of funds.<sup>4</sup>

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<sup>3</sup> The Commission also references this email and another, at ¶ 78, in which Mr. Rybicki discusses raising liquidity in the Funds before redeeming an investor’s money. But “the fact that an investor’s returns on his or her investments in a business operation are dependent on future investors investing in the entity does not per se make the entity a Ponzi scheme. The key issue is whether the business operation is legitimate.” *Jobin v. Ripley (In re M & L Bus. Machine Co.)*, 198 B.R. 800, 810 n. 4 (D.Colo.1996) (overturning bankruptcy court’s decision that investor had “culpable knowledge” that debtor was operating a Ponzi scheme based on statement by debtor “his check would not be ‘valid until they both obtained another investor to fill this contract and then also generated the necessary equipment and shipment and so forth to live up to their terms with the user.’) The Commission’s own description of this case makes clear that EquiAlt purchased at least \$145 million worth of real estate. *See* Compl. ¶ 6 (Notably, this allegation was removed from the Amended Complaint.) Based on EquiAlt’s substantial holdings and the absence of evidence that Rybicki knew about a shortfall, the Commission’s allegations do not establish scienter as to Rybicki.

<sup>4</sup> The Commission also is unlikely to establish that Mr. Rybicki violated the Exchange Act as a “Control Person” of EquiAlt. In order to establish derivative liability under § 20(a) of the Exchange Act, a plaintiff must allege that: (1) the controlled person committed a primary violation of the Exchange Act; (2) the defendant had the power to control the general affairs of the primary violator; and (3) the defendant “had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in primary liability.” *Mizzaro v. Home Depot, Inc.*, 544 F. 3d 1230, 1237 (11th Cir. 2008). As explained herein, the evidence does not support a finding that Mr. Rybicki had the power to control the general affairs of EquiAlt. To the contrary, the allegations make clear that Mr. Davison not only owned the Funds, but also owned, formed, and served as CEO of EquiAlt in Tampa, Florida, which managed the day-to-day affairs of the Funds. Amend. Compl. ¶¶ 10, 12, 14. Rybicki, on the other hand, resided across the country in Phoenix, Arizona, and “communicated with investors and executed debentures and subscription agreements with investors.” *Id.* at ¶¶ 4, 11. While Rybicki held the title of Managing Director and President of Arizona Operations, “title alone does not suffice to create control person liability” under Section 20(a) of the Exchange Act. *Wafra Leasing Corp., 1999-A-1 v. Prime Capital Corp.*, No. 01 C 4314, 2004 WL 1977572, at \*8 (N.D.Ill. August 31, 2004).

**D. The Commission Cannot Show That There is A Reasonable Likelihood That the Alleged Wrongs Will Be Repeated.**

Even if the Commission were to demonstrate a *prima facie* case of previous violations of the federal securities laws, it is not entitled to injunctive relief because it cannot prove that there is any likelihood—much less a reasonable one—that Mr. Rybicki will commit these violations again. *See S.E.C. v. Calvo*, 378 F.3d 1211, 1216 (11th Cir. 2004). The Court considers several factors in analyzing whether a wrong will be repeated: (1) “egregiousness of the defendant's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved, the sincerity of the defendant's assurances against future violations; (4) the defendant's recognition of the wrongful nature of the conduct; (5) and the likelihood that the defendant's occupation will present opportunities for future violations.” *Id.* (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir.1982) (internal citations omitted). Most of these factors weigh against the entry of an injunction in this case.

**1. Egregiousness of the Defendant’s Actions.**

While Mr. Rybicki does not deny that the allegations of the Amended Complaint are serious, for the reasons explained below, the Commission cannot demonstrate that *his actions* were egregious. At every turn, Mr. Rybicki acted at the direction of Mr. Davison and Mr. Wassgren. For example, while the Commission alleges the Defendants engaged in a Ponzi scheme, there is no dispute that: (1) Mr. Davison and Mr. Wassgren set up EquiAlt and prepared the initial offering documents which the Commission now alleges contained misleading statements; (2) Rybicki had nothing to do with EquiAlt’s use of investor funds to purchase, refurbish or rent real estate; (2) the Funds actually purchased real estate valued at nearly \$150 million; (3) Rybicki did not manage the day-to-day operation of the Funds; (4) Rybicki had no control over the accounts from which Ponzi payments or allegedly “improper” distributions were

made. Despite these uncontroverted facts, the Commission wishes to hold Mr. Rybicki responsible for Ponzi payments he did not make and could not have authorized, and the use of investor Funds over which Mr. Rybicki had no knowledge, access, or control.

## **2. Isolated or Recurrent Nature of the Infraction.**

This is the only factor Mr. Rybicki agrees weighs in favor of a preliminary injunction. As alleged in the Amended Complaint, the conduct occurred over a nine-year period. Nevertheless, the record is replete with examples of Mr. Rybicki's efforts to comply with the law based on his own beliefs as well as advice he received from counsel. As explained below, once Mr. Rybicki became aware—after retaining new counsel—that EquiAlt's sales needed to be registered with the Commission to sell all of EquiAlt's funds (not just for the REIT), Mr. Rybicki immediately directed the sales staff to stop processing any and all new investor submissions. Affidavit of Christos Anastasopoulos, ¶¶ 6-8, attached as Exhibit "6". Mr. Rybicki addressed the sales staff *before* the Commission filed its complaint and before Mr. Rybicki could have known that there was any pending action against EquiAlt.

In contrast with Mr. Davison, who was alleged to have misused assets belonging to EquiAlt for his own purposes, including the use of a Manhattan condominium, there are no allegations that Mr. Rybicki misused EquiAlt assets. In fact, despite Mr. Rybicki's various titles as "Vice President" and "President"—whichever titles Mr. Davison decided to assign to him—Mr. Rybicki insisted on paying the full rental price every time he stayed at an EquiAlt property. *See* Receipts for Blue Waters II, attached as Exhibit "5"; *see also* Amend. Compl. ¶ 24 (referencing Relief Defendant Blue Waters TI, LLC). In other words, while the infractions alleged by the Commission may have occurred over a nine-year period, Mr. Rybicki demonstrated his efforts to do the right thing, time and again, when no one was looking.

### 3. The Degree of Scienter Involved.

First, the Commission fails to show that Mr. Rybicki had the requisite scienter—either by knowing or being severely reckless in not knowing—that EquiAlt was a Ponzi scheme.

Rather, the testimony of Mr. Davison and Ms. Stoddart (EquiAlt’s Controller of Accounting) contradicts the Commission’s conclusory assertions. As set forth *supra*, Mr. Rybicki had neither access nor authority over any of EquiAlt’s bank accounts or financials and was not involved in the day-to-day management of the Funds. Indeed, Ms. Stoddart, a licensed CPA who had access to all of EquiAlt’s financial records, testified that she did not even know there was a shortfall:

Q: “But based on your access to the funds’ financials, you can’t tell me at the present time whether the funds are generating or losing money?”

A: I’ll have to look into QuickBooks.” And know you say generating and losing, is it -- are you referring to the net income or the operating income?

Q: Net income.

A: I have to look on QuickBooks definitely.

Q What about historically? How have the funds performed historically over the last five years, if you know?

A: I’ll have to refer to QuickBooks.

Exh. 1, Stoddart Tr. at 68-69. Mr. Davison testified that while he (and Ms. Stoddart) had access to Quickbooks, Mr. Rybicki did not. Mot. for TRO, Exh. 4, Davison Tr. at 54-55. If Ms. Stoddart, a licensed CPA who worked in EquiAlt’s Tampa, Florida office, whose job it was to review financials, did not know whether EquiAlt was making or losing money, how was Mr. Rybicki – whose job it was to “literally” “take [EquiAlt’s] package,” *id.* at 83, to a sales team, who lived a continent away in Arizona and who, according to both Davison and Stoddart, did not have access to these financials—supposed to know?

Second, the Commission failed to cite to any evidence that Mr. Rybicki possessed the requisite scienter to misappropriate investor funds. The evidence developed by the Commission during its investigation demonstrates that Mr. Rybicki did not have access to, or control over, any of EquiAlt's bank accounts or finances, and did not manage its day-to-day operations in Tampa, Florida. It is, therefore, inconceivable that Mr. Rybicki—with no access to or control over EquiAlt's finances—could have even known that a distribution—which based on the Commission's own allegations, could only have been authorized by Mr. Davison—would have been improper.

Third, Mr. Rybicki did not possess the requisite scienter regarding any of the misrepresentations alleged by the Commission. EquiAlt retained the services of Paul Wassgren in virtually all aspects of EquiAlt's business operations and entrusted him with ensuring EquiAlt complied with securities laws. 1. Mot. for TRO, Exh. 4, Davison Tr. at 99, 107, 100; Mot. for Leave to Retain Counsel (DE 121) at 4. As stated *supra*, Mr. Wassgren prepared EquiAlt's marketing materials to investors aware of the purpose for which these materials would be disseminated and used, vetted and participated in approving EquiAlt's PPMs; and provided legal advice to EquiAlt as to the legality of paying commissions to unregistered sales agents for the sale of debentures. And naturally, Mr. Rybicki relied on Mr. Wassgren's approval and assurances regarding EquiAlt's activities; *see* Exhibit 3, Gray Aff.; Exhibit 4, Friedrichsen Aff. Mr. Rybicki will be able to establish an advice of counsel defense, or he will at least demonstrate that he acted in good faith and without scienter. *See SEC v. Huff*, 758 F. Supp. 2d 1288, 1348-49 (S.D. Fla. 2010); *see also Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994).

Finally, Mr. Rybicki's actions throughout the alleged period demonstrated that he sought to do the right thing when no one was watching; these actions are inconsistent with the allegations

that Mr. Rybicki had the requisite scienter. For example, as previously stated, Mr. Rybicki did not misuse EquiAlt's assets for his own personal benefit, but instead paid rent whenever he stayed at an EquiAlt property. Also as previously stated, Mr. Rybicki directed sales agents to speak with Mr. Wassgren when they had questions regarding the legal requirements for selling EquiAlt Funds. And, notably, Mr. Rybicki halted the sale of funds—before the Commission filed its action—when he was advised that the continued sales might violate the law. Exhibit 4, Friedrichsen Aff. ¶¶ 14-15; Exhibit 6, Anastasopolous Aff. ¶¶ 6-8.

His desire to do the right thing continues to this day. Recently, Mr. Rybicki noticed that one of his accounts, a personal Comerica bank account with a substantial amount of cash on deposit, was unfrozen notwithstanding this Court's order. Even though he had not received his periodic check for expenses and was falling behind on paying his bills, Mr. Rybicki's first instinct was to advise the undersigned to alert the Commission and the Receiver that the account had somehow been unfrozen.

This case presents a sad example of Commission overreach; Mr. Rybicki has been improperly alleged to be wrongdoer based on the alleged actions of others despite his efforts to seek legal guidance and do things the right way. At a minimum, the Commission has not and cannot demonstrate the extraordinary and drastic remedy of a preliminary injunction as to him.

**4. Mr. Rybicki Immediately Directed Sales Agents and BR Support Staff to Stop Selling EquiAlt Debentures When He Realized They Needed to Be Registered.**

Mr. Rybicki's actions demonstrate the sincerity of his assurances against future violations and his recognition of the wrongful nature of the conduct. As explained herein, Mr. Rybicki relied on the advice of Mr. Wassgren with respect to whether sales agents needed to be registered with the Commission to sell EquiAlt debentures. After meeting with new counsel, Mr. Rybicki learned that the advice he received from Mr. Wassgren was faulty and that sales agents did in



fact need to be registered before selling EquiAlt Fund debentures.<sup>5</sup> Mr. Rybicki immediately took steps to cease any improper conduct as soon as he learned that the advice upon which he relied was faulty. He notified both his sales agents and staff and directed them to stop selling and processing EquiAlt Fund debentures immediately. Exhibit 4, Friedrichsen Aff. ¶¶ 14-15; Exhibit 6, Anastasopolous Aff. ¶¶ 6-8. He took these steps before the Commission filed its action. Exhibit 6, Anastasopolous Aff. ¶¶ 6-8. Mr. Rybicki's actions in this regard establish that he follows the law and poses no danger of repeated conduct.

#### **5. Mr. Rybicki's Current Occupation Presents No Opportunities for Future Violations.**

First, as referenced in Section D.4, *supra*, through his actions, Mr. Rybicki has repeatedly made clear that when provided with the appropriate legal advice, he follows the law. Additionally, Mr. Rybicki is no longer employed in the securities industry, but is instead working with his family to develop a pool servicing company. Affidavit of Rosemarie Rybicki, attached as Exhibit "7". Mr. Rybicki is working full time—ten hours per day—to restart his life and help his family develop this business. *Id.* ¶ 5. Mr. Rybicki participated in a training program and is now an employee for the family's pool servicing business. *Id.* ¶ 4. Because the business is relatively new, Mrs. Rybicki does not expect the business to generate profits until October 2020. *Id.* ¶ 3. Accordingly, Mr. Rybicki's current occupation and future plans have absolutely no relationship to the securities industry and offer no opportunities for future

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<sup>5</sup> There is other evidence in the record supporting the notion that Mr. Wassgren provided faulty legal advice to Mr. Rybicki. Recently, the Court granted a motion by the Receiver to hire counsel to explore a lawsuit against Mr. Wassgren and his law firms, Fox Rothschild, LLP and DLA Piper, LLP for damages caused to EquiAlt based on bad legal advice provided by Mr. Wassgren. (Order, DE 127). In its Motion, the Receiver explained that the services Wassgren provided included "included forming Receivership Entities, drafting documents used to solicit investors, and providing advice concerning registration requirements and other matters. The lawyers represented EquiAlt and the funds it created on a continuous basis from their inception and were involved in almost every aspect of EquiAlt's business." Mot. for Leave to Retain Counsel (DE 121) at 4. The Receiver asked this Court for leave to hire a law firm on a contingency matter because he "believes the law firms could have liability to the Receivership in connection with these activities." *Id.*

securities violations. With no reasonable likelihood of future violations under these circumstances, the Commission's preliminary injunction motion against Mr. Rybicki must be denied.

### **III. CONCLUSION**

For the foregoing reasons, the Court should deny the Commission's Motion for a Preliminary Injunction.

Respectfully submitted,

July 24, 2020

/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 24th day of July, 2020.

/s/ Adam S. Fels

# **EXHIBIT 1**

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

)

COPY

) File No. FL-04167-A

CERTAIN UNREGISTERED

)

SECURITIES

)

WITNESS: Denver Stoddart

PAGES: 1 through 153

PLACE: Securities and Exchange Commission

801 Brickell Avenue

Suite 1800

Miami, FL 33141

DATE: Thursday, December 5, 2019

The above-entitled matter on for hearing,  
pursuant to the notice, at 10:10 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On Behalf of the Securities and Exchange Commission:

4 ANDRE ZAMORANO

5 MARK DEE

6 CHANEL ROWE

7 ALISE JOHNSON

8 Securities and Exchange Commission

9 801 Brickell Avenue

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12

13 On behalf of the Witness:

14 JONATHAN HARAY

15 DLA Piper

16 500 8th Street Northwest

17 Washington, DC 2004

18

19 JESSICA MASELLA

20 RACHAEL KESSLER

21 1251 Avenue of the Americas

22 New York, New York

23

24

25

1	C O N T E N T S		
2			
3	WITNESS:	EXAMINATION	
4	Denver Stoddart		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	SEC form 1662	6
8	3	Report	74
9	4	Equialt fund property list	75
10	5	Statement cash flow	76
11	6	Profit & Loss all transaction	81
12	7	BR Support Services	94
13	8	Exhibit to cash flow	95
14	9	Depreciable assets, real	
15		Property	98
16	10	Loan	101
17	11	Balance sheet	104
18	12	Noninterest note	105
19	13	Statement of cash flow all	
20		Transaction	115
21	14	P & L for fund II	116
22	15	EA SIP Statement of cash flow	
23		All transaction	128
24	16	P & L for EA SIP	129
25	17	QOZ Audit	131

1	C O N T E N T S (CONT.)		
2			
3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	18	REIT Audit	134
5	19	Distributions	142
6	20	Balance Sheet Fund I 12/31/11	144
7	21	Balance sheet Fund I 12/31/12	145
8	22	Reverse opening Balance	147
9			
10			
11			
12			
13			
14			
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16			
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1 P R O C E E D I N G S

2 MR. ZAMORANO: We're on the record at 10:10  
3 on December the 5th, 2019.  
4 Whereupon,

5 DENVER STODDART  
6 was called as a witness and, having been first duly  
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. ZAMORANO:

10 Q Please state your full name and spell your  
11 name for the record.

12 A My name is Denver Abbey-gail Stoddart.  
13 Denver is spelt D-E-N-V-E-R, Abbey-gail as well is  
14 A-B-B-E-Y - G-A-I-L and last name Stoddart is spelt  
15 S-T-O-D-D-A-R-T as in Tom.

16 Q Just by way of brief introduction. My name  
17 is Andre Zamorano. I'm an officer for the purposes of  
18 this proceeding. Also present are Mark Dee, Chanel  
19 Rowe and Alise Johnson who are also officers of the  
20 Commission for the purposes of this proceeding.

21 This is an investigation by the United  
22 States Securities and Exchange Commission in the  
23 matter of Certain Unregistered Securities Transactions  
24 for the case number 4167 to determine whether there  
25 have been violations of certain provisions of the



1 federal securities laws. However, the facts developed  
2 in this investigation might constitute violations of  
3 other federal or state, civil, or criminal laws.

4 Prior to the opening of the record you were  
5 provided with a copy of the formal order of  
6 investigation in this matter as supplemented, it will  
7 be available for your examination during the entire  
8 course of this proceeding.

9 Ms. Stoddart, have you had an opportunity to  
10 review the formal order?

11 A Yes, I have.

12 Q Also marked as Exhibit No. 1 -- I believe it  
13 should be marked as Exhibit No. 1 already -- is the  
14 SEC form 1662, that document.

15 (SEC Exhibit No. 1 was marked for  
16 identification.)

17 BY MR. ZAMORANO:

18 Q Ms. Stoddart, have you had an opportunity to  
19 review that document?

20 A You said Exhibit No. 1. Which one is  
21 Exhibit No. 1?

22 MR. HARAY: Yeah. Our copies are not  
23 marked.

24 MR. ZAMORANO: Here. Let me have it.

25 MR. HARAY: Okay.

Page 7

1 MR. ZAMORANO: Thanks.

2 BY MR. ZAMORANO:

3 Q Exhibit No. 1, which is the SEC form 1662  
4 that was provided to you before the opening of the  
5 record. Have you had a chance to review that  
6 document?

7 A Yes, I have.

8 Q Do you have any questions concerning that  
9 notice?

10 A Not at this time.

11 Q Ms. Stoddart, are you represented by  
12 counsel?

13 A Yes, I am.

14 MR. ZAMORANO: Would counsel please identify  
15 himself, herself.

16 MR. HARAY: Sure. I guess I'll start. I'm  
17 Jonathan Haray with the law firm of DLA Piper. Would  
18 you like my address?

19 MR. ZAMORANO: Yes, please.

20 MR. HARAY: Okay. 500 8th Street Northwest  
21 Washington, DC 2004.

22 MS. MASELLA: Jessica Masella also with the  
23 law firm of DLA Piper in New York, which is at 1251  
24 Avenue of the Americas, New York, New York.

25 MS. KESSLER: Rachael Kessler also with the

1 law firm DLA Piper. I'm also in the New York office,  
2 1251 Avenue of the Americas, New York, New York.

3 MR. ZAMORANO: Counsel, do you represent any  
4 other parties in this matter?

5 MR. HARAY: Yes.

6 BY MR. ZAMORANO:

7 Q Ms. Stoddart, do you understand that the  
8 representation by counsel of other parties in this  
9 matter may create a potential conflict of interest?

10 A Yes, I am aware.

11 Q Okay. Notwithstanding your knowledge of  
12 that fact, are you still willing to have counsel  
13 represent you here today?

14 A Yes, I am.

15 Q Just a couple preliminary matters just to  
16 make this go by a little bit easier. If you don't  
17 understand the question that I pose to you, if it's  
18 unclear or if you don't understand it, feel free to  
19 ask me to rephrase it and I'll be glad to do that.

20 A All right.

21 Q Also, so the court reporter can take down  
22 this record accurately, it's important that you let me  
23 finish my question before you respond. Do you  
24 understand that?

25 A Yes, sir.

1           Q     Okay. Finally, if you want to take a break  
2     for water or for -- to speak with your counsel, or for  
3     some other reason, feel free to ask me for a break and  
4     we'll be glad to accommodate you with that respect.

5           A     Okay.

6           Q     Ms. Stoddart, just a couple additional  
7     preliminary matters. Here's a copy of the subpoena  
8     that we sent to you care of your counsel Jessica  
9     Masella. Have you seen this document before?

10          A     Yes, I have.

11          Q     And do you understand that you're appearing  
12     here today pursuant to the subpoena?

13          A     Yes, I do.

14          Q     Just want to ask you some background  
15     questions before we get into the substance of your  
16     testimony.

17                 You just stated your full name, do you go by  
18     any other name?

19          A     I go by Denver Sutherland as well, which is  
20     my --

21          Q     Sutherland?

22          A     Yes, Sutherland, which is my nee name.

23          Q     How do you spell that?

24          A     S-U-T-H-E-R-L-A-N-D.

25          Q     And since when have you been using that

1 name?

2 A I use it before I got married, but some of  
3 my documents may still have my maiden name on it.

4 Q Okay. And your maiden name is?

5 A Sutherland.

6 Q Okay.

7 BY MR. HARAY:

8 Q Did you say your nay?

9 A Nee.

10 Q Nee, yeah.

11 A N-E-E.

12 Q Got it.

13 BY MR. ZAMORANO:

14 Q And your date and place of birth?

15 A My place of birth is -- I think it's [REDACTED]

16 [REDACTED]. [REDACTED].

17 Q And your country of citizenship?

18 A My citizenship is currently with the United  
19 States of America.

20 Q And your marital status?

21 A I'm married.

22 Q And your husband's name?

23 A [REDACTED].

24 Q Does your husband work with you?

25 A He works with me maybe on businesses that we



Page 11

1 may have by ourselves or business ventures that we may  
2 have had at other points in time.

3 Q Okay.

4 A Not as an accountant.

5 Q Is he a CPA?

6 A No. He's not.

7 Q Okay. And what is the address of your  
8 primary residence?

9 A Our primary residence is [REDACTED]  
10 [REDACTED] Lithia, Florida ZIP code 33547.

11 Q And how do you spell Lithia?

12 A L-I-T-H-I-A.

13 Q And how long have you lived there?

14 A I've lived there since April of 2015 I  
15 believe it is.

16 Q Can you identify for us any telephone  
17 numbers that you use, either landlines or cellar  
18 service?

19 A Landline or VoIP or whatever they call it --

20 Q VoIP.

21 A -- is 95 -- yeah. It's [REDACTED]. My  
22 cell number is [REDACTED]. Those I currently use.

23 Q And do you operate a website either  
24 personally or through any of your businesses?

25 A I've had a business website called Denver

1 Stoddart CPA & Associates. I think the website is  
2 Stoddartcpa.com.

3 Q Is that website still active?

4 A Yes, it is.

5 Q How about e-mail addresses? Do you have any  
6 business e-mail addresses?

7 A It's [REDACTED] or [REDACTED]

8 [REDACTED] I also have Equialt e-mail addresses  
9 as well.

10 Q And what are those e-mail addresses?

11 A It's going to be Denver Equialt.com. I also  
12 have Accounting Equialt.com.

13 Q Accounting --

14 A Yes.

15 Q -- Equialt.com?

16 A Yes.

17 Q Okay. Do you have a LinkedIn page?

18 A Yes, I do.

19 Q And does your LinkedIn page reference  
20 anything concerning Equialt, LLC?

21 A I don't think it has been updated since I  
22 started working at Equialt.

23 Q Okay. Do you have a Facebook account?

24 A Yes, I do.

25 Q Do you use a Facebook account for business

1 purposes?

2 A I use one for Denver Stoddart CPA &  
3 Associates. So I have a business page.

4 Q Do you use any instant messages or similar  
5 electronic communication services, including like  
6 Bloomberg, Skype or WhatsApp?

7 A WhatsApp.

8 Q What is the identifier for the WhatsApp?

9 A I'm not sure what you mean by identifier. I  
10 just use my phone number normally and my name.

11 Q Okay. Your business phone number or your  
12 personal?

13 A No. It's a personal WhatsApp.

14 Q Okay. Do you use it for business purposes?

15 A No.

16 Q Are you now or have you ever been an officer  
17 or director of any publically held company?

18 A Publically held? No.

19 Q Have you been an officer or director of a  
20 privately held company?

21 A If a 501(c)(3) is categorized as that. I'm  
22 not sure, but I'm an officer or cofounder of a  
23 charity.

24 Q A charity that you formed or founded?

25 A Yes. My husband and myself.



1 Q And what's the name of that charity?

2 A Pure Love Foundation Corp.

3 Q Are you now or have you ever been a  
4 beneficial owner directly or indirectly of 5 percent  
5 or more of any class of equity securities of any  
6 publically held company?

7 A No, I have not.

8 Q Are you now or have you ever been a  
9 beneficial owner directly or indirectly of any  
10 previously held company, corporation, partnership,  
11 limited liability company or the corporate form other  
12 than the 501(c) that you just mentioned?

13 A I'm sorry. Your voice went down a little.  
14 Repeat that.

15 Q Sure. Are you now or have you ever been a  
16 beneficial owner directly or indirectly of any  
17 privately held company, for example, a corporation, a  
18 partnership, a limited liability company or other  
19 corporate form?

20 A Yes, I have.

21 Q Can you identify those entities for us,  
22 please?

23 A Undiluted Music, Righteous Rockers Movement,  
24 Pure Love Foundation as I mentioned, Sardius, LLC.

25 Q How do you spell that?

1           A     S-A-R-D-I-U-S. All Stages Corporate Housing  
2     Group, Bizdom, LLC, and Denver Stoddart CPA &  
3     Associates that I can recall.

4           **Q     Tell us a little bit more about Denver**  
5     **Stoddart CPA Services. Is that an active business?**

6           A     It is still active somewhat, but I've just  
7     kept it opened. I operated it before I started with  
8     my current employment, so I still have it opened. I  
9     wouldn't say completely active. I still do one or two  
10    tax returns each year through that entity.

11          **Q     Does that entity have any employees other**  
12    **than yourself?**

13          A     Not at this time.

14          **Q     When did you form Denver Stoddart CPA?**

15          A     I think it was January 2015.

16          **Q     And what type of business was it involved**  
17    **in?**

18          A     Denver Stoddart CPA & Associates does  
19    accounting, tax preparation services for individuals  
20    and corporations; small businesses primarily.

21          **Q     So at the present time this entity doesn't**  
22    **have any clients other than perhaps one or two that**  
23    **you do tax returns for?**

24          A     Only a few. Maybe five or less.

25          **Q     Was Equialt, LLC ever a client of Denver**

1     **Stoddart CPA?**

2             A     Yes, they have.

3             **Q     During what period of time?**

4             A     That was probably from 2018 April to January  
5     2019. And then just to correct. Equialt -- not  
6     Equialt, LLC directly, it's more Equialt Real Estate  
7     Investment Trust Incorporation. That's the correct  
8     one.

9             **Q     What was the correct entity that employed**  
10    **your CPA services?**

11            A     Equialt Secured Income Portfolio REIT, Inc.

12            **Q     Okay. That's the entity that hired your**  
13    **company?**

14            A     Yeah. That's the one I have the engagement  
15    letter name in.

16            **Q     Do you have any securities accounts?**

17            A     In saying securities, you mean like stocks  
18    and bonds?

19            **Q     Brokerage accounts, correct.**

20            A     I have minimal securities I believe with  
21    Capital One that's now E-Trade or something to that  
22    effect.

23            **Q     Okay. And where do you do your banking?**

24            A     I bank with Bank of America primarily, I  
25    also have banking with BB&T and also Baxter Credit

1 Union.

2 Q I'm going to ask you a couple of questions  
3 concerning any involvement that you may have had in  
4 prior legal proceedings.

5 A Yes.

6 Q Have you ever testified in any proceeding  
7 conducted by the staff of the Securities and Exchange  
8 Commission?

9 A No, I have not.

10 Q A US or foreign federal or state agency?

11 A No, I have not.

12 Q A US or foreign federal or state Court?

13 A No, I have not.

14 Q A stock exchange?

15 A No, I have not.

16 Q The Financial Industry Regulatory Authority?

17 A No, I have not.

18 Q Or any other self-regulatory organization?

19 A No, I have not.

20 Q Have you participated in any arbitration  
21 proceeding related to any securities transactions?

22 A No, I have not.

23 Q Have you ever given a deposition in  
24 connection with any Court proceeding?

25 A I don't know if it went to Court, but I've

1 had to give a testimony about an accounts receivable  
2 outstanding balance while I worked with General Growth  
3 Properties in Pembroke Lakes, Florida. I had to  
4 attest to the balance outstanding for a particular  
5 tenant.

6 Q Okay. And that was with respect to which  
7 employment -- employee?

8 A General Growth Properties.

9 Q General Group?

10 A Growth. General Growth Properties.

11 Q Growth Properties, okay.

12 Have you ever been named as a defendant or  
13 respondent in any action or proceeding brought by the  
14 SEC?

15 A No, I have not.

16 Q Any other US or foreign federal agency?

17 A No. Not -- no, I've not.

18 Q A state securities agency?

19 A No, I have not.

20 Q FINRA?

21 A No.

22 Q And SRO?

23 A No, I have not.

24 Q Or any exchange?

25 A No.



1           Q     Have you ever been a defendant in any action  
2     alleged violations of the federal securities laws?

3           A     No, I have not.

4           Q     Have you ever been a defendant in any  
5     criminal proceeding other than one involving a minor  
6     traffic offense?

7           A     No, I have not.

8           Q     I'm going to ask you a couple question about  
9     your educational history.

10          A     Okay.

11          Q     Where and when did you graduate from high  
12     school?

13          A     I graduated from high school 1996. The high  
14     school situation is different in Jamaica. So you have  
15     two graduations. You graduate from basic high school  
16     in 1996 and then you go onto advance studies, which I  
17     graduated from in 1999 I think. No. 1993 I graduated  
18     high school --

19          Q     Okay.

20          A     -- with a high school diploma. 1995 I  
21     graduated from the advance program.

22          Q     That's more like a university or college  
23     program?

24          A     It's like the first year of university here,  
25     but you do it at the same high school.

1           Q     What was the name of the high school that  
2     you attended?

3           A     St. Hughs High.

4           Q     And the school that you attended for the  
5     advance studies?

6           A     It would be St. Hughs High as well.

7           Q     Have you attended university or college in  
8     the United States?

9           A     Yes, I did.

10          Q     Where and when?

11          A     I attended Florida Atlantic University in  
12     Boca Raton, Florida. I think that was from about 2006  
13     to around 2008.

14          Q     Did you graduate with any degrees?

15          A     I graduated with a masters in accounting.

16          Q     What year was that?

17          A     I currently reside in Lithia, Florida.

18          Q     No. I'm sorry. When did you get your  
19     masters?

20          A     I think that graduation year was probably  
21     2008 or 2009, yeah.

22          Q     Have you taken any other securities,  
23     accounting or business related courses since you  
24     graduated from university?

25          A     I took a Series 6 exam with H.D. Vest in

1 about 2017.

2 Q What is H.D. Vest? Is that a broker-dealer?

3 A I think more an advisor company I think.

4 Q Financial advisor?

5 A Yeah. I don't know the details of exactly  
6 what they do anymore.

7 Q And is that license active?

8 A No, it's not.

9 Q Okay. Do you hold or have you ever held any  
10 professional license?

11 A I currently hold a CPA license, Certified  
12 Public Accountant.

13 Q Here in Florida?

14 A Yes.

15 Q Any other jurisdictions?

16 A No.

17 Q And when did you get your CPA license?

18 A 2015.

19 Q As the license ever been suspended or have  
20 you had any disciplinary proceedings?

21 A No, I have not.

22 Q Are you or have you ever been a member of  
23 any professional business club or organization?

24 A I'm a part of the American Institute of  
25 Certified Public Accountants and the Florida Institute



1 of Certified Public Accountants.

2 Q Okay. I would like to ask you a couple  
3 questions concerning your employment history starting  
4 from the time that you finished your masters degree --

5 A Okay.

6 Q -- at FIU. Where did you go work after you  
7 graduated?

8 A When I graduated I was still employed, I  
9 believe, with General Growth Properties at the Boca  
10 Raton mall office.

11 Q What type of business was General Growth  
12 Properties?

13 A It's a real estate investment trust.

14 Q And what did you do there?

15 A I was a property accountant that was in  
16 charge of accounts receivables and accounts payables  
17 for that particular mall.

18 Q Okay. How long did you work there?

19 A I worked at General Growth Properties a  
20 total of seven years, but during that time you are  
21 located at different mall properties. For that  
22 particular location, it may have been about two years.

23 Q But it was the same entity that you worked  
24 for?

25 A Yes. So it's about seven years for that

1 same entity.

2 Q But you worked at different malls that were  
3 owned by the company?

4 A Yes.

5 Q When did you stop working there? Do you  
6 recall what year more or less?

7 A I think it's around 2011, 2012.

8 Q Where did you go work after there?

9 A I went to Greenfield Properties Group also  
10 in Boca Raton, Florida.

11 Q What type of business was that company  
12 involved in?

13 A It's a real estate property management  
14 company.

15 Q A real estate management company?

16 A A real estate property management company.

17 Q Okay. And what were your employment duties  
18 and responsibilities at this company?

19 A At that time I -- I'm not sure of if I was a  
20 property accountant still or just staff account.  
21 Responsibilities, accounts receivable, accounts  
22 payable monthly reporting, yeah. General monthly  
23 accounting close process is the best way to put it.

24 Q Did either of these two companies have any  
25 affiliation, connection or involvement with Equialt,

1     **LLC?**

2           A     No, they did not.

3           **Q     After Greenfield Properties, where did you**  
4     **go work?**

5           A     After Greenfield Properties I went to Carter  
6     Validus.

7           **Q     Can you spell that?**

8           A     C-A-R-T-E-R, Validus is V-A-L-I-D-U-S. And  
9     they are out of Tampa, Florida.

10          **Q     And what type of company is that?**

11          A     They are a real estate property management  
12     company as well.

13          **Q     Real estate property management?**

14          A     Yes.

15          **Q     Who are the principals or the owners of that**  
16     **company?**

17          A     I remember the name John Carter. He was the  
18     main owner of that company.

19          **Q     And what did you do for them?**

20          A     There I was the accounting manager for that  
21     company. So I would oversee an accounting staff and  
22     also responsible for month-end accounting close  
23     process.

24          **Q     What was that last point? I'm sorry.**

25          A     And I would be in charge of monthly

1 accounting close process.

2 Q Was this a public or private company?

3 A It was a private company. It was public to  
4 the extent that they had to make the information  
5 public and they had to report to the SEC, but they  
6 didn't have stocks that were traded. That's the best  
7 way I guess I can put it.

8 Q Were you involved in the SEC reporting  
9 process?

10 A No, I was not.

11 Q And how long did you work for this company?

12 A About two and-a-half years.

13 Q And following your employment there, where  
14 did you go work?

15 A I started my own practice, Denver Stoddart  
16 CPA.

17 Q And where was your own practice located?

18 A Lithia, Florida.

19 Q And just tell me a little bit more about  
20 your accounting practice. How many employees did it  
21 have when it was operating?

22 A It had --

23 Q How many clients it had at its maximum?

24 A There was nobody there with a W2 to say  
25 employees.

1           Q     Okay.

2           A     But they were contract workers that would be  
3     there as consultants. There would be about two  
4     consultants that I would employ.

5           Q     And what type of clients did you have?

6           A     Primarily real estate clients, small  
7     business owners that own a few properties and needed  
8     their accounting done for those properties.

9           Q     Okay. Who is your current employer?

10          A     My current employer is Equialt, LLC.

11          Q     And how long have you been employed by  
12     Equialt, LLC?

13          A     I've been employed by them since February  
14     2019. I'm not sure how many months that is.

15          Q     And what is your title?

16          A     I'm the accounting controller.

17          Q     And you mentioned that you had done some  
18     consulting work for the real estate investment  
19     trust --

20          A     Yes.

21          Q     -- before?

22          A     Yes.

23          Q     Had you done any consulting work for Equialt  
24     Fund, LLC?

25          A     I had come on board as Equialt REIT, LLC and



1 that involved getting information from the fund, but  
2 not employed by them.

3 Q But not employed by them?

4 A No.

5 Q What about Equialt Fund II, LLC?

6 A Not before I came on board in February.

7 Q Not until you were formerly employed by --

8 A Yes.

9 Q -- Equialt, LLC --

10 A Yes.

11 Q -- in February 2019? Okay.

12 How about Equialt Qualified Opportunity  
13 Fund, LP?

14 A I was involved in that at the end of last  
15 year.

16 Q And what was your involvement?

17 A My involvement came in just overseeing the  
18 entries that were made by the bookkeeper at that time.

19 Q And who was the bookkeeper at that time?

20 A Michelle Rodriguez Diaz.

21 Q Is she still working there?

22 A No, she's not.

23 Q Okay. How did you first become involved  
24 with the Equialt Qualified Secured Income Portfolio  
25 REIT?

1           A     I was reached out to by Taylor White.

2           **Q     I'm sorry?**

3           A     Taylor White, which is an accounting  
4     recruiting firm while I was having my CPA practice.  
5     And they reached out to me and let me know that there  
6     is a new entity that is being formed, and they would  
7     like me to come on board just to get the documents  
8     prepared to make the PPM or the prospectus offering  
9     for that entity.

10          **Q     What documents specifically are you**  
11     **referring to that you were asked to participate in**  
12     **preparing?**

13          A     I'll call it the PPM. I'm not sure what it  
14     officially stands for. I think it's a -- I'm not  
15     really sure what it stands for.

16          **Q     Okay.**

17          A     PPM. Those are the documents that use to  
18     offer to give to investors so that they can invest.

19          **Q     Okay. And that was for the Equalt**  
20     **Qualified Secured Income Portfolio REIT --**

21          A     Yeah.

22          **Q     -- Inc.? Tell us a little bit about what**  
23     **you did specifically with respect to the documents?**

24          A     I will obtain from Michelle Rodriguez at  
25     that time whatever numbers they may have on the

1 history of the entities, including the fund and I  
2 would verify the numbers and also we use that in the  
3 PPM as a projection to see how the REIT, the  
4 history -- and the history of the existing operations  
5 of the owner and then use it to present in the REIT  
6 prospectus.

7 Q You mentioned that you gather numbers from  
8 other entities?

9 A Yes. From Ms. Michelle Rodriguez.

10 Q Okay. Which other entities are you  
11 referring to?

12 A She would use for fund 1, fund II, Fund III  
13 at times and EA SIP.

14 Q Okay. So the funds you're referring to as  
15 fund 1 is Equalt Fund, LLC?

16 A Yes.

17 Q Fund II is Equalt Fund II, LLC?

18 A Yes.

19 Q And then EA SIP, LLC?

20 A Yes.

21 Q Okay. Who was the person that hired you  
22 when you first were working as a consultant for the  
23 REIT?

24 A I don't remember her name, but she was one  
25 of the managers from Taylor White.



1           Q     And what about at the REIT? Was there a  
2     person that hired you from the REIT?

3           A     I was hired through Taylor White, but I did  
4     my interview with Brian Davison.

5           Q     And you mentioned that you became an  
6     employee and -- of which entity in 2019?

7           A     I became an employee of Equialt, LLC.

8           Q     And who offered you the position?

9           A     Brian Davison.

10          Q     And who is Brian Davison?

11          A     He is the CEO of Equialt, LLC.

12          Q     Did you interview with Brian Rybicki?

13          A     No, I did not.

14          Q     What is your title at Equialt, LLC again?

15          A     Accounting controller.

16          Q     Is there a CFO?

17          A     Not that I'm aware of.

18          Q     Has there ever been a CEO there?

19                 MR. HARAY: CEO or CFO?

20                 BY MR. ZAMORANO:

21          Q     CFO.

22          A     CFO? I believe Barry Rybicki has been CEO  
23     over some entities. I don't know if it's over  
24     Equialt, LLC directly.

25          Q     A CFO?

1 A CE -- CFO, yes.

2 Q Chief financial officer?

3 A Yes. I don't know if it's over the REIT or  
4 the QOZ, or over which entity.

5 Q Tell us a little bit about what your  
6 employment obligations and responsibilities are on an  
7 overall basis and also if you can tell us what you do  
8 on a day to day basis as well?

9 A I oversee the accounting operations of  
10 Equialt, LLC who is basically the manager of all the  
11 other related funds. It includes day-to-day  
12 conducting wire transfer transactions as needed for  
13 purchase of properties for reviewing income, rental  
14 revenue expenses and also expenses that go out in  
15 relation to the maintenance of these properties. I  
16 will also review and verify as necessary any payments  
17 that we need to make out to investors for  
18 distributions on a monthly or quarterly basis.

19 Q Are you also responsible for maintaining the  
20 QuickBooks for the funds?

21 A Yes. And maintaining, we have outside  
22 support that maintains what -- do -- if you mean in  
23 terms of making entries into QuickBooks?

24 Q Yes, ma'am.

25 A We have a team of five, including staff

1 accountants, bookkeeper and accounting interns that  
2 make entries into the QuickBooks.

3 **Q And do you supervise them?**

4 **A Yes.**

5 **Q And who are those persons?**

6 **A** Right now you have William Brown who is the  
7 staff accountant currently. We recently hired or  
8 promoted someone to an accounts payable position. Her  
9 name is Betsy Ferguson. We also have an accounting  
10 intern that started about two months ago by the name  
11 of Felix. I don't remember Felix last name and then  
12 we just hired another accounting intern, Megan. I  
13 can't remember her last name right now.

14 **Q You mentioned earlier in your testimony that**  
15 **part of your employment responsibilities include the**  
16 **distributions to investors in the funds, correct?**

17 **A Correct.**

18 **Q Can you tell us a little bit more about what**  
19 **you do with respect to that task or item?**

20 **A** So each month distributions are made out to  
21 investors based on the return of investment that's in  
22 their documents. I will get the files from Barry  
23 Rybicki and his team, they would outline in the Excel  
24 spreadsheet the amount that each investor should get,  
25 what their return should be. I would input the

1 information into QuickBooks if a check is needed to be  
2 cut to that investor or I will review and set up the  
3 direct deposit payments that should go out to the  
4 investors or even the wire that should go out to the  
5 IRA entities.

6 Q So you obtain that information from Barry  
7 Rybicki?

8 A His team.

9 Q His team?

10 A Yes.

11 Q And his team includes who?

12 A Sometimes it comes directly from -- what's  
13 her name -- Rebecca Wiebe. R-E-B-E-C-C-A, last name,  
14 W-I-E-B-E.

15 Q And what is her title or role?

16 A I do not know her title.

17 Q Okay. So this information is furnished to  
18 you in an Excel spreadsheet format?

19 A Yes.

20 Q On a monthly basis?

21 A Yes.

22 Q By Mr. Rybicki or one of his team members?

23 A Correct.

24 Q And based upon that information, you in turn  
25 cut checks to the investors for their monthly



1 interest?

2 A Yes.

3 MR. HARAY: I think she said there were  
4 sometimes other forms of payment.

5 A We cut checks or sent wires, or make ACH  
6 payments.

7 BY MR. ZAMORANO:

8 Q ACH payments, okay. Those are the three  
9 methods that you use to make payments to investors?

10 A Say it again.

11 Q Those are the three methods that you use to  
12 make payments?

13 A Yes. Only three methods that I can think  
14 about right now.

15 Q Okay. What is your present compensation?

16 A My present compensation, I believe it's  
17 132,000 per year.

18 Q Do you receive bonuses?

19 A I have not received a bonus to date.

20 Q Are you entitled to a bonus?

21 A It was not in my contract.

22 Q Okay. Do you have an employment contract?

23 A I do.

24 Q Okay. You mentioned a number of individuals  
25 that you supervise, are there any other persons that

1 report to you that you haven't already mentioned to  
2 us?

3 A No.

4 Q Who do you report to?

5 A I report to Brian Davison.

6 Q And what about to Mr. Rybicki? Do you  
7 report to him as well?

8 A No, I do not.

9 Q Tell us in your own words a little bit about  
10 what you know about the business of the funds, the  
11 investments objective and the business purposes of the  
12 funds the ones that we mentioned. Just for the  
13 record, when I refer to the term funds, I'm referring  
14 to Equalt Fund, LLC, Equalt Fund II, LLC, EA SIP,  
15 LLC, Equalt Qualified Opportunity Fund, LP, and  
16 Equalt Qualified Secured Income Portfolio Fund REIT,  
17 Inc. When I use the term funds, I'm referring to those  
18 entities collectively.

19 A Yeah.

20 MR. HARAY: Sorry. Are you asking whether  
21 she -- whether part of her duties requires knowing  
22 that or just what her impressions are?

23 MR. ZAMORANO: What her impressions are and  
24 what her knowledge is based upon her employment duties  
25 of the fund.

1           A     Can you repeat the entities because the  
2     functions are different.

3                     BY MR. ZAMORANO:

4           Q     Sure. The first one -- we can take each one  
5     individually if you'd like, but the first one is  
6     **Equalt Fund, LLC.**

7           A     Equalt Fund, LLC overall from the  
8     accounting side where it is, we get funds from the  
9     investors, which we record from the accounting side of  
10    things and those investment funds are in turn used to  
11    acquire properties. That fund purchase properties.  
12    Once the properties are purchased, depending on the  
13    state of the property, they may or may not be a rehab  
14    that is done to the property. If the rehab --

15                   MR. HARAY: I'm sorry. Can I just interject  
16    for a moment? 'Cause I think his question is to the  
17    extent you're aware of the purpose of the fund or the  
18    objective of the fund and it sounds like you're  
19    describing sort of the operations of the fund and  
20    those may not be the same things. So just want to  
21    clarify that she may not be answering the question  
22    that you've asked.

23           A     I know the accounting of the fund, like the  
24    accounting transactions I make in relation to the  
25    fund.

1 BY MR. ZAMORANO:

2 Q You know the accounting aspect of it?

3 A Yes.

4 Q Do you know what the business purpose of  
5 funds are?

6 A No, I do not.

7 Q Do you know what the objective -- investment  
8 objectives of the funds are?

9 A No. I haven't seen those funds agreement so  
10 to speak.

11 Q Okay. Tell me a little bit more about the  
12 operations from an accounting perspective that you  
13 were testifying about earlier?

14 A Okay. So the funds come in from the  
15 investors, basically those funds are used to purchase  
16 or acquire properties and also used to rehab those  
17 properties. Once those properties are rehab and  
18 operational, we rent those properties out, collect  
19 income, rent from tenants, and at the same time we  
20 also as a operation of the fund, we will have to pay  
21 out any maintenance expenses relating to the  
22 day-to-day operations of the fund.

23 Q And is that generally the case with respect  
24 to the remaining funds that I mentioned as well?

25 A Generally, yes.



1           **Q     How frequently do you interact with Brian**  
2 **Davison?**

3           A     It varies, but on average I'll say about  
4 three times a week.

5           **Q     What are his roles and responsibilities?**

6           MR. HARAY: Sorry. Just to be -- are you  
7 asking about professional interactions about business  
8 or just like how often they see each other in --

9           MR. ZAMORANO: No. Business.

10          MR. HARAY: -- the business facilities?

11          MR. ZAMORANO: Business.

12          MR. HARAY: Okay.

13          A     About three times per week.

14          BY MR. ZAMORANO:

15          **Q     Three times per week?**

16          A     Per week.

17          **Q     Do you meet on a weekly basis like a set**  
18 **time?**

19          A     Not a set time.

20          **Q     Just depending on your schedules?**

21          A     Yes. And what's happening. Yeah.

22          **Q     Based on your interaction with Mr. Davison,**  
23 **can you tell me what his roles and responsibilities**  
24 **are for Equialt, LLC?**

25          A     What his roles and responsibilities are?

1           **Q     What does he do?**

2           A     I don't know exactly what he does, but in  
3 terms of information he has requested from me, he has  
4 requested primarily reporting information for the  
5 entities and the funds; a high level management  
6 reports.

7           **Q     What are those high-level management reports**  
8 **that you're referring to?**

9           A     Operating reports, including income  
10 statements for properties, twelve month statement,  
11 balance sheet, cash flow statement, balance as a  
12 particular point in time.

13          **Q     And do you provide him those reports on a**  
14 **consistent basis or as requested?**

15          A     There's a weekly report -- a weekly activity  
16 report that I provide consistently.

17          **Q     And what does that weekly activity report**  
18 **consist of?**

19          A     It's basically reports to him or present to  
20 him all moneys that has come in and all moneys that  
21 has come out for the entities -- operating entities.

22          **Q     And how is that report generated? Through**  
23 **what sort of program or software?**

24          A     That one I have to sieve through the bank  
25 statements for those.

1 Q Okay.

2 A Or the bank transaction since the statements  
3 may not be available.

4 Q Does Mr. Rybicki receive these weekly  
5 activity reports as well?

6 A No, he does not.

7 MR. HARAY: You mean from here?

8 MR. ZAMORANO: From her.

9 A Not from me.

10 BY MR. ZAMORANO:

11 Q Do you know if Mr. Davison provides him  
12 those reports?

13 A If I know what?

14 Q Do you know whether Mr. Davison provides Mr.  
15 Rybicki the weekly activity reports that you just  
16 mentioned?

17 A I do not know.

18 Q Have you ever had any discussions with Mr.  
19 Rybicki about those reports?

20 A I have not.

21 Q Has he ever requested that you provide him  
22 the reporting that you mentioned earlier in your  
23 testimony?

24 A No, he has not. Not to me directly.

25 Q Do you know what Mr. Rybicki does at the

1 funds?

2 A I do not know his direct. I know it has to  
3 do with investments and that's all.

4 Q Investments or investors?

5 A Investors and their investments.

6 Q And what do you base that knowledge on?

7 A Based on e-mail communication to my staff  
8 that is responsible for that area primarily.

9 Q E-mail communications to your staff that's  
10 responsible for that area?

11 A Yes.

12 Q And who are those persons?

13 A It's William Brown.

14 Q Anybody else?

15 A William Brown primarily and myself is over  
16 that area.

17 Q And what does William Brown do exactly?

18 A Right now he's basically overseeing most of  
19 the investments. He reviews all the investment that  
20 comes, he enters it into QuickBooks. He's also  
21 responsible for issuing any return of principal, any  
22 principle request that may come in and also cutting  
23 any checks for any commission checks that we have to  
24 cut back based on investment we receive.

25 Q You mentioned commission checks, who is

1 responsible for cutting those checks?

2 A William Brown.

3 Q And who does he receive his instruction from  
4 with respect to the checks that he has to cut for  
5 commissions?

6 A They come from Barry Rybicki or someone on  
7 his team.

8 Q Are commissions that --

9 MR. HARAY: Can I just ask?

10 BY MR. HARAY:

11 Q Do you know that because you're on the same  
12 e-mails?

13 A I have access to the e-mails.

14 BY MR. ZAMORANO:

15 Q Do you know if the commissions that parties  
16 receive for selling securities of these fund are first  
17 paid to Barry Rybicki Support Services?

18 A They go to Barry Rybicki. Yeah, BR Support  
19 Services.

20 Q And do you know why that is?

21 A I do not.

22 Q And has that always been the case since you  
23 worked at the fund -- at Equialt?

24 A Since I've been there this year, yes.

25 MR. HARAY: I'm sorry. I didn't hear.



1           A     Since I've been employed there.

2                     MR. HARAY: Okay.

3           A     Since this year.

4                     MR. HARAY: Got it.

5                     BY MR. ZAMORANO:

6           Q     Do you have any information or knowledge  
7     about how Mr. Davison and Mr. Rybicki first met and  
8     first became involved in business dealings?

9           A     No, I do not.

10          Q     Do you know how long they've known each  
11     other?

12          A     No, I do not.

13          Q     Where does Mr. Davison work?

14          A     When I see him, he works out of our office  
15     the 2112 West Kennedy Boulevard, Tampa, Florida 33606.

16          Q     And does Mr. Rybicki have an office there?

17          A     No. He doesn't have an office at that  
18     location.

19          Q     Where does he work?

20          A     I don't know exactly, but I know the state.  
21     It's out of Arizona.

22          Q     Arizona. Have you ever participated in any  
23     joint conference calls with Mr. Rybicki and Mr.  
24     Davison concerning your employment responsibilities?

25          A     Not concern my responsibilities.

1           Q     Concerning what then that you can recall?

2           A     They have had conversation --

3                     MR. HARAY: I'm sorry. She didn't say that  
4 she had other calls.

5                     BY MR. ZAMORANO:

6           Q     Didn't you just say that you had a -- you  
7 had calls about other matters?

8           A     Yes. I've had about other matters.

9           Q     What are those other matters?

10          A     About the REIT. The REIT quarterly  
11 distribution requirement per the agreements.

12          Q     And what did you collectively discuss with  
13 respect to that item?

14          A     Year-end bonus that is supposed to be paid  
15 out to investors.

16          Q     Did you discuss the amount of the year-end  
17 bonus that was required to be paid?

18          A     Yes.

19          Q     Did you discuss what the source of the funds  
20 that were to be used to pay those bonuses?

21          A     No, I did not.

22          Q     As a general matter, who gives you  
23 instruction or direction with respect to your  
24 employment duties?

25          A     That will come from Brian Davison.



1           **Q**     Does he provide you that instruction and  
2     those directions primarily through e-mail or orally?

3           **A**     It varies. I don't get instructions often.  
4     My task is normally known up front, so I can't say.  
5     It just varies maybe one or two times.

6           **Q**     Okay. When you say your task is known up  
7     front, what -- can you expand on that a little bit?  
8     What do you mean by that?

9           **A**     No. Just an accounting controller or an  
10    accountant, there's an expectation of what your  
11    routine responsibilities would be.

12          **Q**     Okay.

13          **A**     Which is to close the books primarily.  
14                 BY MR. HARAY:

15          **Q**     You said close the books and then what?

16          **A**     Yeah. Say it again.

17          **Q**     Did you say something after close the books?

18          **A**     Close the books primarily.

19          **Q**     Primarily.

20          **A**     Yes.

21          **Q**     Got it.

22                 BY MR. ZAMORANO:

23          **Q**     Before you became employed at Equialt, LLC,  
24     who was responsible for accounting-related activities  
25     for the funds?

1           A     Accounting-related activities, meaning  
2     bookkeeping in this respect, would be Michelle  
3     Rodriguez Diaz.

4           Q     And I don't recall if I asked you if she's  
5     still employed.

6           A     Yes, you did. She is no longer employed  
7     there.

8           Q     And do you know where she is employed now?

9           A     I do not.

10          Q     Did you ever meet her?

11          A     Yes, I have.

12          Q     Do you keep in contact with her?

13          A     No, I have not.

14          Q     Do you know why she left?

15          A     I do not.

16          Q     If you have any questions --

17               MR. HARAY: Can I just have a moment?

18               BY MR. ZAMORANO:

19          Q     Is there something that you would like to  
20     add or clarify to your testimony?

21          A     So Michelle Rodriguez, she was doing the  
22     bookkeeping, but at the end of each year we would  
23     bring in or they would bring in an external accounting  
24     firm that would basically do the year-end close and  
25     the bank reconciliations.

1           Q     The year-end close and the bank  
2     reconciliations, correct?

3           A     Yeah.

4           Q     Okay. And who was that outside firm?

5           A     I believe it's Dearolf & Mereness.

6           Q     Do you have any idea how to spell that?

7           A     D-E-A-R-O-L-F and I think Mereness is  
8     spelled M-E-R-E-N-E-S-S.

9           Q     Does this accounting firm still have any  
10    involvement or participation in any aspect of the  
11    accounting for the funds?

12          A     I would say, yes. Through 2018 they did.

13          Q     Through 2018, okay.

14          A     The 2018 books.

15          Q     And their involvement and participation  
16    ended as of 2018; is that correct?

17          A     They are our tax accountant, so they're  
18    still responsible for the taxation of the funds and  
19    that involves getting the books, I guess, tax ready as  
20    well. So year-to-year they have been involved in that  
21    aspect.

22          Q     And is there a particular person who is in  
23    control of that account for the -- this accounting  
24    firm?

25          A     Mike -- I'm not sure how his last name is

1 spelt. Mike Zookmiller or something to that effect.

2 Q And where is this company located?

3 A Tampa, Florida.

4 Q So now who is doing the year-end close and  
5 bank reconciliation? You?

6 A For 2019 it would be me.

7 Q Okay. In your opinion, who has the ultimate  
8 approval over the funds bookkeeping or accounting  
9 processes?

10 A In keeping the accounting processes?

11 Q Or the accounting process, the process of  
12 accounting for funds book and records?

13 A I don't understand the question.

14 Q Let me ask the first part of it. Who is  
15 responsible for the funds bookkeeping?

16 A The funds bookkeeping in terms of getting  
17 information in the system?

18 Q Correct.

19 A That would be me and my team for 2019 and  
20 forward.

21 Q Who is involved in making decisions  
22 concerning how certain transaction should be accounted  
23 for in the funds books and records?

24 A That would be me for 2019 information and  
25 forward.

1           Q     And at the present time what accounting  
2     software program does the funds use to keep track of  
3     income, expenses and other daily transactions?

4           A     From our end we keep track of QuickBooks.  
5     I'm not sure if Mr. Rybicki's team use another  
6     software as well.

7           Q     Do you know if they've ever used any another  
8     software in the past?

9           A     I do not.

10          Q     And since you've been working with the  
11     funds, have the books always been maintained on  
12     QuickBooks?

13          A     For the funds, yes.

14          Q     And what about for Equalt, LLC?

15          A     Yes. The fund-related activity.

16          Q     And who are the persons that have access to  
17     the QuickBooks?

18          A     Right now we have five user access, which is  
19     just my accounting team.

20          Q     Does Mr. Davison or Mr. Rybicki have access  
21     to the QuickBooks?

22          A     They do not, but at the end of each year we  
23     have to send the QuickBooks file to the tax  
24     accountants and they will have access.

25          Q     Tell me a little bit of how that process



1     **works.**

2           A     So at the end of each year once they're  
3     ready to prepare the tax returns, we will send them an  
4     accountant's copy and a password, and they will go in  
5     and make any year-end adjustments that they feel fit  
6     to make.

7           Q     And the they that you're referring includes  
8     who?

9           A     Mike Zichmiller and his team, Tom -- Tom  
10    from Dearolf. I don't remember his last name.

11          Q     Okay.

12          A     At least for 2018.

13          Q     We've been going for about an hour, why  
14    don't we take a five-minute break so you can get some  
15    water and get started again?

16          A     Okay. Thank you.

17                     (A brief recess was taken.)

18           MR. ZAMORANO: We're back on the record at  
19    approximately 11:15.

20           BY MR. ZAMORANO:

21          Q     Ms. Stoddart, have you been involved in  
22    making any management or business decisions for  
23    Equialt, LLC or any of the funds?

24          A     Can you repeat that again?

25          Q     Sure. Have you had any involvement in



1 making business or management decisions for Equialt,  
2 LLC or for the funds?

3 A And then what do you mean by business and  
4 management?

5 Q A part from your responsibilities and duties  
6 as the accountant controller, have you made any  
7 strategic business decisions for -- relating to the  
8 operation of Equialt, LLC or for the funds?

9 A No, I have not.

10 Q Who are the persons that are responsible for  
11 making those decisions?

12 A As far as I know, it would be Brian Davison,  
13 my CEO.

14 Q Based on your involvement as the accountant  
15 controller, do you know whether there is a division of  
16 responsibilities at Equialt, LLC between Mr. Davison  
17 and Mr. Rybicki?

18 A And division of responsibilities, meaning  
19 what they are, each person?

20 Q What each person is responsible for doing at  
21 Equialt, LLC?

22 A No. I don't know that.

23 Q Do you know if Mr. Rybicki reports to Mr.  
24 Davison?

25 A I do not know.

1           Q     Do you know if they make joint decisions?

2           A     I don't know for certain.

3           Q     Are there yearly meetings where senior  
4 management at Equialt, LLC meet to discuss the  
5 business?

6           A     I don't know. I just started February, so I  
7 can't really say.

8           Q     Who is the person who is responsible for  
9 financial planning for the funds?

10          A     For the funds itself?

11          Q     Yes.

12          A     I'm not sure who does that. If it's Brian  
13 or Barry, I don't -- I'm not sure.

14          Q     I'm sorry. What was the last one?

15          A     If it's Brian or Barry, I'm not sure who it  
16 is.

17          Q     Okay. Who is responsible for the financial  
18 performance of the funds?

19          A     Performance?

20          Q     Correct. Profitability.

21          A     In terms of monitoring and tracking how the  
22 funds perform?

23          Q     Correct.

24          A     I don't know for certain.

25          Q     Do you have any involvement in the analysis

1 of the funds financial performance?

2 A In terms of the funds and the investments,  
3 no. I more oversee the operations of the properties  
4 and stuff.

5 Q Do you know who is responsible for analysis  
6 of funds financial performance?

7 A I can't say directly. I know we have a CIO.  
8 And that's chief investment officer. So I can't say  
9 for certain if he does that.

10 Q And who is that person?

11 A Tony Kelly.

12 Q And he is the chief investment officer?

13 A Yes. I think that's what it stands for,  
14 yes.

15 Q And in general, what does he do for Equialt,  
16 LLC to the extent that you know? I don't want you to  
17 speculate.

18 A Yeah. That I know of, he oversees the  
19 rehabs.

20 Q Who is responsible for overseeing the funds  
21 actual real estate investments?

22 A I'm not sure.

23 Q Okay. Do you happen to know how the funds  
24 real estate investments are titled?

25 A No.

1           **Q**     Do you know if the funds are still raising  
2     money from investors?

3           A     Yes.

4           **Q**     You do know?

5           A     Yes.

6           **Q**     And are they?

7           A     Yes, because I see it comes into the bank  
8     account.

9           **Q**     Okay. And the bank is which bank?

10          A     Bank of America.

11                   BY MR. HARAY:

12          **Q**     Is that the same for all funds?

13          A     Yes.

14          **Q**     Are there any that are closed?

15          A     I'm only aware of Bank of America currently.

16          **Q**     I'm saying are any of the funds not  
17     receiving investments at this point?

18          A     Fund 1 is receiving investment, fund II, EA  
19     SIP, QOZ and the REIT for 2019 at least.

20          **Q**     Do you know how much has been raised by the  
21     first fund, Equalt Fund, LLC?

22          A     You mean --

23          **Q**     In 2019.

24          A     I can't give you a number right now. Not  
25     off my head. Not off the top of my head.

1           Q     Okay. And would your answer be the same if I  
2     asked you about the other funds?

3           A     Yeah.

4           Q     Okay.

5           A     Yeah. I have to look at it.

6           Q     Have you had any discussions with Davison or  
7     Rybicki concerning the need of the funds to raise  
8     additional investor money?

9           A     No, I haven't.

10          Q     Have you had any type of conversation that's  
11     in anyway coed or related to that subject?

12          A     No, I have not.

13          Q     Do you know who Diane Dutton is?

14          A     No, I do not.

15          Q     Have you ever heard that name before?

16          A     No, I have not.

17          Q     Does Equalt, LLC or the funds have any  
18     board of directors or advisors that you know of?

19          A     Equalt, LLC or the REIT, or the QOZ? I  
20     have seen the REIT and the QOZ documents. That I can  
21     tell you that there is a board there. For the fund, I  
22     cannot say?

23          Q     Okay. So for the REIT and for the QOZ, yes,  
24     you believe they have a board of directors?

25          A     Yes.



1           **Q     And do you know who those persons are?**

2           A     Brian Davison and Barry Rybicki I know in  
3 particular. There may be more, but I can't recall.

4           **Q     Okay. Besides the accounting firm that you**  
5 **mentioned earlier, does Equialt, LLC engage any**  
6 **third-party business our financial consultants?**

7           A     Financial consultants outside of auditors or  
8 tax, not that I'm aware of.

9           **Q     Okay. During the course of your employment,**  
10 **have you had any contact with any prospective**  
11 **investors in the funds?**

12          A     Investors directly? No, I have not.

13          **Q     Either existing or persons who were desiring**  
14 **to invest in the funds?**

15          A     No, I have not.

16          **Q     Do you know who the persons are that are**  
17 **responsible for soliciting investors for the funds?**

18          A     Soliciting it? No, I do not.

19          **Q     Do you know who is responsible for**  
20 **communicating with existing investors in the funds?**

21          A     That would be Barry and his team.

22          **Q     Do you know a person name Andre Sears?**

23          A     Yes, I do.

24          **Q     Who is Andre Sears?**

25          A     I know he is -- he works in the capacity of



1 Barry so to speak, but he's over like -- he gets fund  
2 II investment so to speak; like the middleman between  
3 us and the investors. That's how I know to put it  
4 best.

5 **Q Middleman between the funds and the**  
6 **investors?**

7 A That's how I best know how to put it. We  
8 would get the request and he will notify us of any  
9 investors. Any commissions that need to be paid,  
10 those would come through Mr. Sears, yeah, for fund II.

11 **Q For fund II?**

12 A Yes, only.

13 **Q Only for fund II?**

14 A Yes.

15 **Q Not for any other funds that you know of?**

16 A I haven't seen it for the others.

17 **Q Do you have any interaction or communication**  
18 **with Mr. Sears?**

19 A By e-mail probably. Just by the  
20 communication where he makes the request and that's  
21 it.

22 **Q And what request would that be?**

23 A Just letting us know that an investor has  
24 made a deposit, what that date is and whatever  
25 commission is due.

1           Q     Okay. And he sends you that information  
2 directly; is that correct?

3           A     He sends it to our e-mail address that we  
4 have called Commission Equialt.

5           Q     Have you ever heard of a company called the  
6 Picasso Group?

7           A     No, I have not.

8           Q     Do you know if investors are provided  
9 account statements?

10          A     I do not know.

11          Q     Have you had any involvement with the  
12 marketing or promotion of the funds?

13          A     No, I have not.

14          Q     Who is responsible for marketing or  
15 promoting the funds to your knowledge?

16          A     I can't say for sure.

17          Q     Do you know how the fund solicit investors?

18          A     No, I do not.

19          Q     Have you had any involvement in drafting,  
20 reviewing, approving any sales or marketing materials  
21 provided to investors?

22          A     No, I have not.

23          Q     Have you seen any of those materials that  
24 have been provided to prospective investors?

25          A     And can you be specific about the marketing

1 materials?

2 Q Sure. Like a fax sheet or a brochure of any  
3 type?

4 A I've seen the PPM as I've been involved in  
5 it for the REIT.

6 Q Okay. Have you seen the PPMs for the other  
7 funds?

8 A I've looked at the one for the QOZ somewhat,  
9 yeah, but not for the funds. I'm not sure what it is.

10 Q Not for the other two?

11 A No. Just for the QOZ and the REIT I've seen  
12 that one.

13 Q Okay. And was there any particular purpose  
14 why you reviewed the PPMs for the REIT and for the QOZ  
15 and not for the other three remaining funds?

16 A When I came on board originally it was to  
17 help with the REIT and also those two entities are  
18 audited, so I have to pull that information to provide  
19 to the auditors.

20 Q Okay.

21 BY MR. HARAY:

22 Q When you say when you first came on board,  
23 are you referring to the period when you were hired  
24 under your own business?

25 A When I was hired by Taylor White as a

1 consultant.

2 Q Taylor White?

3 A Yes.

4 Q Okay.

5 BY MR. ZAMORANO:

6 Q We discussed briefly the commissions that  
7 are paid by the funds for the sale of its investments,  
8 now are you familiar with what the commission  
9 structure is?

10 A I am aware of the structure because we  
11 normally verify that the commission paid on the amount  
12 is correct. I can't remember the exact percentages  
13 right now since that task was delegated, but we  
14 normally have to verify that what is paid out matches  
15 what is invested.

16 Q And who is that task delegated to?

17 A It's delegated to William Brown.

18 Q Based on the interaction that you have had  
19 with respect to this issue, do you know what the  
20 percentages are that are paid for the sale of the  
21 funds investments?

22 A I know that it's a percentage of what the  
23 investment is. I cannot say to the exact number from  
24 memory.

25 Q Okay. Does it vary depending upon who is

1     **selling the investment?**

2           A     No, it does not.

3           **Q     Okay.**

4           A     Not that I'm aware of.

5           **Q     Have you had any involvement or**  
6     **communications with the persons who sell investments**  
7     **in the funds?**

8           A     No. I've only communicated with Barry and  
9     Andre Sears.

10          **Q     Do you know whether the funds pay a**  
11     **management fee to Equalt, LLC?**

12          A     Not that I'm aware of.

13          **Q     You're not aware of that?**

14          A     And when you say funds, you mean management  
15     fee? We do a asset management. If that's what you're  
16     referring to, that is done.

17          **Q     Yes.**

18          A     Yes.

19          **Q     What is that? Do each of the funds pay an**  
20     **asset management fee to Equalt, LLC?**

21          A     Yes.

22          **Q     Okay. Do you know what that monthly**  
23     **management fee is?**

24          A     It varies. If it's an asset management fee,  
25     property management fee, acquisition management fee,



1 if it's the resort, we have a verification that it has  
2 to be within the benchmark range, but I don't know it  
3 offhand. It's in a automatic spreadsheet or  
4 something.

5 Q Okay. You said -- can you go through those  
6 items?

7 A So there's an asset management fee.

8 Q That is paid by the funds to Equalt, LLC,  
9 correct?

10 A Yes.

11 Q But you don't know the amount?

12 A Not offhand. I know it's within the range  
13 of -- a certain range. There's also a property  
14 management fee.

15 Q Property management fee. Okay.

16 A And there's normally an acquisition and  
17 disposition fee and also a property management fee.  
18 And this is different from the funds and the QOZ, and  
19 the REIT.

20 Q It's different how? I'm sorry.

21 A The QOZ and the REIT. When you refer to  
22 funds, are you including the REIT and the QOZ as well?

23 Q Yes.

24 A Okay. So for the REIT it's different. The  
25 REIT it's per -- it's going to be ten percent. That



1 one I wouldn't speak to. It's ten percent if it's a  
2 single story house, but it may be different if it's  
3 multi property house. And that's basically on the  
4 rental income. So that's not a percentage of the  
5 funds invested itself. For the funds though, it's  
6 going to be what I mentioned before.

7 Q So for the funds that you're referring to  
8 are the --

9 A Equialt Fund 1, Equialt Fund II and EA SIP.

10 Q EA SIP?

11 A Yes.

12 Q Okay. So I just want to make sure that I  
13 got them all down correctly. Asset management fee?

14 A Asset management fee.

15 Q Property management fee?

16 A There's a property management fee.

17 Q Acquisition fee?

18 A Acquisition and disposition fee and there  
19 would also be a project or construction management  
20 fee.

21 Q And that's with respect to Equialt Fund,  
22 Equialt Fund II, and Equialt Fund III or EA SIP?

23 A Yes. EA SIP, Equialt Fund I and Equialt  
24 Fund II.

25 Q Okay. And there's a different structure

1 with respect to the REIT and QOZ; is that correct?

2 A Yeah. With the REIT or QOZ, the management  
3 fee at this time, the property management fee, that's  
4 the one I can recall. It will be 10 percent basically  
5 for single family homes. That's the property  
6 management fee. The asset management fee for those is  
7 a little more different as well. It's based on  
8 whatever is in the PPM or the contract agreement that  
9 we have, the operating agreement for those.

10 Q Okay. Do you know how Mr. Rybicki and Mr.  
11 Davison are compensated by Equialt, LLC?

12 A If I know how their compensation is  
13 determined?

14 Q And what their -- how it's determined and  
15 what it is?

16 A I don't know offhand what it is. I have  
17 access to ADP, but I do not know how the compensation  
18 is arrived at.

19 Q Okay. And you say you have access to ADP,  
20 what do you mean by that just so that the records is  
21 clear?

22 A Just means that I can go in there and what  
23 each person is -- each person salary is. And he's  
24 paid through staff payroll.

25 Q And --

1 BY MR. HARAY:

2 Q Is that a payroll service?

3 A Yes. ADP is a payroll service, yes.

4 BY MR. ZAMORANO:

5 Q ADP is a payroll service, correct?

6 A Yes.

7 Q And you have access to ADP?

8 A Yes.

9 Q And have you -- can you tell us what the  
10 yearly compensation that Mr. Rybicki and Mr. Davison  
11 receives based on your review of the ADP documents?

12 A Not from memory.

13 Q Okay.

14 A I know Brian is on it, but I don't recall if  
15 Barry is on it.

16 Q Okay. Have you had any participation in  
17 approving a particular investment by somebody looking  
18 to invest in the funds?

19 A No, I have not.

20 Q Who is involved in that process?

21 A I'm not sure. I normally get the documents  
22 already approved. It will come from Barry's team  
23 though.

24 Q From Barry's team?

25 A Yeah. He will send me the documents already

1 approved and stuff.

2 Q And the documents being the signed  
3 subscription agreement?

4 A Subscription agreement.

5 Q Accredited investor questionnaire?

6 A Yes.

7 Q Anything else that you can recall?

8 A I remember the subscription agreement as you  
9 said and questionnaire. I remember those two.

10 Q Okay. And if it's an investor that's  
11 investing in the debenture, who would you also receive  
12 the debenture?

13 A I don't recall seeing a debenture at this  
14 time.

15 Q Do you have any involvement in deciding how  
16 an investor's money is going to be used by the funds?

17 A No, I do not.

18 Q Who is responsible for that, if you know?

19 A I can't say for certain, but I only can  
20 assume that it's going to be Brian and the chief  
21 investment officer.

22 Q Okay. Have you had any involvement in  
23 deciding whether the funds will make monthly interest  
24 payments to investors in the funds?

25 A No, I have not.

1           **Q     Have you ever been involved in generating**  
2 **financial projections for the funds?**

3           A     Not for the investors.

4           **Q     Internal?**

5           A     Internal just in terms of maintenance and  
6 rental income cash flow projections.

7           **Q     Do you know whether investors have received**  
8 **financial projections for the funds?**

9           A     I do not know.

10          **Q     Do you know how the funds performed in 2018?**

11          A     2019?

12          **Q     '18.**

13          A     '18. When you say performance, do you mean  
14 like operations? Or do you mean the investments?

15          **Q     Financial performance meaning, are they**  
16 **making or losing money?**

17          A     We have the tax return based on whatever the  
18 adjustments make at the end of the year, but to speak  
19 to the numbers directly, I cannot. I'll have to refer  
20 to that or something.

21          **Q     You have to what? I'm sorry.**

22          A     I have to refer to those documents. I  
23 cannot say offhand.

24          **Q     What documents would you need to refer to?**

25          A     Just like their tax return or the income



1 statements and all that stuff for the funds. That  
2 would give us the performance.

3 **Q How about for 2019?**

4 A 2019? We are still behind trying to get  
5 caught up on our books, so I still would have to run  
6 like the income statements and the cash flow  
7 projections from out of QuickBooks.

8 **Q Okay. So what are the documents that you**  
9 **need to generate in order to determine whether the**  
10 **funds are being financially profitable?**

11 A We could run the income statements, the  
12 balance sheet or cash flow projection.

13 **Q Okay. And you're still working on that?**

14 A We have it updated somewhat, but we still  
15 going back and making 2019 adjustments.

16 **Q What are some of the adjustments that need**  
17 **to be made for 2019?**

18 A For 2019 we have reclassify transactions  
19 that may be misclassified. There are items that may  
20 come into the bank that haven't been identified and  
21 the time I would have to take to research to find out  
22 what it is. Some of it is due to the bookkeeper who  
23 is just entering the data; he's not sure what it is.

24 **Q But based on your access to the funds'**  
25 **financials, you can't tell me at the present time**



1    **whether the funds are generating or losing money?**

2           A    I'll have to look into QuickBooks. And know  
3    you say generating and losing, is it -- are you  
4    referring to the net income or the operating income?

5           **Q    Net income.**

6           A    I have to look on QuickBooks definitely.

7           **Q    What about historically? How have the funds**  
8    **performed historically over the last five years, if**  
9    **you know?**

10          A    I'll have to refer to QuickBooks. We have  
11   multiple funds, when I came in I just started focusing  
12   on 2019, but if I run it in QuickBooks, then it should  
13   be able to tell us what is there historically if the  
14   information is entered accurately.

15          **Q    Is there any reason to suspect that the**  
16   **information hasn't been entered into accurately?**

17          A    Well, yes. A bookkeeper basically was there  
18   for some period of time, the external accountants that  
19   came in as much as they could made entries based on  
20   the knowledge that they were provided. But from what  
21   I've seen, there have been information that they  
22   weren't sure what it was and it appears that they just  
23   basically classified it to the best of their 'cause  
24   the bookkeeper wasn't sure how to do it or had the  
25   information to provide them on what it really was.

1           **Q**     And for what period of time would that have  
2     occurred?

3           A     Right now I can't say how far it has gone  
4     back. From what I've just seen just glimpsing on some  
5     stuff from 2017 at least, I've seen things that have  
6     been misclassified.

7           **Q**     2017 backwards or --

8           A     From 2017 forward that I've seen, I've seen  
9     things that are misclassified.

10           BY MR. HARAY:

11           **Q**     Is forward towards the current?

12           A     Towards the current year.

13           BY MR. ZAMORANO:

14           **Q**     And what's -- can you give me some examples  
15     of things that have been misclassified?

16           A     A lot of things have been placed in repairs  
17     and maintenance that were actually rehab cost that  
18     should have been capitalized.

19           **Q**     Anything else that sticks out in your mind?

20           A     Funds deposits may have come in that are  
21     investors funds that have been placed otherwise.  
22     There may have been placed in Ask My Accountant, they  
23     may have been placed in a loan. It's just being  
24     uncertain what it was at the time.

25           **Q**     Since you became the accountant controller

1 for Equialt, LLC, have you discovered any  
2 irregularities in the accounting for the funds?

3 A Besides the things that are misclassified?

4 Q Right?

5 A I haven't.

6 Q Okay. Do you happen to know what the  
7 current value of the assets held by Equialt Fund, LLC  
8 is?

9 A No, I don't. We track it cost in  
10 QuickBooks, so we don't reflect the value.

11 Q So how is it accounted for? Just by cost?

12 A By cost of the asset or purchase cost.

13 Q And is that true for the remaining funds as  
14 well?

15 A Yes.

16 Q To your knowledge, have the assets ever been  
17 valued by an independent third party?

18 A For the REIT and the QOZ, as a part of the  
19 audit procedures we had to get a third party valuator.  
20 So in that respect, we have documents on that  
21 valuation. Just for those two entities I can speak  
22 to.

23 Q Okay. And with respect to those two  
24 entities, who did the valuation?

25 A I don't remember their name right now.

1           Q     And for the other funds, you are not aware  
2     of any independent third party having performed an  
3     evaluation of the assets that are held by the funds?

4           A     Not that I am aware of.

5           Q     What about internally? Has anybody  
6     attempted to value the assets internally has opposed  
7     to just simply the valuation based upon the cost or  
8     the acquisition?

9           A     We have a software that uses -- I guess  
10    Appfolio. No. That does the rent.

11          Q     What's it called?

12          A     No. There's a Appfolio software that we  
13    use.

14          Q     Appfolio?

15          A     Yes. But that's more in terms of the market  
16    rent. I'm just thinking out loud. I'm sorry.

17          Q     That's okay.

18          A     In our QuickBooks in our vendor section the  
19    most I can speak to is, that I've have seen vendors  
20    with the name valuation behind it, so I just can only  
21    assume that they are the ones that we use for  
22    whatever. But my accounts payable person can probably  
23    speak to that more.

24                   MR. HARAY: May I ask?

25                   BY MR. HARAY:



Page 73

1           Q     Is -- the question of valuation of the  
2     property is for the fund -- the other funds, not the  
3     QOZ or the REIT, is that something that's part of your  
4     responsibilities?

5           A     No. We just pay the bills from our section.

6                 MR. ZAMORANO: Why don't we take a  
7     five-minute break and we'll decide on lunch?

8                 MR. HARAY: I was going to ask you, just for  
9     mental planning, do you know when you want to break  
10    for lunch?

11                MR. ZAMORANO: Yeah. We can -- why don't we  
12    break for lunch now? How long do you guys think? Off  
13    the record.

14                (Whereupon, a luncheon recess was taken.)

15                A F T E R N O O N   S E S S I O N

16                MR. ZAMORANO: We're back on the record at  
17    10 till 1.

18                BY MR. DEE:

19                Q     Good afternoon, Ms. Stoddart.

20                A     Good afternoon.

21                Q     My name is Mark Dee just in case you forgot.  
22    Hope lunch was well.

23                I just want to go back to your website, CPA  
24    Stoddart.

25                A     Mmm-hmm.

1           Q     You have a designation on that website for  
2     QuickBooks ProAdvisors, is it still active?

3           A     I think I need to renew that. Now I'm  
4     actually doing -- you have to keep renewing it, so I'm  
5     actually doing the test right now for that.

6           Q     Okay. And we'll mark this as Exhibit No. 3,  
7     Bates number Equalt00003202.

8                     (SEC Exhibit No. 3 was marked for  
9                     identification.)

10          A     Thank you.

11                     BY MR. DEE:

12          Q     Is this the type of report you would create  
13     for Mr. Davison?

14          A     No.

15          Q     Do you know who created this report?

16          A     No, I do not.

17          Q     Have you ever heard this report referred to  
18     as the Google spreadsheet?

19          A     No, I have not.

20          Q     From looking at it, does it give you any  
21     idea of what it is?

22          A     It just looks like a pro forma report from  
23     just the heading.

24          Q     Okay. But you have no idea who created that  
25     report?



1 A No, I do not.

2 BY MR. HARAY:

3 Q You said pro forma report?

4 A Yes. It has it at the top.

5 BY MR. DEE:

6 Q Would you mark that as Exhibit 4.

7 (SEC Exhibit No. 4 was marked for  
8 identification.)

9 BY MR. DEE:

10 Q What you're being handed is Exhibit 4. This  
11 originated from Bates number Equalt00004473. The tab  
12 on the spreadsheet for this was the Equalt fund  
13 property list.

14 Have you ever seen this before?

15 A No, I have not.

16 MR. HARAY: Do you mean has she ever seen a  
17 printed version like this? Or does she recognize it  
18 from anything? I mean this is a big printout of  
19 paper.

20 BY MR. DEE:

21 Q Have you ever reviewed spreadsheets of the  
22 residences that are allegedly owned by Equalt?

23 A The spreadsheets of the -- yes.

24 Q Okay.

25 A I've looked at those, yeah.

1           Q     All right. Within those spreadsheets, have  
2     you ever reviewed or examined, or updated any  
3     spreadsheet of that nature?

4           A     No, I have not.

5           Q     Okay. You have nothing to do with the  
6     assets of the portfolios, if you want to call them  
7     that?

8           A     I enter the purchases of the assets.

9           Q     Just in -- I'm sorry. Go ahead.

10          A     Yeah. In QuickBooks, but just based on this  
11     information on the sheet, I do not update the sheet --  
12     these sheets.

13          Q     Do you know who does?

14          A     Someone in property management or in that  
15     department that I'm aware of.

16          Q     Are you aware of anybody in property  
17     management that we could contact so we can get an  
18     explanation?

19          A     I would start with the chief investment  
20     officer Tony Kelly. He would be more familiar.

21          Q     Okay. Would you mark this as Exhibit 5.

22                     (SEC Exhibit No. 5 was marked for  
23                     identification.)

24                     BY MR. DEE:

25          Q     Are you familiar with the statement cash

1 flows?

2 A Yes, I am.

3 Q All right. This is for Equialt Fund, LLC  
4 fund 1 as it's been called?

5 A Yes.

6 Q All right. In layman's terms, can you tell  
7 us what the statement of cash flow is?

8 A The statement of cash flow basically  
9 summarize the money that goes in and out of the  
10 company in three main categories; in your operating,  
11 investing and also financing. So it tells you the  
12 amount of money that is spent on financing activities,  
13 investing activities, operating activities.

14 Q Okay. This particular fund, has it ever  
15 been audited?

16 A Not that I'm aware of.

17 Q And the QuickBooks that were produced to the  
18 SEC that helped me create this report, were there any  
19 changes prior to sending it to us, like in  
20 reclassifying assets, liabilities, expenses, revenue?

21 MR. HARAY: Since when? Sorry.

22 BY MR. DEE:

23 Q Prior to producing it to the SEC, were there  
24 any changes to or mis- -- reclassifications to assets,  
25 liabilities, equity, revenues or expenses?

1           MR. HARAY: I'm sorry. Are you asking from  
2 the day you asked for it or from the date it was  
3 generated?

4           MR. DEE: The day we asked for it.

5           MR. HARAY: Okay.

6           A     Daily or weekly we normally reviewing the  
7 books to reclassify, so it's possible. 'Cause we're  
8 constantly reviewing and reclassify transactions.

9           BY MR. DEE:

10          **Q     Anything significant?**

11          A     Repairs and maintenance as I mentioned  
12 before. A lot of the stuff in repairs should have  
13 been capitalized because it was rehab expenses. Some  
14 clean up. We have found that items that were actually  
15 deposits were probably be an expense or something like  
16 that. Investor funds may have been put as ask my  
17 accountant or something else, and then we had to  
18 reclassify in those cases.

19          **Q     Anything that you would call material?**

20          A     I think the repairs on maintenance  
21 accumulated would have been that. Materially, I know  
22 that we had to reclassify construction in progress,  
23 works that were done, and we had to move those to  
24 fixed assets, but would still fall in the balance  
25 sheet, yeah.

1           Q     Okay. Let's take a look at net income.  
2     There was a discussion earlier with respect to  
3     performance. This particular report is all  
4     transactions?

5           A     Yes.

6           Q     And so you understand what all transactions  
7     are?

8           A     So is it from inception?

9           Q     Yes, ma'am.

10          A     Okay.

11          Q     All right. You can see what net income or  
12     net loss was since the inception?

13          A     Yes.

14          Q     Would you read that number for me?

15          A     I think it's 2.7 million.

16          Q     Is it 27 million?

17          A     I'm counting the zeros. Yes, 27 million.

18          Q     Okay. Mr. --

19                 BY MR. HARAY:

20          Q     Which number is 27 million?

21          A     At the top here, net income.

22                 BY MR. DEE:

23          Q     Net income, net loss.

24                 You were asked by Mr. Zamorano earlier about  
25     performance.



1           A     Mmm-hmm.

2           **Q     If you could have an opinion or if you had**  
3 **an opinion on the performance of the fund?**

4           A     Yes.

5           **Q     What would be your opinion of this fund with**  
6 **a net loss of \$27 million since inception?**

7           A     Just --

8                     MR. HARAY: She said -- sorry. I think her  
9 answer before was that she did not have an opinion or  
10 have knowledge about financial performance of the  
11 funds.

12                    MR. DEE: But she said she -- if she had the  
13 net income or she had the documents from QuickBooks  
14 she could.

15                    BY MR. DEE:

16           **Q     Is that correct?**

17           A     Mmm-hmm. Yes.

18                    MR. HARAY: She didn't say she would have an  
19 opinion. She said there could be some information in  
20 those reports.

21                    BY MR. DEE:

22           **Q     Can you make any opinion based on the net**  
23 **loss of \$27 million?**

24           A     It's hard because first of all -- what date  
25 exactly? I'm not sure that we gave you the QuickBooks

1 file as at, but these are saying through November 5.  
2 I know personally that the books have not been  
3 finalized through November 5 just in terms of  
4 reviewing, doing the background and so on.

5 I can speak definitely for 2019, but based  
6 on what's here, it's showing that net income is at 27  
7 million and net income in general would show that it's  
8 a loss. Basically the company is operating as a loss  
9 just based on what's on this report.

10 Q Okay. Let's go and take a look at revenue  
11 and expenses to see how this net loss was developed.

12 Would you mark this Exhibit 6.

13 (SEC Exhibit No. 6 was marked for  
14 identification.)

15 BY MR. DEE:

16 Q Do you see Exhibit 6 in front of you?

17 A Exhibit 6, yes.

18 Q What is Exhibit 6?

19 A Exhibit 6?

20 MR. HARAY: Sorry. Is this 6 that you put  
21 here?

22 A It says profit and loss.

23 BY MR. DEE:

24 Q All transactions?

25 A If it's all transactions?

1           Q     Do you see the two words all transactions  
2 underneath profit and loss?

3           A     Yes. Profit and loss all transactions.

4           Q     All right. And same as before, all  
5 transactions being from inception?

6           A     Yes.

7           Q     All right. Total rental income, could you  
8 tell me what that number is?

9           A     9.2 million.

10          Q     Take a look at Resort income other?

11          A     Yes. 2.3 million.

12          Q     Okay. What's the total income from  
13 inception?

14          A     It has 11.9 million.

15          Q     Let's go to page 21 of the exhibit. What's  
16 total other income?

17          A     Page 21, 16,000.

18          Q     Okay. And that's derived from those  
19 categories above it, correct?

20          A     Per this sheet, yes.

21          Q     Okay. From 11.9 and you add 16,000, can we  
22 deduce that this fund generated \$12 million in revenue  
23 from the inception until the day that this was given  
24 to us?

25          A     It's kind of hard for me to deduce. Just

1 looking at I'm seeing there's a loss on notes  
2 receivable of \$403,000 that is reflected on the other  
3 income. I guess all of these things is -- just having  
4 me being curious about where these numbers will come  
5 from. But just based on this report, that's what it's  
6 showing. But a lot of these are still pending review.

7 Q A lot of these are pending review starting  
8 when? When did the review start?

9 A Like I have started from 2017.

10 Q Let me rephrase it.  
11 When did you start reviewing the QuickBooks?

12 A I came here, I started February 2019, yes.

13 Q Okay. And that's when you started?

14 A Yes.

15 Q And do you know if there were any reviews  
16 done prior to your employment?

17 A Based on the year-end adjustments that  
18 Dearolf & Mereness have made, I know that they  
19 attempted to start the review, but when they finish  
20 the tax return at the end of the year, they ask us to  
21 revisit some of the transactions that they were  
22 uncertain about.

23 Q Okay. So from 2011 until your appointment  
24 with Equialt, the fund stayed as it was and ran it was  
25 and the results were as it were?

1           A     Yeah.

2           MR. HARAY: Can you rephrase that? I don't  
3 understood the question.

4           MR. DEE: She understood it. She said, yes.  
5 She responded.

6           MR. HARAY: No. No. No. No. 'Cause we  
7 have to understand the question.

8           MR. DEE: What didn't you understand, sir?

9           MR. HARAY: Maybe she can read it back.

10          A     If the funds ran --

11          MR. HARAY: Not you. Sorry.

12          A     Sorry. Okay. Go ahead.

13                (The last question was read back by the  
14 court reporter.)

15          MR. HARAY: What is that -- any of that  
16 referring to?

17          MR. DEE: Refer --

18          MR. HARAY: She said before she got to  
19 there.

20          MR. DEE: Before she was -- before she  
21 did --

22          MR. HARAY: The fund ran as it ran. I just  
23 don't understand the question.

24          MR. ZAMORANO: Both of you can't talk over  
25 each other for her.



1           So what's your question?

2           MR. HARAY: He's saying for the period of  
3 time before Ms. Stoddart was there, so before she  
4 would have any firsthand information, he's asking her  
5 if the fund ran as it ran, which just seems like a  
6 circular question. I don't understand what he's  
7 asking.

8           BY MR. DEE:

9           Q     **From 2011 from inception --**

10          MR. HARAY: Right.

11          BY MR. DEE:

12          Q     **-- until you were hired, Mr. -- Ms.**  
13 **Stoddart, these funds were reported as they were**  
14 **without any changes.**

15          MR. HARAY: How would she know that?

16          MR. DEE: Well, when she came in she took a  
17 look at the books and she started her review.

18          MR. HARAY: Okay. Maybe ask her the  
19 question then.

20          BY MR. DEE:

21          Q     **All right. When you were hired and you**  
22 **looked at the fund, this fund in particular, and you**  
23 **had any questions, did you ask anybody how this was**  
24 **performing or how the results came about?**

25          A     The results or --

1           Q     Of the fund.

2           A     Or any particular transactions, did I ask  
3 about it?

4           Q     Well, right now I'm just -- we're just  
5 talking about revenue.

6           A     Yes.

7           Q     That's all we're talking about.

8                     When the revenue came in, did you have any  
9 questions about it?

10          A     No, because once I came in I started  
11 focusing on 2019 primarily. We start going back to  
12 make a few reviews in 2018, prior years, but my focus  
13 has primarily been on 2019 and the REIT and the QOZ.

14          Q     Did Mr. David who you report tell you that  
15 there was anything wrong with the books and records?

16          A     He suggested that he may not be as accurate.

17          Q     And how did he suggests that?

18          A     Dearolf & Mereness when they reviewed it,  
19 they made that implication.

20          Q     Did Dearolf & Mereness provide any  
21 documentation that said that the books and records may  
22 be inaccurate?

23          A     Looking at the historical transactions, I  
24 saw where they had to make numerous year-end  
25 adjustments.

1           Q     Okay. You testified before that that's what  
2     Dearolf & Mereness did, they made year-end  
3     adjustments.

4           A     Yes.

5           Q     Were those year-end adjustments for  
6     corrections or were they for preparing the books for  
7     the next year and the taxes that they were going to  
8     prepare?

9           A     It sounds like a dual thing to me, the same  
10    thing. 'Cause to get the taxes prepared, they had to  
11    do some year-end adjustments as well.

12          Q     Okay. Since they do the taxes, they make the  
13    year-end adjustments?

14          A     Yes. And I believe they were also engaged  
15    to do accounting review as well.

16          Q     But they filed the taxes based on those  
17    records.

18               MR. HARAY: Well --

19               BY MR. DEE:

20          Q     They filed the taxes based on --

21               MR. HARAY: I don't know you've establish  
22    any basis for her to know what they did before she  
23    arrived there.

24               BY MR. DEE:

25          Q     Did you review the tax records when you were

1     **hired?**

2           A     I looked on 2018 somewhat, but not in  
3     detail.

4           Q     Okay. And what did -- what records were  
5     used to produce the 2018 tax records?

6           A     They were provided with the QuickBooks  
7     files.

8           Q     And those QuickBooks file -- QuickBooks  
9     files, were they the files that were used to not only  
10    prepare the taxes, but used to determine what the  
11    revenue was?

12          A     The file that they provided at the time,  
13    yes.

14          Q     Okay. Now, can we say that the fund  
15    generated \$12 million in revenue from inception?

16                MR. HARAY: Can you clarify what you mean by  
17    can we say? I mean --

18                BY MR. DEE:

19          Q     Can we agree that Equalt Fund -- Equalt  
20    Fund, LLC generated \$12 million in revenue from  
21    inception?

22                MR. HARAY: Are you asking if this document  
23    reflects that?

24                BY MR. DEE:

25          Q     Does this document reflect that Equalt

1 Fund, LLC generated \$12 million in revenue?

2 A It reflects it, yes. It does reflect \$12  
3 million in -- yeah, since inception, but not inception  
4 through November 5, 2019 I cannot say.

5 Q I'll accept that.

6 A Yeah.

7 Q Let's look just slightly above that to total  
8 gain/loss on property sale. We'll start looking at  
9 expense and losses, okay?

10 According to the document --

11 A On what page you're seeing gain and loss?

12 Q 21.

13 A Okay.

14 Q We're just above interest income, loss on  
15 notes receivable. It shows for total gain and loss on  
16 property sales \$31,423.48. Is that what the document  
17 says?

18 A \$31,423.48, yes.

19 Q That's a loss, is it not?

20 A Yes, it is.

21 Q Thank you.

22 MR. HARAY: A loss compared to what?

23 MR. DEE: It's a loss on a gain and sale of  
24 properties?

25 MR. HARAY: Is that the question?



1 MR. DEE: Yes, that's what -- that was the  
2 question.

3 BY MR. DEE:

4 Q And, Ms. Stoddart, you understood me didn't  
5 you?

6 A Mmm-hmm.

7 Q Okay. You said Mmm-hmm, but make sure that  
8 the court reporter picks that up.

9 MR. HARAY: Do you mind if I ask just to  
10 make it more complete whether this document reflects  
11 the value of the real estate holdings?

12 A Oh. This one, it doesn't reflect the value.  
13 The gain or loss is reported based on the cost and  
14 includes appreciation and all other adjustments. So  
15 in QuickBooks we only report the cost of the asset,  
16 not at the fair market value.

17 Q Correct. I wasn't looking for market value.  
18 Let's go to page 20.

19 A What page?

20 Q Page 20 of the same exhibit.

21 According to this document, total management  
22 fees taken or total management fees paid was  
23 \$5,654,570.19; is that correct?

24 A Yes, by this document.

25 Q Page 22 of the same document, the same

1 exhibit. Based on that document, can you tell me what  
2 the amount of discount fees were taken?

3 A Discount fee on the document is 1.1 million.

4 Q Due diligence?

5 A Due diligence is 835,000.

6 Q And total other expenses?

7 A 4.6 million.

8 Q Based on this document?

9 A Yes.

10 Q All right. One more and it's asset  
11 management fees and it's on page 21. Could you read  
12 what was taken for asset management fees?

13 A Page 21?

14 Q Yes, ma'am, of the same exhibit.

15 A Total asset management fees 2.7 million.

16 Q Would you go to page 19 of the exhibit,  
17 please. Do you see down near the bottom where it says  
18 total interest expense?

19 A Yes.

20 Q And that number is?

21 A 6.1 million.

22 Q And what is the total interest expense?

23 A It's the distributions made to the  
24 investors.

25 Q And has any of part of this been

1     **capitalized?**

2             A     Yes. The 14.9 million interest expense  
3     other adjustment is moving it to the balance sheet.

4             **Q     Is the 6.1 million the interest that was**  
5     **paid this year?**

6             A     I cannot be certain.

7             MR. HARAY: I think you might have said 16.1  
8     million instead of 6.1 million just to confirm.

9             MR. DEE: Did I say 6.1 or 16?

10            (The last question was read back by the  
11     court reporter.)

12            BY MR. DEE:

13            **Q     Let me just ask a few questions in reference**  
14     **to the interest expense.**

15            A     Mmm-hmm.

16            **Q     Does the 6.1 million represent monthly**  
17     **interest payments to investors?**

18            A     I cannot say 'cause this is from inception.  
19     I'm not sure what period it covers.

20            **Q     Does it -- well, let me reword it.**  
21                    **Do you pay monthly interest to investors?**

22            A     Yes.

23            **Q     Do you pay quarterly interest to investors?**

24            A     Yes.

25            **Q     Do you have growth investors?**

1 A Yes.

2 Q Is it true that 25 percent of your investors  
3 are growth investors?

4 A I do not know.

5 Q Never done that analysis?

6 A No.

7 Q Do you have any knowledge or have you done  
8 any analysis of how many notes are due in the first  
9 third of this upcoming year in 2020?

10 A No, I have not.

11 Q Can you go to page 3 of the same exhibit.  
12 If you look right under -- are you there yet?

13 A Yes.

14 Q Okay. If you look right under tax  
15 preparation fees you'll see another asset management  
16 fee. Do you see that?

17 A Page 3. On page 3?

18 Q Yes.

19 MR. HARAY: Which one is it? This one?

20 MR. DEE: This one.

21 A Yes.

22 BY MR. DEE:

23 Q Okay. There's another asset management fee  
24 there 84,000, is that misclassified?

25 A I cannot tell without looking for it in the

1 detail description.

2 Q Okay. Let's go to commissions which is at  
3 the bottom of page 3.

4 A Yes.

5 Q Could you tell me what the amount is?

6 A \$523,500.

7 Q And this commission represents what? Can  
8 you tell me what that represents?

9 A It's hard to say the period and the date  
10 without seeing the details, but generally the  
11 commissions is the percentage that we pay on the  
12 investment.

13 Q These are payments for what the sales agents  
14 collect?

15 A I'm not sure the third party, but we  
16 normally make these payments to either MA Sears or BR  
17 Support Services.

18 MR. HARAY: Finish with this?

19 MR. DEE: Yes, but I would hang on it.

20 BY MR. DEE:

21 Q Would you mark this as the next exhibit.

22 (SEC Exhibit No. 7 was marked for  
23 identification.)

24 BY MR. DEE:

25 Q Would you take a look at Exhibit 7.



1                   When you had mentioned BR Support Services  
2   and we had just talked about commission, is this what  
3   you were referring to?

4           A     Yes.

5           Q     And the commission expense is capitalized?

6           A     Yes.

7           Q     Would you go to page 3 and tell me what that  
8   total number is.

9           A     Total 15.5 million.

10          Q     All right. Let's go to assets. Go back to  
11   the statement, the cash flows.

12          A     You have the exhibit number?

13          Q     I believe it was --

14                   MR. HARAY: It was 6. Oh. 5.

15                   BY MR. DEE:

16          Q     Do you see any note receivables on there?

17          A     Yes.

18          Q     Okay. Do you see one for McDonald Revocable  
19   Trust? It's probably abbreviated.

20          A     Yes.

21          Q     Would you mark that as an exhibit?

22                                (SEC Exhibit No. 8 was marked for  
23                                identification.)

24                   MR. HARAY: 8?

25                   MR. DEE: Yes.

1 BY MR. DEE:

2 Q This is kind of a side exhibit to the  
3 statement of cash flows?

4 A Yes.

5 Q That's the detail on this note receivable?

6 A Yes.

7 Q Do you know what it means to reclass  
8 investment accounts with no initial investment under  
9 memo?

10 A That first line was meant by Dearolf, so  
11 it's hard for me to speak to why they made that  
12 adjustment.

13 Q Dearolf is?

14 A Dearolf & Mereness. They were the tax  
15 accountants that were also doing the year-end  
16 adjustments.

17 Q Okay. So he -- he is the person I need to  
18 talk to?

19 MR. HARAY: Sorry. She didn't say Darrell.  
20 She said Dearolf.

21 BY MR. DEE:

22 Q Dearolf?

23 A Yes. Dearolf & Mereness.

24 Q Is it Dearolf?

25 A Yes, Dearolf.

Page 97

1 Q Do you see distributions on that statement  
2 of cash flows?

3 I'm going to go off the record for 5  
4 minutes. The time is 1:27.

5 MR. DEE: Okay. We're back on the record.

6 BY MR. DEE:

7 Q The last thing we looked at was distribution  
8 where you saw -- I gave you an exhibit.

9 MR. HARAY: I believe asked her about  
10 distributions.

11 Q Did you get that Exhibit?

12 MR. HARAY: We're at 5. 5 is in front of  
13 her I should say.

14 BY MR. DEE:

15 Q All right. Let's go to page 18, the  
16 distributions that are there. The document reflects  
17 that 7.6 -- or I'm sorry -- 7.9, almost 8 million in  
18 distributions were made; is that correct?

19 A Per the document, yes.

20 Q Next thing I want to look at is properties.  
21 I think I remember you testified that that's what you  
22 record, the transactions and the acquisition of  
23 properties; is that correct?

24 A Under properties? Under --

25 Q Do you record the payments and the

1 acquisitions of properties?

2 A Yes.

3 Q Okay.

4 A From 2019 and forward.

5 Q All right. Page 1 of Exhibit 5, do you see  
6 where it says depreciable assets, real property?

7 A Yes.

8 Q Okay. And it's almost 20 million. It's  
9 actually 19.8 million.

10 A Yes.

11 Q All right. I have a little more detail of  
12 that. Would you mark that as an exhibit?

13 (SEC Exhibit No. 9 was marked for  
14 identification.)

15 BY MR. DEE:

16 Q Let me show you Exhibit 9. Exhibit 9 are --  
17 is depreciable assets, real property.

18 When you -- is this what you would do, you  
19 would record these properties when they're bought and  
20 the payments for them for the year 2019?

21 A Yes. I wouldn't necessarily put it all in  
22 one category here, depreciable assets, but I will  
23 record them on the balance sheet or fix asset account.

24 Q And page 6 of 6 under number, the column.  
25 Is your designation DAS?

1 A Yes, it is.

2 Q Okay. So for every designation, the DAS,  
3 you recorded the sale or purchase of properties?

4 A Sale purchase or reclassification.

5 Q And the total amount of real property owned  
6 by fund 1 is 19.8 million?

7 A Under this real property account.

8 Q Would there be any other account that  
9 property be recorded?

10 A When the property is just purchased,  
11 sometime it originally gets recorded to the property  
12 investments account then get allocated and also it may  
13 get allocated to land as well, it would also include  
14 cost of the property.

15 Q In Exhibit 5 you referred to land, that  
16 would be almost \$6 million according to the document  
17 on page 1?

18 A According to the document.

19 MR. HARAY: Which document? I'm sorry.

20 MR. DEE: Exhibit 5.

21 MR. HARAY: Do you want her to look at it?

22 MR. DEE: Yes.

23 MR. HARAY: You have to look at it before  
24 you can answer.

25 A Okay.



1 BY MR. DEE:

2 Q Construction in progress on the same page,  
3 this fund has paid three and a half million dollars  
4 according to this document?

5 A According to the document.

6 Q Leasehold improvements 4.8 million according  
7 to this document?

8 A And also the additional amounts allocated  
9 identifying property names like 1334 Kettle Avenue and  
10 so on.

11 Q Property investments?

12 A Property investments or properties purchased  
13 should be the account where properties are purchased,  
14 but not yet allocated out to the fixed asset.

15 Q I'm sorry. And you had made reference to  
16 that earlier. If it wasn't in real property, it could  
17 be recorded there?

18 A Say that again?

19 Q You had testified earlier, I believe,  
20 that -- when we were talking about real property, if  
21 real -- if it wasn't recorded under real property, it  
22 could be recorded under property investment?

23 A Yes, it could.

24 Q Can you turn to page 2 Exhibit 5.

25 Do you see on the third line there it says

1 "Loan, 5123 Broadway"?

2 A Yes, I do.

3 Q Are you familiar with that transaction or  
4 transactions?

5 A Yes, I am.

6 Q What can you tell me about that?

7 A It's a loan made to another entity, 5123  
8 Broadway.

9 Q And who is 5123 Broadway?

10 A It's another entity. I don't remember the  
11 main name of it, but that's the address of that  
12 particular entity that the loan was issued to.

13 Q And that is an investment for fund 1?

14 A Yes, an investment that fund 1 or loan they  
15 issue.

16 (Court reporter clarification.)

17 A An investment that they made or a loan did  
18 basically issue to 5123 Broadway.

19 Q I'm going to show you some detail of that.  
20 Would you mark that as an exhibit for me, please.

21 (SEC Exhibit No. 10 was marked for  
22 identification.)

23 BY MR. DEE:

24 Q Would you look at Exhibit 10. This is the  
25 loan, the 5123 Broadway. I wonder if you could

1 explain if this was -- or how the management companies  
2 involved Equialt, LLC or why their name is entered for  
3 April 22nd, 2019?

4 A Yeah. I think this is one that we found  
5 recently where Equialt, LLC I believe sold a property  
6 to fund 11, this is fund 11's books, and instead of --  
7 what they did, instead of going through by paying fund  
8 1 and then fund 1 paying Equialt, LLC, they instead  
9 eliminated that second party and allow them to just  
10 reimburse them instead through Broadway. So this is  
11 one that I've seen recently.

12 Q Are you sure?

13 A I can look further at it to be sure.

14 Q Okay. But you're not positive today?

15 A No. I know this came up recently where  
16 it's -- documents were found that it may or may not  
17 have been recorded correctly, so that one I have to  
18 check back on.

19 Q And just above that we have the capitalized  
20 cost of both commissions and interest; is that  
21 correct? Exhibit 5 page 2.

22 MR. HARAY: Oh. What was it again? We're  
23 on the page.

24 BY MR. DEE:

25 Q Top of the page. Top of page 2, Exhibit 5,

1 loan cost commissions, loan cost interest.

2 A Yes.

3 Q Okay. And there's no reason to believe that  
4 the amounts there are not accurate?

5 A Except whatever has not been reclass on the  
6 income statement at that point in time.

7 Q Just one additional question. The title  
8 loan costs, was that there before you were hired?

9 A Yes. This was assigned to the cost that  
10 Dearolf & Mereness when they were doing the books,  
11 they assigned -- started assign it historically to  
12 that description.

13 Q Okay. In your bookkeeping in accounting  
14 have you ever used just the initials RCL capitalized,  
15 meaning reclassified?

16 A Possibly.

17 Q Okay. It doesn't represent a company?

18 A No.

19 Q Okay.

20 A Not that I'm aware of.

21 Q All right. I think there is two other note  
22 receivables I'm going to look at, but I'm going to  
23 have to introduce the balance sheet to do it.

24 A Okay.

25 Q If you look at this exhibit on page 2.



1 (SEC Exhibit No. 11 was marked for  
2 identification.)

3 A Yes.

4 BY MR. DEE:

5 Q Go under related party by category. There's  
6 a do to/from Equialt, LLC other in the amount of 2.2  
7 million; is that accurate?

8 A 2.2 million?

9 Q Yes.

10 A Yes, I see that.

11 Q Is that a loan to the management company?

12 A It's hard for me to speak to the items in  
13 this account because just from my research, I realize  
14 that there are properties that have been purchased  
15 that have not been correctly identified to a  
16 particular fund and it will be placed in the Do To Do  
17 From account.

18 Q Do you know what that account is used for?

19 A Any amounts that it believes that Equialt,  
20 LLC owes the fund 1. I've also discovered that  
21 management fees and stuff that were uncertain as to  
22 what they were are also in that account.

23 Q Is it accurate to characterize that account  
24 like a junk box where you just -- they just drop  
25 stuff?



1           A     No, it is not, but, yeah.

2           Q     I have a document that may clarify that.  
3     Hold onto that. This is the detail of that account.  
4     If you can take a quick look at it once we introduce  
5     this exhibit, Exhibit No. 12.

6                     (SEC Exhibit No. 12 was marked for  
7                     identification.)

8           A     And can you clarify what you're saying? Are  
9     you asking me if it is accurate to do it or you're  
10    basically telling me that's what they have been doing?

11                   BY MR. DEE:

12           Q     Yes. The latter, which you had described.  
13    Take a look at that and see if it's -- it looks like a  
14    catch-all.

15           A     Unfortunately, historically that's what's  
16    has been happening with this account.

17           Q     Okay. So -- I mean it's a thick exhibit and  
18    it has a lot of details. So it looks like it goes  
19    back and forth. This is a noninterest note.

20                   MR. HARAY: Which is?

21                   MR. DEE: The note receivable that the  
22    management company owes to fund 1.

23                   MR. HARAY: Is there a particular part of  
24    the document we're looking at?

25                   BY MR. DEE:

1           Q     Well, this whole note seems to just run  
2     that's why I'm asking. The note receivable just  
3     continues to run. It started -- if you look at the  
4     front of the exhibit on page 1 it says March 1st, 2010  
5     and then it runs all the way through April 11th, 2019  
6     on the penultimate page and then the last page it has  
7     the last entry, July 26, 2019 on page 15 of 15. So  
8     this is a note receivable that's almost 9 years old.

9           A     No. Because you see right throughout where  
10    the credits are there where it has been reimbursed  
11    during various times.

12          Q     Is it -- can I almost characterize it as a  
13    line of credit?

14          A     No. From what I've seen or from my  
15    experience, yeah.

16                MR. HARAY: That's the question he asked. I  
17    think you answered it.

18                BY MR. DEE:

19          Q     Can we just agree that the management  
20    company owes fund 1 \$2.2 million?

21          A     I cannot speak to it without further  
22    research as to some of these items.

23          Q     Just curious. What kind of research would  
24    you have to do?

25          A     From 2019 what I found out is that, some

1 expenses like management fees have been categorized as  
2 a do-to-do from, when it's actually not.

3 Q Thank you. Let's -- I'm interested to  
4 know -- discuss liabilities, we'll stay within the  
5 balance sheet.

6 MR. HARAY: Is that 5?

7 MR. DEE: Statement of cash flow is 5. 9 I  
8 think it was. The balance sheet, 11.

9 MS. MASELLA: The balance sheet is 11.

10 BY MR. DEE:

11 Q Okay. Go to the last page. Do you see  
12 total investment?

13 A Yes.

14 Q All right. That number is 97,657,000 and  
15 change, correct?

16 A Correct.

17 Q Is that what's owed to the investors of this  
18 fund?

19 A I can't be certain just because of the  
20 issues we have been having with QuickBooks.

21 Q And those issues are?

22 A Just if the informations there is accurately  
23 reflecting what it is.

24 Q And if I ask you anything further about this  
25 fund, are you going to reply that you have issues with

1     **QuickBooks and you can't answer any further?**

2             MR. HARAY: Well, I think you just have to  
3     answer your questions -- ask the questions.

4             A     It's hard for me to say until I hear the  
5     question.

6             BY MR. DEE:

7             Q     **Let's go to equity. Total equity is a**  
8     **negative 40 million -- actually, 40.1, correct?**

9             A     Per the document, that is correct.

10            Q     **Per the document, what would cause the fund**  
11    **to be \$40 million of negative equity?**

12            A     Negative equity in general is where a  
13    company's liabilities exceeds its assets, but in this  
14    case the assets are reflected a cost. We don't  
15    reflect the fair market value or any appreciation of  
16    the asset so to speak, so that will speak to that as  
17    well.

18            Q     **But we're just going by what the QuickBooks**  
19    **say?**

20            A     Yes.

21            Q     **And part of the assets are the capitalized**  
22    **expenses, correct? The two largest are interest and**  
23    **commissions?**

24            A     Yes.

25            Q     **All right. Just using round numbers they're**

1 15 million each, about \$30 million, correct? Or is  
2 that fair?

3 A Let me look at it to verify. 15 million,  
4 yeah, that's correct.

5 Q Sound like you said 50.

6 A 15 million each, that's fair.

7 Q 15 million a piece.

8 MR. HARAY: One five each.

9 A Yes.

10 BY MR. DEE:

11 Q And you've had about \$10 million worth of  
12 amortization expense, correct?

13 A Yes.

14 Q All right. So if you didn't have those two  
15 expenses capitalized, your negative equity -- even if  
16 I included the \$10 million of amortization expense,  
17 your negative equity could be about \$60 million.

18 A About 70.

19 Q Yeah. Go ahead and repeat that, please.

20 A It wouldn't be 60 million. I think it would  
21 have been around 70 million.

22 Q 70 million. I was a little conservative.  
23 Thank you.

24 Now, we've taken a look at fund 1, based on  
25 the documents you have about 12 million in revenue,



1     you're showing negative -- or you're showing a net  
2     loss of 27 million, so you're showing expenses for the  
3     period that we looked at of about \$39 million, where  
4     does the money come from to cover the deficit?

5           A     The balance sheets have been reconciled I  
6     know each month and that's the most I could speak  
7     about, which shows that all funds have been in and out  
8     at least through 2018, but to speak to specifically  
9     where the funds have come from, a further review of  
10    the balance sheet or bank statement would have to give  
11    me that information.

12           Q     And while you've been there in 2019, you've  
13    had about \$6 million of interest expense, correct?

14           A     It's hard to say from this document. Since  
15    it's run from inception, the transaction details will  
16    have to let me know specifically how much it is for  
17    2019.

18           Q     Well, let's speak hypothetically. Let's say  
19    it is 6 million for this year, if it averages 6  
20    million just for two years, you've already eaten up  
21    your revenue that you made from 2011 all the way to --  
22    we'll say to be fair -- the end of October 2019. Why  
23    isn't the fund generating enough revenue to cover its  
24    expenses?

25           A     Repeat the question.

Page 111

1           Q     Why isn't the fund generating enough revenue  
2     to cover its expenses?

3           A     I don't know why. I can't necessarily speak  
4     to the operations of the fund as to property  
5     management. I can just speak to more of the income  
6     and the expenses that go out.

7           Q     I've only read these books and records for  
8     maybe two and a half weeks, I haven't been there 10  
9     months like you, so you've got a little bit on me.  
10    But I'm looking at them and I have to ask a question,  
11    it begs the question, where is the money coming from  
12    to cover the deficit?

13                Now, if you raise -- according to the pro  
14    forma statement that's an exhibit, I believe, 3, you  
15    raised about \$104 million; if you're only generating  
16    \$12 million of revenue, it could only mean that the  
17    money is coming from the investor funds; is that  
18    correct?

19                MR. HARAY: Sorry. That is a very long  
20    question. I don't know that anyone can follow, so --

21                MR. DEE: Sure.

22                BY MR. DEE:

23           Q     You raised a hundred million dollars,  
24    correct?

25           A     Per the document, yes.

1           Q     You've got \$30 million in interest and  
2     commission expense.

3           A     Per the document, yes.

4           Q     You've only generated 12 million in revenue,  
5     correct?

6           A     Per the documents.

7           Q     Per the documents. That's 18 million of  
8     deficit right there. So if you have a deficit of 18  
9     million, you have to use the investor funds to pay  
10    your debts, isn't that true?

11           MR. HARAY: Well, if you're asking her where  
12    the money comes from, I think you just asked her that  
13    and she said she didn't know.

14           BY MR. DEE:

15           Q     If you raised a hundred million dollars from  
16    investors, you have a hundred million dollars,  
17    correct?

18           A     Yes.

19           Q     All right. Now, you're operating, you only  
20    generated 12 million your revenue?

21           A     Yes.

22           Q     You have expenses of 39 million?

23           A     Yes.

24           Q     You have net loss of 27 million?

25           A     Yes.

1           **Q     Don't you go to the investor funds to cover**  
2 **that deficit?**

3           A     It's hard for me to respond because like I  
4 said, assumption is being made that the information is  
5 accurate. Just looking at these books and these  
6 numbers already, it's clearly that it's not completely  
7 accurate, so therefore, I cannot make an assumption or  
8 draw an opinion as to where it comes from. Because  
9 just obviously, just skipping through the pages, there  
10 are a lot of things in this QuickBooks that's out of  
11 alignment that has to be repaired. It's an unaudited  
12 document so I cannot make an assumption as to where  
13 the funds come from because it's obvious that this  
14 QuickBooks documents needs cleaning and need to be  
15 reviewed and order to correctly, and accurately  
16 reflect the information. That's the most I can do on  
17 that.

18           **Q     You have no argument that this fund's only**  
19 **raised 12 million? You have no argument with that**  
20 **number, do you?**

21           A     Per this document. I have an argument with  
22 negative 455 in the bank account. A bank is not going  
23 to have negative 455 in the bank account it continue,  
24 so this goes to show that this information in the  
25 first place is not accurate, so garbage in garbage



1 out. So for me to draw a conclusion on an inaccurate  
2 statement, I cannot.

3 Q Do you make -- I think you testified that  
4 you make high-level reports to Mr. Davison, correct?

5 A Yes, I do.

6 Q And you do on cash flow activity; is that  
7 correct?

8 A We call it weekly cash activity, yes; not  
9 necessarily a cash flow.

10 Q I stand corrected. Do you make any  
11 operational analysis to Mr. Davison?

12 A Not on frequent basis, just on a property by  
13 property basis, which just tells the performance of  
14 each property.

15 Q Do you make any performance analysis for Mr.  
16 Davison?

17 A And performance, meaning?

18 Q How the fund is doing.

19 A I don't do a fund analysis at this time.

20 Q Does anybody?

21 A The chief investment officer may as that may  
22 be a part of his function, but I can't speak to any.

23 Q I want to go onto fund II. You want to take  
24 a quick five-minute break. We'll go off the record at  
25 2 o'clock.



1 MR. DEE: Let's go back on the record at  
2 2:09 p.m.

3 BY MR. ZAMORANO:

4 Q Ms. Stoddart, if I could just, for the  
5 benefit of the court reporter, request that you speak  
6 a little bit more slowly.

7 A I'm sorry. My accent.

8 Q She has a little bit of difficulty catching  
9 everything you're saying.

10 A Okay.

11 Q So I want to make sure the record is clear.

12 A Okay. I'll do that.

13 Q Thank you for your co-operation.

14 A All right.

15 BY MR. DEE:

16 Q Let's mark this.

17 (SEC Exhibit No. 13 was marked for  
18 identification.)

19 BY MR. DEE:

20 Q We are going to go over fund II. Fund II is  
21 the statement of cash flows all transactions. Please  
22 take a look at that first and let me know when you're  
23 ready.

24 A Okay. I'm ready.

25 Q All right. According to the document, net

Page 116

1    **loss for this fund from inception was 14.9 million,**  
2    **according to the document, do you agree?**

3           MR. HARAY: Did she agree it says that?

4           BY MR. DEE:

5           **Q    Do you agree that the net loss from**  
6    **inception was 14.9 million?**

7           A    Yes. Per this document, it has 14.9  
8    million.

9           **Q    Okay. Let's take a look at the profit and**  
10   **loss for fund II like we did for you fund 1.**

11                    (SEC Exhibit No. 14 was marked for  
12                    identification.)

13           BY MR. DEE:

14           **Q    Take a look at Exhibit 14.**

15           MR. HARAY: Do you have a spare?

16           MR. DEE: Yes.

17           MR. HARAY: Thank you.

18           BY MR. DEE:

19           **Q    Okay. Let's look at total rental income.**  
20   **According to the document it was 3.4 million; is that**  
21   **correct?**

22           A    Per the document it's 3.4 million.

23           **Q    Is there any other income on this document?**

24   **Take look. Take your time. Take a look.**

25           A    I see total other income for 333,000.

1 Q Okay. So is it safe to say if I add the two  
2 incomes together, according to this document, I'll  
3 come to roughly 3.7 million?

4 A Roughly 3.8, yes.

5 Q Thank you. Let's look at expenses.

6 Page 2 under commission expense, according  
7 to the document, 336,500 was paid to Equalt the  
8 management company, correct?

9 A Per the document, that's correct.

10 Q And per the document, other commission  
11 expense was another 145,000?

12 A That's correct.

13 Q Okay. So total commissions expense there,  
14 per the document, was \$481,500; is that correct?

15 A \$480,522.38, that's correct.

16 Q Okay. In your experience since 2019 in  
17 recording journal transactions in the fund, did you  
18 happen to notice what the largest expense was per  
19 fund?

20 A We have a few large expenses that I've  
21 noted. They generally are commission expenses,  
22 management fees and all distributions or interest  
23 expense payments to investors.

24 Q What was the total expense before net  
25 ordinary income on the last page, page 10?

1           A     Total expense is 11 million.

2           Q     And what was the net loss?

3           A     The net loss per this document is 14.9  
4 million.

5           Q     How does the fund make up the deficit  
6 between the revenue and expenses?

7           A     I cannot speak to it and I don't know  
8 without paying further attention to what's on  
9 everything and the bank statement, honestly. 'Cause  
10 this is from inception historical, which I can't speak  
11 to the older history, older transaction as to how they  
12 have been making up the deficit.

13          Q     Do you know what the net income is between  
14 the months February 2019 and the end of October 2019?

15          A     I don't know it off my head. Net operating  
16 income we have been reviewing it per property and  
17 that's just the make focus for now.

18          Q     There's no concern by management what net  
19 income is for the funds?

20          A     I don't know in terms of management, but I  
21 just know in terms of property operating day-to-day  
22 just to make sure the properties are profitable.

23          Q     And when you say the properties are  
24 profitable, could you describe that for me?

25          A     It's more seeing that the rental income

1 that's collected for each property exceeds the expense  
2 that are paid out for the property, the maintenance  
3 expenses.

4 Q And there is no concern about the  
5 profitability of the fund?

6 MR. HARAY: She didn't say that.

7 MR. DEE: No. No. That's a separate  
8 question.

9 MR. HARAY: Concern by who?

10 MR. DEE: By management.

11 BY MR. DEE:

12 Q Let me rephrase.

13 A Yeah.

14 Q Management is concerned about the  
15 profitability of the rental income over expenses of  
16 each individual property, correct? Is that what you  
17 told me?

18 A They are concerned and review those, yes.

19 Q And I'm drawing an inference that that is a  
20 priority for management.

21 A I don't get that opinion.

22 Q No?

23 A No.

24 Q Okay. What is a priority?

25 A When you're saying priority, you're thinking



1 the only priority or one of the priorities?

2 Q The priority per the funds, is there any  
3 priority or concern about the funds and how they're  
4 performing?

5 A Based --

6 MR. HARAY: Can I just -- 'cause I think  
7 it's unclear for the record. Are you asking her what  
8 other people in particular are thinking and if so,  
9 who, and can you --

10 BY MR. DEE:

11 Q Do you report to Mr. Davison?

12 A Yes, I do.

13 Q Has he expressed any concern about the  
14 performance of fund I, fund II that we've already  
15 discussed?

16 A Mr. Davison will more express to me based on  
17 what I produce in the QuickBooks. There's a chief  
18 investment officer as well who is more intimate with  
19 the funds and invest in it. He also work close with  
20 Mr. Davidson. He will more likely produce the reports  
21 that you have given to me, and more likely Mr. Davison  
22 would have consulted on him on that aspect, but for my  
23 portfolio, that's hasn't come up as a responsibility  
24 for me.

25 Q So Mr. Kelly, he's the chief investment

1 officer that you're talking about?

2 A Yes.

3 Q He doesn't come to you at all even though  
4 you are the controller?

5 A He will come to me for information from  
6 QuickBooks or information for the funds he will get  
7 from Barry directly who has the fund information as  
8 well.

9 Q What does Mr. Kelly -- what kind of  
10 information does Mr. Kelly ask you about QuickBooks?

11 A He will ask me for the information I spoke  
12 to you earlier about, about the property operating in  
13 terms of the rental income and the maintenance that  
14 goes out. He may need information on bank  
15 transactions, if anything, so that he can determine  
16 cash flow. That's the most that I may get from him.

17 Q Should I draw the conclusion that neither  
18 Mr. Davison nor Mr. Kelly care how the funds operate?

19 MR. HARAY: I don't think that's -- that  
20 doesn't seem to be a fair drawing from what she said.  
21 Are you asking her a separate question about whether  
22 they care in her view?

23 MR. DEE: Yes.

24 A I absolutely could not draw that conclusion  
25 because earlier you produce to me information,

1 analysis and performance that they did. I may not be  
2 involved in the preparation of those performance, but  
3 obviously, they are preparing performance and  
4 reviewing it.

5 BY MR. DEE:

6 Q So my questions are better directed towards  
7 Mr. Davison and Mr. Kelly?

8 A Probably.

9 Q Fair enough. But according to this fund,  
10 we're operating in hole and that's a layman's term  
11 that expenses exceed revenue.

12 A According to this document which -- where a  
13 lot of the information, just look at it surfacely,  
14 cannot be correct. It is -- that's the case.

15 Q Well, tell me why it can't be correct?

16 A I saw it on fund I, I'm just seeing if I see  
17 it on fund II as well.

18 Q Did you know that these QuickBooks were  
19 being produced to the SEC?

20 A Yes. I was aware that we were being  
21 produced to the SEC.

22 Q Did you express your opinion that there were  
23 errors in there?

24 MR. HARAY: Well, no. We're not going to  
25 get into conversations between her and counsel.

1 MR. DEE: I didn't ask her about counsel.

2 MR. HARAY: Well, you're eliciting questions  
3 about --

4 MR. DEE: I'll stay way from privilege --

5 MR. HARAY: I'd like to finish. I'd like to  
6 finish what I'm saying for the record.

7 You're eliciting questions about the  
8 production of the records as I understand it, so you  
9 can direct those to us and we can answer them. As far  
10 as I understand, you asked for the actual records of  
11 the company and they were -- that's what was produced,  
12 but if there's clarifications or corrections they're  
13 making to the record, we can talk about that if she  
14 knows it, but we produced the records.

15 MS. JOHNSON: I don't think she answered  
16 your questions about what was incorrect about fund II.

17 MR. DEE: Go back and read the last question  
18 in reference to what was correct and not correct --  
19 what she thought was surfacely not correct that she  
20 saw.

21 BY MR. DEE:

22 Q You surfacely can look at it and see errors,  
23 can you tell me what those errors are?

24 A For example, on page 6 if you look and you  
25 see an investment from Raymond W.K, Bar of



1 \$19,372,000, there should not be a negative investment  
2 'cause the return to the investor should not exceed  
3 the amount that he actually invested. Normally in  
4 this case furthers research has to be done to find out  
5 if this amount is actually an interest expense that  
6 was paid or to try and locate the investors  
7 investment, or to see if it's under another name or  
8 the name may have been classified somewhere else. I  
9 don't -- let me see if the bank is here. I don't have  
10 the balance sheet to verify if there's any negative  
11 amount in the bank accounts right now, but it's items  
12 of that nature that will let me question the balance.

13 **Q Are any of these items that you mentioned**  
14 **material?**

15 A Yes. On the bank statement -- let me see  
16 the balance sheet. I don't see the balance sheet for  
17 fund II here. I'm not sure if I got it. I'll have to  
18 see it to determine that. I think what's fairly  
19 material here is the negative accounts receivable of  
20 \$287,000. Is that it? Oh, no. That's the cash flow.  
21 Yeah.

22 MR. HARAY: I think he's going to ask  
23 another question.

24 A Okay.

25 MR. DEE: No. I'm just listening.



1 MR. HARAY: There's no question pending,  
2 so --

3 MR. DEE: I'm listening.

4 MR. HARAY: -- wait for the question.

5 BY MR. DEE:

6 Q But according to the document, even with  
7 your observations it's still a net loss of \$15  
8 million; is correct?

9 A Again, it's hard for me to speak to a  
10 document that I didn't absolutely prepare to even try  
11 to get my name against it. As I mentioned before, I  
12 started 2019, we started focusing on that and it's  
13 hard for me to verify information that's from  
14 inception to when I was not employed. I can't really  
15 comment on what's in some of these -- what is in this  
16 document completely.

17 Q Can you verify what the net loss was on page  
18 10 according to the document?

19 A I can tell you that the net loss on this  
20 document on page 101 is 14.9 million.

21 Q Thank you. And my final question for fund  
22 II.

23 You have historical net loss, which means  
24 you've exceeded your revenues, where do you draw the  
25 funds from to continue operating this fund?

1           A     This fund has been operating for a while, so  
2     the funds must come from somewhere, but I can't speak  
3     to specifically where it has come from without further  
4     reviewing of the information.

5           Q     If the funds -- the only funds available are  
6     investors funds, then they would have to come from  
7     investor funds, wouldn't it?

8           A     Unless there's something else in the books  
9     that we haven't seen which I can't speak to.

10          Q     Do you know that the fund is raising money  
11     from any other investment other than cash that it has  
12     now? I'm sorry. Strike that.

13                 Fund II raises money from investors, the  
14     fund generates revenue, those are the only two sources  
15     of fund, isn't it? Isn't that correct?

16          A     The main source of revenue is from the  
17     operations of the property purchases, whether it's the  
18     sale or the rental income that I'm aware of.

19          Q     Okay. But we read at -- and you read the  
20     number, net loss was 14.9 million, correct?

21          A     Mmm-hmm.

22          Q     All right. In a normal operation if you're  
23     at that net loss, haven't you exceeded your revenue  
24     with expenses?

25          A     In a normal operation.

1           Q     And if I gave you a hundred thousand dollars  
2     as one investor -- this is just a round amount. That  
3     doesn't mean it was raised by fund II -- and you had a  
4     15,000-dollar loss historically, wouldn't I have to  
5     draw that money from the investor, me?

6           A     Not necessarily. You can take a loan or do  
7     other stuff to get the money to fund it if you want to  
8     get technical.

9                     But if there's no other source of fund, you  
10    have to. But the mere fact that you could pay it to  
11    the investor, means that you have the fund somewhere  
12    there.

13          Q     But I'm the only investor, I gave you a  
14    hundred grand -- a hundred million dollars --

15          A     Yes.

16          Q     -- and you lost 15 million, and you have 85  
17    surplus and you can draw another 15, right?

18          A     You will have to have funds coming from  
19    somewhere.

20                    If you are the only investor with a hundred  
21    thousand and you draw 15, you will have to get money  
22    somewhere, yeah.

23          Q     All right. Let's go to Fund III.

24                    This exhibit is EA SIP, LLC and it's going  
25    to be the statement of cash flows all transactions.

1 (SEC Exhibit No. 15 was marked for  
2 identification.)

3 A Okay.

4 BY MR. DEE:

5 Q And it's from the inception.

6 MR. HARAY: Is it 14 or 15?

7 MR. DEE: 15.

8 BY MR. DEE:

9 Q Could you look at that, please.

10 MR. HARAY: It's not Fund III. Are we not  
11 doing Fund III? I'm sorry.

12 MR. DEE: I don't even know what Fund III  
13 is.

14 MR. ZAMORANO: EA SIP.

15 MR. HARAY: EA SIP.

16 BY MR. DEE:

17 Q Let me know when you're ready, Ms. Stoddart.

18 A All right. I'm ready.

19 Q Okay. According to this document, this fund  
20 suffered a net loss of 3.7 million, correct?

21 A Correct, per the document.

22 Q The net cash provided by operating  
23 activities, according to this document, was a negative  
24 3.7 million almost 3.75, correct?

25 A Correct, per the document.



1 Q Let's look at the P and L.

2 (SEC Exhibit No. 16 was marked for  
3 identification.)

4 BY MR. DEE:

5 Q This is going to be the profit and loss for  
6 EA P -- EA SIP, LLC and it's all transactions. Take a  
7 look at that. Let me know when you're ready.

8 A All right. I'm ready.

9 Q According to the profit and loss statement  
10 from inception, total net income was 176,000; is that  
11 correct?

12 A That is correct. 176,000 per the document.

13 Q And the cost of labor commissions was  
14 589,000 and change; is that correct?

15 A That is correct.

16 Q Okay. Gross profit is negative 414,000; is  
17 that correct?

18 A That is correct.

19 Q On page 2 total expense was \$209,665 and  
20 change, correct?

21 A Total interest expense \$209,665.35, yes.

22 Q Total professional fees, \$123 and 200 -- I'm  
23 sorry -- \$123,283.52, correct?

24 A Correct.

25 Q Net ordinary income was a negative



1     2,045,000, correct?

2             A     Correct.

3             Q     Page 3 we're showing a net loss of 3.7  
4 million, correct?

5             A     That is correct.

6             Q     This fund is also showing expenses greater  
7 than revenue; is that correct?

8             A     That is correct.

9             Q     Where do we get the funds to cover the  
10 deficit?

11            A     With this one particularly I want to point  
12 out that part of the deficit is because of noncash  
13 items. Like with the amortization expense and if  
14 there's a depreciation expense, it doesn't affect the  
15 cash, so those are noncash activities which wouldn't  
16 need a necessarily 3.7 to cover. But otherwise, I  
17 cannot speak to where it's coming from, but I know  
18 there's a positive cash flow at the end of the period.

19            Q     That's all for Fund III -- EA SIP. Sorry.  
20 Now I know why you asked.

21                   Equalt Qualified Opportunities Zone Fund,  
22 LP and Subsidiaries consolidated financial statement  
23 December 31st, 2008. This is going to be the audit I  
24 believe your familiar with. Please take a look at  
25 that. The Bates numbers run from Equalt00003171 to

1 3181.

2 (SEC Exhibit No. 17 was marked for  
3 identification.)

4 BY MR. DEE:

5 Q Can you go page 3 of 11. When you're  
6 ready -- you let me know when you're ready.

7 A I'm ready.

8 Q Okay. Report of independent registered  
9 public accounting firm, do you see that?

10 A Say that again.

11 Q It's page 3.

12 MR. HARAY: Page 3, you're on 5.

13 A Oh. I was looking at the bottom. Yeah.  
14 I'm sorry.

15 MR. HARAY: Two different page numbers.

16 A Okay. Yes, I see that.

17 BY MR. DEE:

18 Q Okay. Do you see the paragraph just above  
19 the auditors signature where it say capital funding?

20 A Yes.

21 Q All right. Let me just read it on the  
22 record. "The company is subject to the risk  
23 certainties associated by the business that has not  
24 yet generated revenues. The company's continued  
25 operation are dependent upon its ability to raise

1 additional funds. There can be no assurance that the  
2 company will be able to secure any additional  
3 financing on acceptable terms and conditions or at  
4 all."

5 Were you involved in this audit?

6 A Yes. I provide the information to the  
7 auditors based on what was in QuickBooks.

8 Q Okay. It's just information you provided?

9 A Yes. I -- yeah. They're an independent  
10 accounting firm so I couldn't be directly involved.  
11 We just have to provide information.

12 Q And that was the extent of your involvement?

13 A Yes.

14 Q Have you read the audit?

15 A Yes, I have read the audit.

16 Q And it hadn't generated any revenues, had  
17 it?

18 A No, it had not. The REIT was pretty new at  
19 this point in time. It started August 10, 2018.

20 Q Did it pay any interest expense? Did it pay  
21 any interest to investors?

22 MR. HARAY: So just to -- for the record, to  
23 be clear, she referenced the REIT a moment ago and I  
24 think you're --

25 A Okay.

1 MR. HARAY: Just to make sure you're on the  
2 same --

3 A I'm sorry.

4 MR. HARAY: -- the same entity.

5 A Oh this is the QOZ. I'm sorry. Qualified  
6 Opportunity Zone.

7 BY MR. DEE:

8 Q You have a CPA certification, correct?

9 A That is correct.

10 Q You can read the income statement on there  
11 or the profit and loss it's also called, correct?

12 A That is correct.

13 Q All right. And when you earlier responded  
14 that there were revenues, you read that from the  
15 statement, correct?

16 A Repeat that?

17 Q Or from the audit?

18 A Repeat that?

19 Q I said, when you earlier testified or you  
20 were reading from the audit, the exhibit, that there  
21 were no revenues --

22 MR. HARAY: You read it I think.

23 Q I read it, you agree.

24 A I think you asked me and I was supposed to  
25 respond if there was no distributions.

1 Q That's not -- that was another question.

2 MR. HARAY: Can we start fresh, please?

3 A So I'm sorry. Yeah.

4 BY MR. DEE:

5 Q Well, I think we're done with this. Let me  
6 go to fund 5. This is the REIT.

7 (SEC Exhibit No. 18 was marked for  
8 identification.)

9 BY MR. DEE:

10 Q This is the audit for Equalt Secured Income  
11 Portfolio REIT Incorporate and Subsidiaries. The  
12 Bates numbers run from Equalt00003182 to 3201.

13 MR. HARAY: Do you have a copy? Thanks.

14 BY MR. DEE:

15 Q Do you have the exhibit?

16 MR. HARAY: She does.

17 A Yes, I do.

18 BY MR. DEE:

19 Q Are you familiar with this?

20 A Yes, I am.

21 Q All right. Let's turn to the auditors  
22 opinion under related party transactions. "As  
23 discussed" --

24 MS. MASELLA: What page?

25 MR. DEE: Page 3. The page number is right.



1 at the top.

2 BY MR. DEE:

3 Q "As discussed in note 5 to the consolidated  
4 financial statement, the company has significant  
5 transactions with entities affiliated through common  
6 ownership which could influence the extent of cost  
7 incurred by the company. The operating results or the  
8 financial positions of the company could have been  
9 significantly different if they were autonomous."

10 Do you know what the auditors meant by that?

11 A I'm not sure what they meant by that.

12 Q Okay. Your involvement in this audit was  
13 just to provide information to the auditor?

14 A Yes. Keep it independent. We provided the  
15 income statements and balance sheets and transactions.

16 Q Correct me if I'm wrong, you were hired by  
17 the REIT at the end of '18 or pretty close to 2018 at  
18 the end; is that correct?

19 A Yes. I started working on the REIT in about  
20 2018, yes.

21 Q What month?

22 A I think it was like about April.

23 Q Would you say you were really familiar with  
24 the accounting of this fund?

25 A I would have to say I was.

1           Q     All right. This is one of the few -- this  
2     is only fund that's showing a profit, correct?

3           A     Yes. It's showing net income of -- yeah.  
4     Net income of 107,000.

5           Q     Would you have any dispute with the net  
6     income number of \$107,572?

7           A     I would not.

8           Q     And why are you so confident?

9           A     Because it was audited, one, and we had  
10    to -- I had to prepare the information myself, so I  
11    guess I'm comfortable with the information that I put  
12    in and the due diligence and care taken by the  
13    auditors to prepare this report.

14          Q     So it don't cloud the record, but let me  
15    just go back to fund 1s 1, II and EA SIP, LLC.

16                You're not confident in those funds or those  
17    funds numbers; is that accurate?

18          A     That is accurate.

19          Q     Is there somebody at Equialt that is  
20    confident in those numbers?

21          A     I can't speak if there's anyone there that  
22    is confident about it, but accounting produces numbers  
23    and we don't really have anyone there right now that  
24    has been there that long since the information is  
25    produced.

1           Q     Prior to you taking care of the bookkeeping  
2     of the funds, it was just Michelle Rodriquez Diaz?

3           A     When I came on board there was Michelle  
4     Rodriquez Diaz and William Brown that was just  
5     assisting with accounts payable.

6           MR. HARAY: I believe she testified earlier  
7     there was also the outside accounting firm.

8           A     Yes.

9           BY MR. DEE:

10          Q     Of Dearolf & Mereness?

11          A     Yes.

12          Q     But they were only there towards the end --  
13     at the end of each year to do year-end adjustments?

14          A     As far as I'm aware.

15          Q     So actually the accounting prior to you fell  
16     on -- or the bookkeeping fell on Michelle Diaz and  
17     William Brown?

18          A     William Brown more than accounts payable  
19     capacity at that time, yes.

20          Q     How long has William Brown been there? Do  
21     you know?

22          A     I think it has been maybe less than a year  
23     or about a year at least.

24          Q     Well, how long was Michelle Diaz there?

25          A     I'm not sure. Longer than that.

1 Q Who was before though? Do you know?

2 A I don't remember the name of the firm, but  
3 it was an external accounting firm that used to do the  
4 books.

5 Q Excluding the one you have already  
6 mentioned, Dearolf & Mereness?

7 A Yes. They proceeded Michelle.

8 Q The accounting firm that you know, but you  
9 don't know the name of, but they're a professional  
10 firm you think?

11 A I would hope.

12 Q Okay. But you don't know?

13 A I don't know.

14 Q Let's go off the record at 2:42 p.m.

15 (A brief recess was taken.)

16 MR. DEE: Let's go back on record at 2:51  
17 p.m.

18 BY MS. JOHNSON:

19 Q Has funds I or II taken any loans or lines  
20 of credit from any banks or similar credit facilities?

21 A Not that I'm aware of.

22 Q Have they taken -- fund I or II taken any  
23 loans from any of the principals?

24 A Principals, meaning?

25 Q Any of the executives of the company.



1           A     Loans? Not that I'm aware of.

2           Q     What about -- has funds I or II taken any  
3     loans from each other or any of the other Equalt  
4     funds that we've talked about today?

5           A     There's quite possibly, but I can't  
6     absolutely sure speak to it without looking again at  
7     the books, but at the same time I can't completely  
8     rule it out.

9           Q     Okay. If they have, how would that be  
10    reflected on the QuickBooks?

11          A     It would have been reflected as a loan.

12          Q     Would it be listed from entity to entity?

13          A     It will have the loan and entity's name.

14          Q     Okay. Same question for the EA SIP fund.  
15                Has it taken any loans from any commercial  
16    banks or credit facility?

17          A     I'm not absolutely sure, but if it did, it  
18    would be reflected on the balance sheet on the loan,  
19    and entity name. For the -- I'm sorry. For any  
20    banks, external entities? No. I'm sorry.

21          Q     What about line of credit?

22          A     No. Not that I'm aware of.

23          Q     Okay. But I think you were getting there.  
24    Has the -- just for the record, has the EA SIP fund  
25    taken any loans from any of the other Equalt funds?



1           A     If it has, it would have been reflected on  
2     the balance sheet on the loan and the entities or the  
3     fund's name.

4           Q     Would you be involved in any of the terms of  
5     the loans from one fund to the other?

6           A     The terms, no, I would not.

7           Q     Who would have been -- who would have  
8     brokered those terms? Who would have set out the  
9     terms?

10          A     I'm not sure. Maybe Brian or Tony.

11          Q     Have either Brian, Tony or Mr. Rybicki  
12     loaned the company -- any of the funds any money?

13          A     Not that I'm aware of. Maybe an initial  
14     capital investment from way back, but otherwise, I'm  
15     not aware of any.

16                BY MS. ROWE:

17          Q     Other than the discrepancies -- the  
18     potential discrepancies that you testified to earlier  
19     in the QuickBooks, are there any other sort of  
20     mischaracterizations or errors that you think may  
21     change your opinion of the books and records?

22          A     It's hard to say without getting more time  
23     to look over it. From what I've seen so far, it  
24     hasn't been in the areas that I've mentioned before.  
25     We've had repairs and maintenance, whether it's a

1 repair or it's a capital item, whether in the do to do  
2 from -- some of the management fees is recorded as a  
3 do-to-do from versus management fees. They may or may  
4 not been more, but I just haven't had the time to look  
5 back at them as yet.

6 **Q And are you aware of whether --**

7 MR. ZAMORANO: Excuse me.

8 MR. HARAY: One second.

9 MR. ZAMORANO: She was going to answer  
10 something and you were going to talk to her.

11 MR. HARAY: No. She was talking. The  
12 question was coming.

13 MR. ZAMORANO: I think she was going to  
14 answer something.

15 BY MR. HARAY:

16 **Q Were you speaking.**

17 A No. I was done. And then she was talking.

18 MR. ZAMORANO: Okay. I'm sorry.

19 BY MS. ROWE:

20 **Q Are you aware of -- I'm sorry.**

21 MR. HARAY: I'm sorry.

22 A Just to clarify. So some of the accounts  
23 that we have notice the discrepancies are the do-to-do  
24 from accounts. Ask my accountant may have a balance  
25 fro their other loan to shareholder accounts. Those

1 the main accounts and the repairs and maintenance that  
2 I have said. Construction improvements, anything on  
3 fixed asset.

4 BY MS. ROWE:

5 Q Regarding the REIT, are the -- are you ware  
6 of whether the investors funds are held in an interest  
7 bearing account?

8 A The investor funds? Not that I'm aware of.

9 Q Okay. There is a reference to -- in the PPM  
10 to some sort term investments. Do we have any  
11 knowledge of what those short-term investments might  
12 be?

13 A No. I'm not aware of those.

14 BY MR. DEE:

15 Q A while back in fund 1 I was going to talk  
16 about distributions and I think I cut myself off and  
17 never introduced the exhibit. This is the total  
18 distributions. If you take a look at Exhibit 5 I have  
19 in my hand and I'm going to hand to you -- it was 7.9  
20 million, but exhibit 19 is the distributions for 7.96  
21 million almost 8.

22 (SEC Exhibit No. 19 was marked for  
23 identification.)

24 BY MR. DEE:

25 Q Your -- if you take a look at -- under the

1 number for January 1, 2019, your initials DAS -- I'm  
2 sorry. Are those your initials, DAS, there?

3 A Those are my initials.

4 Q Okay. Can you explain what those  
5 distribution are?

6 A Those amounts were on the books as return of  
7 funds that was originally invested by Brian Davison  
8 and Barry Rybicki. However, we could not find  
9 original investment, so Mr. Davison gave me the  
10 direction that he is not going to worry about it so I  
11 should put it as a distribution for now.

12 Q Do you see the amount of 2.7 million there?

13 A Yes, I do.

14 Q That wasn't a distribution to pay off a note  
15 receivable that Equialt fund 1 held on Mr. Rybicki who  
16 would hold the note payable?

17 A I'm not aware of that.

18 MS. ROWE: Can I just follow-up real quick?

19 BY MS. ROWE:

20 Q Just to clarify. Your statement that the  
21 distribution to Davison was a return of funds, but the  
22 record couldn't be found on the initial investment, is  
23 that also for the distribution to Rybicki? It's the  
24 same scenario?

25 A Yes. That applies there as well, yes.



1 BY MR. DEE:

2 Q Okay. Let's see. This is Exhibit 20.

3 (SEC Exhibit No. 20 was marked for  
4 identification.)

5 BY MR. DEE:

6 Q Exhibit 20 is a balance sheet for fund 1 as  
7 of December 31st, 2011. Would you take a look at it  
8 and let me know when you're ready.

9 A I'm ready.

10 Q All right. Under liabilities and equity,  
11 liabilities, long-term liabilities, investment, do you  
12 see the names of Barry Rybicki and Brian Davidson?

13 A Yes, I do.

14 Q Per the document, they have \$3 million next  
15 to each of their names, correct?

16 A That is correct.

17 Q All right. Just a reference, there is under  
18 checking and savings Wells Fargo 1045, there's an  
19 amount of 6.1 million in there; is that correct?

20 A That is correct.

21 Q Is it safe to assume that that 6.1 million  
22 sitting in the checking account predominantly came  
23 from Mr. Rybicki and Mr. Davison?

24 A Per the document, that can -- that  
25 conclusion can be drawn.



1 Q Okay. All right. Take a look Exhibit 21.  
2 (SEC Exhibit No. 21 was marked for  
3 identification.)

4 BY MR. DEE:

5 Q Go to page 3. And this is exhibit is fund 1  
6 balance sheet as of December 31st, 2012. Look under  
7 long-term liabilities and then investment, do you see  
8 Mr. Davison or Mr. Rybicki's name there?

9 A No, I do not.

10 Q Do you have any idea why?

11 A No, I do not.

12 Q Is it safe -- well, can I assume that they  
13 were probably paid their initial investment? Or let  
14 me rephrase it. They were paid back their original  
15 investment.

16 MR. HARAY: If she knows.

17 BY MR. DEE:

18 Q If you know.

19 A I do not know. I'll have to look further  
20 into the details to verify.

21 Q Could you also draw the conclusion since  
22 their names are not there and neither is there \$3  
23 million a piece there?

24 MR. HARAY: I think she just said she didn't  
25 know, so --

1 MR. DEE: Well, I asked her to draw a -- if  
2 we could draw a conclusion.

3 BY MR. DEE:

4 Q Can you draw that conclusion?

5 A I find it difficult to draw a conclusion on  
6 information that was way before I was employed. I  
7 don't want to put myself in that position until I've  
8 seen further details.

9 Q Okay. But you are a CPA, correct? You are  
10 certified?

11 A I am.

12 Q I think we established that.

13 A Absolutely.

14 Q And you can read documents like financial  
15 reports?

16 A Yes.

17 Q And you are asked opinions from time to  
18 time; is that true?

19 A Well, I try not to give an opinion on  
20 unaudited documents.

21 Q You don't give any opinions on any unaudited  
22 documents?

23 MR. HARAY: She didn't say that.

24 A I try not to give an opinion on unaudited  
25 documents or documents that I have to look more

1 closely on.

2 MR. DEE: You guys have any other questions?  
3 Mark this exhibit.

4 (SEC Exhibit No. 22 was marked for  
5 identification.)

6 BY MR. DEE:

7 Q Exhibit 22, it's titled Reverse Opening  
8 Balance of \$6 million. Twelve one --

9 MS. MASELLA: Do you have another copy of  
10 that?

11 MR. DEE: No, I don't. I looked. I'm going  
12 to hand this to you and the three of you can split it.

13 MS. MASELLA: Okay.

14 BY MR. DEE:

15 Q It's dated 12/1/19. General journal  
16 transaction, accrual basis December 31st, 2012.  
17 Debit, credit DM, which is not you. 3 million, 3  
18 million. The memo says reverse for both Barry Rybicki  
19 and Brian Davison, both are 3 million-dollar debits.  
20 I'm just reading it for the record. And then there  
21 was \$6 million and there's a notation, WF. I'm  
22 assuming it's Wells Fargo 1045 checking. Would you  
23 review that.

24 Okay. Have you read the document or  
25 reviewed it?

1 A Yes, I have.

2 Q Would that document and the information on  
3 it help you make a decision or draw an opinion that  
4 their -- Mr. Rybicki and Mr. Davison's initial  
5 investment was returned to them?

6 A It doesn't help me at all. It's hard for me  
7 to comment on it without, I guess, the supporting  
8 documents or explanation as to why the journal entry  
9 was made by Dearolf & Mereness.

10 Q My last question, I think.

11 Fund 1. Under investing activities -- this  
12 is Exhibit 15, statement of cash flows. The fund is  
13 EA SIP. There appears to be a note receivable from  
14 Equialt Fund, LLC, there appears to be a note  
15 receivable for 128 East Davison, LLC and a receivable  
16 for 31078 Avenue, if you would look there and confirm  
17 whether that's on the document or not.

18 A The note receivables for 1.4, 820,000 and  
19 \$568,000.

20 Q But it's on the document? Those are note  
21 receivables for that fund, EA SIP?

22 A Yes.

23 Q And the note payable would be held by the  
24 other parties, correct?

25 A Yes.



1           Q     One of those is a fund, so they borrow money  
2     or they loan money to each other?

3           A     Well, these transactions in particular we  
4     were recent reviewing it and what they do is that,  
5     they sell properties to each other. I am not sure,  
6     but I think one or two of these should have been a  
7     sale outright to the property or either the property  
8     actually -- for 31078 in particular I can speak to, so  
9     let me not comment on the other to with uncertainty.

10                The property was actually purchased by  
11     31078, but they got recorded on -- EA SIP actually  
12     owned the property, but at the time I think they had  
13     it as 31078. Okay. So 31078 assigned the property.  
14     31078 assigned the property to EA SIP, however, when  
15     they saw the funds coming, they assumed that it was a  
16     loan, but it was not. I can only speak to the 568  
17     just from memory. I'm not sure about the 1.4 or the  
18     820.

19           Q     Thank you.

20                BY MS. JOHNSON:

21           Q     Just so I'm clear. So you said that they  
22     incorrectly entered it as a loan. It should have been  
23     marked as straight-up purchase?

24           A     Yeah. The property was assigned and so the  
25     funds leaved EA SIP, but the property was actually



1 assigned to them so they should actually paid for it.

2 BY MR. ZAMORANO:

3 Q I just have a couple follow-up questions  
4 that I didn't ask you in the beginning.

5 Besides conversation with your attorneys,  
6 have you had any conversations concerning this  
7 investigation with Mr. Davison?

8 A I guess you have to be more specific. In  
9 terms of if I'm going to need approval to take the  
10 flight to come here because I got a subpoena, yes.  
11 I've had conversations that I received a subpoena to  
12 that extent.

13 Q Has he commented to you what he think this  
14 investigation was all about?

15 A No, he has not, but we have had to provide  
16 to potential auditors the fact that we have an SEC  
17 inquiry and that e-mail I may have been copied on just  
18 for audit purposes.

19 Q And is that with respect to the two audited  
20 funds?

21 A Say it again.

22 Q That's with respect to the two funds that  
23 are audited?

24 A In trying to secure a audit firm.

25 Q In order to secure an audit firm for those

1 two funds, correct?

2 A For the Equialt Secured Income Portfolio  
3 REIT and the Equialt Qualified Opportunity Zone, yes.

4 Q Besides Mr. Davison, have you had any  
5 conversations with any of your colleagues about what  
6 this investigation might entail?

7 A No, I have not.

8 Q Or anybody else other than Mr. Davison and  
9 your colleagues? Anyone outside the company?

10 A No, I have not.

11 Q Ms. Stoddart, I don't think we have any  
12 further questions for you at this time. However, if  
13 we feel that it's necessary for you to come testify  
14 again, we'll consult with your attorneys.

15 Is there anything that you would like to  
16 add, correct, amend or supplement to your testimony  
17 that you provided today?

18 A Nothing at this time.

19 MR. ZAMORANO: Counsel, do you have any  
20 clarifying questions?

21 MR. HARAY: No.

22 MR. ZAMORANO: Okay. That being the case,  
23 we are done. Off the record at 3:10.

24 (Whereupon, at 3:10 p.m., the examination  
25 was concluded.)

PROOFREADER'S CERTIFICATE

In The Matter of: CERTAIN UNREGISTERED SECURITIES  
Witness: Denver Stoddart  
File Number: FL-04167-A  
Date: Tuesday, December 5, 2019  
Location: Miami, FL

This is to certify that I, Maria E. Paulsen,  
(the undersigned), do hereby certify that the  
foregoing transcript is a complete, true and accurate  
transcription of all matters contained on the recorded  
proceedings of the investigative testimony.

  
(Proofreader's Name)

12/11/19  
(Date)

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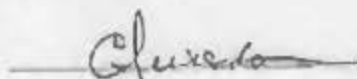
COUNTY OF PALM BEACH

I, Caretha Wisdom, Professional Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report said hearing in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said hearing.

I further certify that said Hearing was taken at the time and place hereinabove set forth and that the taking of said hearing was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of any party connected with the action, nor am I financially interested in the action.

Dated this 10th day of December, 2019.



Caretha Wisdom,  
Professional Court Reporter



# **EXHIBIT 2**



UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
 ) File No. FL-04167-A  
CERTAIN UNREGISTERED SECURITIES )

WITNESS: Dale Tenhulzen

PAGES: 1 through 61

PLACE: 801 Brickell Avenue

Suite 1800

Miami, Florida 33131

DATE: Friday, December 20, 2019

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:07 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 ANDRE ZAMORANO, ESQ.</p> <p>5 Division of Enforcement</p> <p>6 Securities and Exchange Commission</p> <p>7 801 Brickell Avenue</p> <p>8 Suite 1800</p> <p>9 Miami, Florida 33131</p> <p>10 (305)982-6393</p> <p>11 zamoranoa@sec.gov</p> <p>12</p> <p>13 On behalf of the Witness:</p> <p>14 ALLAN LERNER, ESQ.</p> <p>15 Law Office of Allan M. Lerner, P.A.</p> <p>16 2888 East Oakland Park Boulevard</p> <p>17 Fort Lauderdale, Florida 33306</p> <p>18 (954)563-8111</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 MR. ZAMORANO: We are on the record at 10:07</p> <p>3 on December 20, 2018.</p> <p>4 Mr. Tenhulzen, do you swear or affirm to tell</p> <p>5 the truth, the whole truth, and nothing but the truth?</p> <p>6 MR. TENHULZEN: I do.</p> <p>7 Whereupon,</p> <p>8 DALE TENHULZEN</p> <p>9 was called as a witness and, having been first duly</p> <p>10 sworn, was examined and testified as follows:</p> <p>11 MR. ZAMORANO: Please state your full name and</p> <p>12 spell your name for the record.</p> <p>13 THE WITNESS: Dale Lister Tenhulzen, D-A-L-E</p> <p>14 L-I-S-T-E-R T-E-N-H-U-L-Z-E-N.</p> <p>15 MR. ZAMORANO: Just by way of brief</p> <p>16 introduction, again, my name is Andre Zamorano, I'm an</p> <p>17 officer of the Commission for the purposes of this</p> <p>18 proceeding.</p> <p>19 This is an investigation by the United States</p> <p>20 Securities and Exchange Commission in the matter of</p> <p>21 Certain Unregistered Securities transactions to determine</p> <p>22 whether there have been violations of certain provisions</p> <p>23 of the federal securities laws. However, the facts</p> <p>24 developed in this investigation might constitute</p> <p>25 violations of other federal or state, civil or criminal</p>																																														
<p style="text-align: right;">Page 3</p> <p>1 CONTENTS</p> <p>2</p> <table border="0"> <tr> <td>3 WITNESS</td> <td>EXAMINATION</td> </tr> <tr> <td>4 Dale Tenhulzen</td> <td>6</td> </tr> <tr> <td>5</td> <td></td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7 EXHIBITS: DESCRIPTION IDENTIFIED</td> <td></td> </tr> <tr> <td>8 53 Subpoena</td> <td>6</td> </tr> <tr> <td>9</td> <td></td> </tr> <tr> <td>10 54 PPM</td> <td>25</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12 55 e-mail</td> <td>26</td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14 56 Document</td> <td>53</td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	3 WITNESS	EXAMINATION	4 Dale Tenhulzen	6	5		6		7 EXHIBITS: DESCRIPTION IDENTIFIED		8 53 Subpoena	6	9		10 54 PPM	25	11		12 55 e-mail	26	13		14 56 Document	53	15		16		17		18		19		20		21		22		23		24		25		<p style="text-align: right;">Page 5</p> <p>1 laws.</p> <p>2 Prior to the opening of the record you were</p> <p>3 provided with a copy of the formal order of investigation</p> <p>4 in this matter, and it's been supplemented, and both of</p> <p>5 those documents will be available for your examination</p> <p>6 during the entire course of this proceeding.</p> <p>7 Have you had an opportunity to review the</p> <p>8 formal order?</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. ZAMORANO: Prior to the opening of the</p> <p>11 record you were provided with a copy of the Commission's</p> <p>12 Supplemental Information form. A copy of that notice was</p> <p>13 attached to your subpoena.</p> <p>14 Have you had an opportunity to read that</p> <p>15 document?</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. ZAMORANO: Do you have any questions</p> <p>18 concerning that notice?</p> <p>19 THE WITNESS: No.</p> <p>20 MR. ZAMORANO: Are you represented by counsel?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. ZAMORANO: Counsel, can you please identify</p> <p>23 yourself for the record?</p> <p>24 MR. LERNER: Allan Lerner, Law Firm of Allan</p> <p>25 Lerner, P.A., 2889 East Oakland Park, Florida 33306,</p>
3 WITNESS	EXAMINATION																																														
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Page 6

1 telephone number (954) 563-8111.  
 2 MR. ZAMORANO: Sir, a copy of the subpoena is  
 3 going to be marked as Exhibit Number 53.  
 4 (SEC Exhibit No. 53 was marked  
 5 for identification.)

## EXAMINATION

BY MR. ZAMORANO:

8 **Q It is both a testimony subpoena and a subpoena**  
 9 **for documents.**

10 **Do you recognize that document?**

11 A Yes.

12 **Q Do you understand that you're appearing here**  
 13 **today to provide testimony pursuant to that subpoena?**

14 A Yes.

15 **Q Just going to go over some background questions**  
 16 **before we get into the substance of your testimony.**

17 **Have you ever been known by any other names**  
 18 **other than the one that you stated on the record?**

19 A No.

20 **Q Your date and place of birth?**

21 [REDACTED]

22 **Q Country of citizenship?**

23 [REDACTED]

24 **Q Marital status?**

25 A Married.

Page 8

1 **Q Are you now or have you ever been a beneficial**  
 2 **owner directly or indirectly of five percent or more of**  
 3 **any publicly held company?**

4 A No

5 **Q Are you now or have you ever been a beneficial**  
 6 **owner directly or indirectly of any privately held**  
 7 **company?**

8 A Excuse me?

9 **Q Privately held company.**

10 A Have I been an owner, yes

11 **Q What's the name?**

12 A Red Apple Resources

13 **Q What type of business was Red Apple Resources?**

14 A Fund raising, non for profits, schools,

15 Synagogues, churches

16 **Q And were you the owner of that company?**

17 A Partial owner

18 **Q And is that company active?**

19 A No

20 **Q When did it cease being active?**

21 [REDACTED]

22 [REDACTED]

23 **Q Okay.**

24 **Are you now or have you ever been a**  
 25 **manager or member of any privately held company other than**

Page 7

1 **Q And what is your primary residence address?**

2 [REDACTED]

3 [REDACTED]

4 **Q How long have you lived there?**

5 A 2014.

6 **Q And your business address?**

7 [REDACTED]

8 **Q How do you spell that?**

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 **Q Okay. Do you have a business telephone**  
 15 **number?**

16 [REDACTED]

17 **Q And a personal telephone number?**

18 [REDACTED]

19 **Q And do you have a business e-mail?**

20 [REDACTED]

21 **Q And do you have a personal e-mail address?**

22 [REDACTED]

23 **Q Are you now or have you ever been an officer or**  
 24 **director of any publicly held company?**

25 A No.

Page 9

1 **the ones you've just mentioned?**

2 A What would you consider Live Wealthy  
 3 Institute?

4 **Q Is that incorporated?**

5 A It's an LLC.

6 **Q Limited liability company?**

7 A Right.

8 **Q Where is it organized?**

9 A Wyoming.

10 **Q And who are the owners of Live Wealthy?**

11 A Just myself.

12 **Q When was that incorporated -- or organized**  
 13 **rather?**

14 A I don't recall the exact date.

15 **Q More than five years ago?**

16 A Yeah.

17 **Q Does Live Wealthy Institute have any bank**  
 18 **accounts?**

19 A Yes.

20 **Q Where does it have its bank accounts?**

21 A Chase Bank.

22 **Q For how long has Live Wealthy Institute had its**  
 23 **bank accounts at Chase Bank?**

24 A Since inception.

25 **Q Any other banks that you have accounts at?**

Page 10

1 A No.

2 **Q What about securities accounts?**

3 A Securities, no securities.

4 **Q Have you ever testified in any proceeding**  
5 **conducted by the staff of the Securities and Exchange**  
6 **Commission?**

7 A No.

8 **Q A U.S. or foreign federal or state agency?**

9 A No.

10 **Q A U.S. or foreign federal or state court?**

11 A No.

12 **Q Stock exchange?**

13 A No.

14 **Q Financial Industry Regulatory Authority?**

15 A No.

16 **Q Any other self regulatory organizations?**

17 A No.

18 **Q Have you ever testified in any arbitration**  
19 **proceeding related to securities transactions?**

20 A No.

21 **Q Have you ever given a deposition in any court**  
22 **proceeding?**

23 A No.

24 **Q Have you ever been named as a defendant or a**  
25 **respondent in any action or proceeding brought by the**

Page 11

1 **SEC?**

2 A No.

3 **Q Or any other U.S. or foreign federal**  
4 **agency?**

5 A No.

6 **Q State securities agency?**

7 A No.

8 **Q Finra?**

9 A No.

10 **Q Self regulatory organization?**

11 A No.

12 **Q Or an exchange?**

13 A No.

14 **Q Have you ever been a defendant in any action**  
15 **alleging violations of the federal securities laws?**

16 A No.

17 **Q Have you ever been a defendant in any criminal**  
18 **proceedings other than one involving a minor traffic**  
19 **offense?**

20 A No.

21 **Q I'm going to ask you a couple of questions,**  
22 **brief questions about your educational history. Did you**  
23 **attend college?**

24 A Yes.

25 **Q Where did you attend college?**

Page 12

1 A University of Iowa.

2 **Q Did you graduate?**

3 A No.

4 **Q What did you study?**

5 A Premed, four years.

6 **Q Any other college education?**

7 A No.

8 **Q Have you taken any securities, accounting or**  
9 **business related courses since high school?**

10 A Business -- question business related, I go to  
11 insurance seminars and that kind of thing; is that what  
12 you mean by business?

13 **Q It would include insurance.**

14 A That and -- so I've been to many insurance  
15 seminars. And a course called for a certification for a  
16 wealth preservation planner.

17 **Q Certification for planning?**

18 A Wealth planning, yes.

19 **Q Who's that certification given by?**

20 A A gentleman by the name of Rocky Delansisco.  
21 Don't ask me how to spell it.

22 **Q And is that in California?**

23 A No. He's from I believe Illinois or Midwest  
24 somewhere.

25 **Q When did you obtain that certification?**

Page 13

1 A If I recall it would be probably 2010 or '11.

2 **Q Do you hold or have you ever held any**  
3 **professional licenses?**

4 A I hold a life license and a life settlement  
5 license.

6 **Q From what state?**

7 A California, and then several other states. I  
8 think I'm licensed in Florida as well.

9 **Q Any securities related licenses?**

10 A No.

11 **Q Are you or have you ever been an employee of a**  
12 **broker dealer investment advisor, investment company,**  
13 **municipal securities dealer?**

14 A No.

15 **Q Municipal advisor?**

16 A No.

17 **Q Transfer agent?**

18 A No.

19 **Q Or nationally recognized statistical rating**  
20 **organization?**

21 A No.

22 **Q Who is your present employer?**

23 A I'm unemployed. Well, Live Wealthy Institute.

24 **Q How long have you worked at Live Wealthy**  
25 **Institute?**

Page 14

1 A Since inception.  
 2 **Q Did you form the company?**  
 3 A Yes.  
 4 **Q How many employees does Live Wealthy have?**  
 5 A Zero. I just have one part-time.  
 6 **Q Who is that person?**  
 7 A [REDACTED]  
 8 [REDACTED]  
 9 **Q She is not an actual employee; she is an**  
 10 **independent contractor?**  
 11 A Right.  
 12 **Q What does she do for you?**  
 13 A She handles paperwork, contracts.  
 14 **Q Tell me a little bit about the business of Live**  
 15 **Wealthy Institute.**  
 16 A Mainly life insurance and annuities.  
 17 **Q It sells --**  
 18 A Sells life insurance and annuities. And I teach  
 19 classes.  
 20 **Q What type of classes do you teach?**  
 21 A First class is tax free retirement.  
 22 **Q Do you charge for those classes?**  
 23 A No. Second one is asset protection and  
 24 unlocking wealth.  
 25 **Q Okay.**

Page 15

1 A Third one is the bank.  
 2 **Q Okay.**  
 3 A And the fourth one is the new asset class.  
 4 **Q Which companies are you authorized to sell life**  
 5 **insurance and annuities for?**  
 6 A Many. They're all listed on the State of  
 7 California but I don't know all the names.  
 8 **Q Okay. More than five?**  
 9 A Yeah, more than five.  
 10 **Q What is the annual sales for life insurance**  
 11 **products for Live Wealthy Institute for 2019?**  
 12 A Not very much for 2019.  
 13 **Q 2018?**  
 14 A No.  
 15 **Q 2017?**  
 16 A No. I don't recall all the numbers. Probably  
 17 less than a hundred thousand dollars.  
 18 **Q How about annuities for 2019?**  
 19 A Zero.  
 20 **Q 2018?**  
 21 A Probably zero.  
 22 **Q 2017?**  
 23 A Maybe 500 thousand. That's a contract not  
 24 income, it's the contracted.  
 25 **Q I was talking about income.**

Page 16

1 A Oh income would just be six percent of 500.  
 2 **Q Does Live Wealthy Institute file tax returns?**  
 3 A No.  
 4 **Q When was the last time they filed a tax return?**  
 5 A No, there is no income.  
 6 MR. LERNER: Well, it's an LLC so it would pass  
 7 through to him individually.  
 8 BY MR. ZAMORANO:  
 9 **Q Okay.**  
 10 **So you individually file tax returns for**  
 11 **the income that's generated?**  
 12 A Yeah, life insurance companies you have to be  
 13 licensed individually not through the corporation.  
 14 **Q Okay.**  
 15 A So it's a 1099. It's very difficult to get a  
 16 corporate license.  
 17 **Q What was your personal income for 2018?**  
 18 A I don't recall the exact number.  
 19 **Q Approximately would be fine.**  
 20 A Net taxable income?  
 21 **Q Yes.**  
 22 A Probably in the 300s.  
 23 **Q And for 2017?**  
 24 A Probably 400.  
 25 **Q And do you file tax returns?**

Page 17

1 A I do.  
 2 **Q Do you have an accountant that files those for**  
 3 **you?**  
 4 A Yes, I do.  
 5 **Q Who is that?**  
 6 A [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 **Q Where are they located?**  
 10 A Seattle, Washington. Bellevue, Washington  
 11 actually.  
 12 **Q I would like to ask you some questions**  
 13 **concerning the subpoena for documents which have been**  
 14 **marked as Exhibit 53. The documents have been requested**  
 15 **under paragraph number C, letter C rather.**  
 16 **Can you tell me a little bit about what you did**  
 17 **in order to collect the documents that were requested by**  
 18 **us in the subpoena?**  
 19 A I went through all my client files and pulled  
 20 out any and all related materials.  
 21 **Q Are those client files electronic or are they**  
 22 **hard copy?**  
 23 A They're hard copy. But then they were put in  
 24 electronic to send.  
 25 **Q How many of your clients have purchased**



Page 18

1 **investments from Equialt?**

2 A I don't recall the exact number.

3 **Q Approximate number. More than 50, less than 50?**

4 A Probably more than 50.

5 **Q Where are those clients located primarily?**

6 A Southern California.

7 **Q Any other states?**

8 A Yes, there is but spotted.

9 **Q What states?**

10 A Maybe North Carolina, maybe Michigan, Arkansas.  
11 I don't recall the states. If they're out of state  
12 they're referrals.

13 **Q Do you recall or do you know whether you have**  
14 **produced a list of clients that invested in one or more of**  
15 **the following investment funds? Equialt Fund, LLC;**  
16 **Equialt Fund II, LLC; E-A-S-I-P, LLC; Equialt Qualified**  
17 **Opportunity Fund, LP; and the last one is Equialt**  
18 **Qualified Security Portfolio REET.**

19 A I recall it's only the first two.

20 **Q First two. So the Equialt Fund, LLC, and**  
21 **Equialt Fund II, LLC, are the two funds that you have**  
22 **clients that purchase investment funds. Is that correct?**

23 A I'm going to assume that, yes.

24 **Q And just for the purpose of this testimony I'm**  
25 **going to refer to those two entities as the funds. Is**

Page 20

1 A Yes, [REDACTED]. And we used every key search  
2 word we can think of.

3 **Q Okay. Are there any documents that we requested**  
4 **that have been destroyed in the past?**

5 A No.

6 **Q Or that you're withholding for any particular**  
7 **purpose?**

8 A No.

9 **Q Does Live Wealthy Institute have a physical**  
10 **office?**

11 A No.

12 **Q Just a PO box that you mentioned?**

13 A PO box, and by law I have to keep files in one  
14 location under lock and key.

15 **Q Okay.**

16 A So the only place for me to do that is my home  
17 because I have clients from Northern California to  
18 Southern California.

19 **Q So the client files are maintained at your home?**

20 A Yes.

21 **Q How many clients does Wealth Institute have?**

22 A I'm going to assume there is between 170 to 200.

23 **Q How do you obtain your clients?**

24 A Through my classes and referrals.

25 **Q Where do you hold those classes or seminars?**

Page 19

1 **that okay?**

2 A That's fine.

3 **Q Just for the ease of reference.**

4 **Who was responsible for collecting the documents**  
5 **that we requested?**

6 A Myself and Sarah Williams.

7 **Q And how long do you typically retain client**  
8 **files?**

9 A I've never destroyed clients files unless they  
10 die or they -- or if they don't work with me anymore.

11 **Q Okay. Does your business retain electronic**  
12 **documents such as e-mails?**

13 A Yes.

14 **Q Does it do it on a personal dedicated server or**  
15 **do you do it through some service provider like --**

16 A No, it's our own computers. And I've got Red  
17 Tail; is that what you're asking?

18 **Q Yes.**

19 A Red Tail is the service I use.

20 **Q And did you personally review your e-mails to**  
21 **determine whether there were documents that were**  
22 **responsive to our request for documents?**

23 A Yes, we both did.

24 **Q And when you say both you're referring to**  
25 **[REDACTED] ?**

Page 21

1 A In conference rooms.

2 **Q Do you advertise?**

3 A No, I'm doing mailing.

4 **Q Do you solicit clients through the internet?**

5 A No. I have a website page but it's just a  
6 landing page, but they can contact me if they want.

7 **Q How about cold calls?**

8 A No.

9 **Q Newsletters?**

10 A Only to clients.

11 **Q Radio?**

12 A No.

13 **Q Television?**

14 A No.

15 **Q When did you begin offering or selling**  
16 **investments in the funds?**

17 A I believe I tested it in 2013 but never really  
18 started until 2014.

19 **Q What do you mean that you tested it in 2013?**

20 A I believe I had two clients.

21 **Q You sold investments in the Equialt funds to two**  
22 **clients in 2013?**

23 A Yes.

24 **Q And you said you tested it, what did you do?**

25 A I wanted to make sure that they would pay

Page 22

1 monthly, I wanted to make sure everything was legitimate  
2 and through my due diligence.

3 **Q What due diligence did you conduct?**

4 A I conducted talking first of all to the business  
5 manager Barry Rybicki.

6 **Q Do you know how to spell his last name?**

7 A R-Y-B-A-K -- I can look it up if you need me to.

8 **Q R-Y-B-I-C-K-I. Does that sound about right?**

9 A Yes.

10 **Q Okay. And you spoke with Mr. Rybicki?**

11 A Yes.

12 **Q Did you speak to anybody else at the company  
13 about the funds?**

14 A Yes, also Brian Davison.

15 **Q Who is Brian Davison?**

16 A I believe he's the president of the company.

17 MR. LERNER: What was Rybicki's position?

18 THE WITNESS: I think it's business manager.

19 MR. LERNER: At the time?

20 THE WITNESS: Yes.

21 BY MR. ZAMORANO:

22 **Q In addition to speaking to them did you do any  
23 other due diligence?**

24 A Yes.

25 **Q What's that?**

Page 23

1 A The way I found the company I was at a life  
2 insurance seminar, agents get invited to different  
3 seminars to learn more about life insurance. I was  
4 sitting next to a gentleman at the class and we were  
5 talking about our practices, and I usually don't talk to  
6 many people at these but I liked this gentleman and our  
7 practices were very similar so we started talking about  
8 annuities and how we're both looking for income for  
9 clients as well as growth, so he's the one who introduced  
10 me to Equialt, he said he uses Equialt as an income  
11 employee.

12 **Q Who is that person?**

13 A His name is Ron Stevenson.

14 **Q Where does Mr. Stevenson live?**

15 A Prescott, Arkansas.

16 **Q So Mr. Stevenson introduced you to Barry  
17 Rybicki?**

18 A Yes, gave me his information.

19 **Q Okay. And what else did you do as far as due  
20 diligence is concerned?**

21 A Well, I read that that fund one I believe it is.

22 **Q What did you read?**

23 A I had questions about there is a section that  
24 says no commissions are paid, so I asked well how could I  
25 do this if no commissions are paid.

Page 24

1 **Q What were you told?**

2 A I was given, he said we could do a management  
3 marketing fee arrangement to fund my classes.

4 **Q Management marketing fee arrangement?**

5 A Yes.

6 **Q To fund your classes?**

7 A Right. Each class put on costs about \$20  
8 thousand.

9 **Q Going back to your initial conversation with Mr.  
10 Stevenson, what did he tell you about the Equialt funds?**

11 A That he felt it was a risk but he felt it was  
12 safe because there was no -- they buy real estate and  
13 there was no mortgages on the real estate so they could  
14 not leverage the real estate. I have some background in  
15 real estate, I wanted to find out more.

16 **Q What's that background?**

17 A Buying, selling real estate.

18 **Q Did you visit any of the real estate assets  
19 owned by the investment funds?**

20 A I did.

21 **Q Where?**

22 A Tampa, Florida.

23 **Q Is that where you met with Mr. Davison?**

24 A Yes. Their office is there.

25 **Q And you visited some of the real estate that the**

Page 25

1 **investment funds reportedly owned?**

2 A Yes.

3 **Q You mentioned that you read a document that said  
4 no commissions are paid, do you recall which document that  
5 was?**

6 A I believe it's if I recall it's the fund one.

7 **Q Fund one, but is it a private placement  
8 memorandum?**

9 A Yeah, the PPM. I don't have them with me.  
10 (SEC Exhibit No. 54 was marked  
11 for identification.)

12 BY MR. ZAMORANO:

13 **Q I'm going to show you what we marked as  
14 Exhibit 54 which is the private placement memorandum for  
15 Equialt Management Fund, LLC. Do you recognize that  
16 document?**

17 A Yes.

18 **Q And do you recall where it mentions that no  
19 commissions are paid in connection with this investment?**

20 A Maybe it's fund two, I may have been mistaken.

21 MR. LERNER: Can we go off the record?

22 MR. ZAMORANO: Sure. Off the record at 20 till  
23 11.

24 (Whereupon, a discussion was held off the  
25 record.)

Page 26

1 MR. ZAMORANO: We're back on the record at  
 2 quarter till 11  
 3 BY MR. ZAMORANO:  
 4 **Q During the break your counsel referenced a**  
 5 **private placement memorandum at Bates numbers 1387**  
 6 **through 1406, and it's a private placement memorandum,**  
 7 **another version for Equialt Fund, LLC, which apparently**  
 8 **has a provision that says no commissions will be paid. Is**  
 9 **that correct?**  
 10 A That's correct  
 11 **Q So when did you first receive any compensation**  
 12 **relating to the Equialt funds?**  
 13 MR. LERNER: May I speak to him?  
 14 A If I can go to the commission and add to that  
 15 **Q Sure.**  
 16 A If there is no commissions and I don't charge  
 17 fees to my clients how do I get paid to do this So he  
 18 referenced to I could speak to their counsel who put the  
 19 PPM together This gentleman's name was Paul Wassgreen  
 20 (SEC Exhibit No 55 was marked  
 21 for identification )  
 22 BY MR. ZAMORANO:  
 23 **Q I'm going to show you what we've marked as**  
 24 **Exhibit Number 55 which is an e-mail from Barry Rybicki to**  
 25 **you with contact information for an attorney named Paul R.**

Page 27

1 **Wassgreen, W-A-S-S-G-R-E-E-N, partner of Fox Rothchild,**  
 2 **Los Angeles, 1800 Central Park East, Suite 300.**  
 3 **Is this the attorney you're referring to?**  
 4 A Yeah, yeah, but it was before then.  
 5 **Q It was before 2016?**  
 6 A Yeah, it was 2014.  
 7 **Q Okay. What did you and Mr. Wassgreen discuss?**  
 8 A I discussed how the PPM was put together, and if  
 9 I'm not getting paid a commission how am I going to get  
 10 paid.  
 11 **Q What did he tell you?**  
 12 A That they have a what I used before marketing  
 13 agreement, so we went through that, he wanted to know my  
 14 expenses and how much I paid for my classes, and my  
 15 question was am I able to sell this by being life licensed  
 16 and he said as a PPM I am.  
 17 **Q Can you expand a little bit about the discussion**  
 18 **that you had with Mr. Wassgreen concerning that point?**  
 19 A Concerning the PPM?  
 20 **Q Concerning whether you had to be licensed with**  
 21 **the -- in order to have the securities license in order to**  
 22 **sell these investment funds.**  
 23 A It was quite awhile ago. It was 2014.  
 24 **Q To the best of your recollection.**  
 25 A I just wanted to make sure that I was able to

Page 28

1 sell these legally or do I need a securities license.  
 2 **Q What did Mr. Wassgreen tell you?**  
 3 A He said no, this is the way this is set up,  
 4 because this is a PPM you are allowed to sell as long as  
 5 you do it through a marketing agreement.  
 6 **Q And did you sign a marketing agreement?**  
 7 A I recall I did but I cannot find it anywhere.  
 8 **Q What did the marketing agreement provide for,**  
 9 **what were the compensation terms, what you were obligated**  
 10 **to do, just tell me a little bit more about that.**  
 11 A The compensation was ten percent of whatever the  
 12 deposit was.  
 13 **Q Ten percent of the deposit?**  
 14 A Yes. So if it was a hundred thousand it was 10  
 15 thousand.  
 16 MR. LERNER: When you say deposit what are you  
 17 referring to?  
 18 THE WITNESS: Them giving a hundred thousand  
 19 dollars to Equialt.  
 20 BY MR. ZAMORANO:  
 21 **Q You're talking about investment --**  
 22 A Correct.  
 23 **Q So for each investment your compensation was --**  
 24 A Ten percent of that amount.  
 25 **Q Ten percent?**

Page 29

1 A Correct  
 2 **Q Did you ever consult with your own counsel about**  
 3 **whether you're required a securities base license?**  
 4 MR. LERNER: Go off the record  
 5 MR. ZAMORANO: Sure  
 6 (Whereupon, a discussion was had off the  
 7 record )  
 8 MR. ZAMORANO: Back on the record  
 9 BY MR. ZAMORANO:  
 10 **Q During the break I had a conversation with your**  
 11 **counsel about attorney client communications and it's your**  
 12 **intent to assert your attorney client privilege with**  
 13 **respect to communications that have taken place with Mr.**  
 14 **Wassgreen pursuant to a formal engagement, however, you're**  
 15 **not asserting your privilege with respect to**  
 16 **communications that occurred prior to that engagement with**  
 17 **respect to the question of whether you were required to**  
 18 **have a license. Is that accurate?**  
 19 MR. LERNER: Yes  
 20 THE WITNESS: Yes, I'm sorry  
 21 MR. LERNER: He stated yes Just for the  
 22 record, the engagement occurred in 2016, the formal  
 23 engagement actually paid him a retainer at that time  
 24 Prior to that they were not engaged but they did have  
 25 these communications he has testified to

Page 30

BY MR. ZAMORANO:

**Q How many communications -- well, first of all, what was the nature of the communications, were they personal, by telephone, or were they by e-mail?**

A Telephone.

**Q How many conversations do you believe that you had with respect to whether the question you needed to be licensed in order to sell investments in the Equialt fund?**

A It would only be a couple I'm sure.

**Q Did he provide you any written opinion letter or confirmation or anything in writing?**

A I don't believe so. He did tell me he wrote the PPM so that's why I went to him.

**Q With respect to the investments that you sold in Equialt wealth funds was the commission that you received always ten percent or has it varied?**

A No, it varies. It's ten percent for initial and then if I went over half a million in one month I would get a two percent bonus.

**Q How was that bonus calculated based on the investment amounts as well?**

A Total 500, so it would be two percent of the 500.

**Q Okay. So in addition to the commission of ten percent on the investment amount you received two percent**

Page 31

**of 500 thousand?**

A That's correct.

**Q Okay.**

A And then renewals, they had a four-year contract and I negotiated a three-year contract because I didn't want my clients to be in for four years, so if they would renew after three years then I would get a six percent renewal fee.

**Q Okay. And what happened in the event that one of your clients decided to redeem his or her investment before the expiration of the contract period would you be charged back?**

A I did not get charged back in the first, now they are doing that but I don't work with him anymore.

I got one situation where somebody died so the trustee asked for the money and they got the redemption early.

The second one was in the last three years ago probably, two to three years ago a woman that invested with me wanted out and they sent her her money back and then gave me a charge back on that.

**Q Okay.**

**So those two instances that you recall?**

A Yes, that are early. There is only two early.

**Q Okay.**

Page 32

A They had always stated if there was an emergency they could get their money back to them, which a death is kind of an emergency.

**Q Right.**

How was the commission paid, was it paid by check or was it paid by electronic transfer?

A Paid by check.

**Q Always by check?**

A Yes, I believe it was always by check.

**Q Where would you deposit those checks?**

A Chase.

**Q And do you know who wrote those checks?**

A Barry Rybicki.

**Q Was it BR Support Services, does that sound familiar?**

A Yes.

**Q Do you know what the total amount of commissions you received for selling investments in the Equialt funds over the years?**

A Over 700 thousand.

**Q Documents that have been provided by Equialt in connection with this matter indicate that you received \$1,142,112 in commissions for selling investments in the funds.**

**Does that figure sound accurate?**

Page 33

A The only 1099's I have are the 700 plus that I found.

MR. LERNER: Repeat the number.

MR. ZAMORANO: \$1,142,112.

BY MR. ZAMORANO:

**Q You said you received 1099's. What are 1099's for the record?**

A Instead of a W2 it's a 1099.

**Q Tax form?**

A Tax form.

**Q Who do you receive that tax form from?**

A BR Support.

**Q And your understanding is that based on the 1099's that you received that you received approximately \$700 thousand dollars in commissions?**

A The tax returns.

**Q And the tax returns.**

A From the date you asked January 1, 2015, on.

**Q Did you provide those 1099's in response to our request?**

A Yes.

**Q Okay. And did you provide --**

MR. LERNER: What he just said just triggered in my mind why there might be a difference. Since he was working for them since 2014 you provided the information.

Page 34

1 THE WITNESS: From '15.  
 2 MR. LERNER: It's only one year, okay.  
 3 BY MR. ZAMORANO:  
 4 **Q So you provided the 1099's for the period that**  
 5 **we requested?**  
 6 A Yes.  
 7 **Q And did you provide tax returns?**  
 8 A Yes.  
 9 **Q Okay.**  
 10 A What I was asked to.  
 11 **Q Okay.**  
 12 MR. LERNER: Did you see any tax returns?  
 13 MR. ZAMORANO: No, I didn't see any tax returns.  
 14 MR. LERNER: Were they requested, Andre?  
 15 MR. ZAMORANO: Not specifically but what was  
 16 requested pursuant to the subpoena was all documents  
 17 concerning any compensation including financial records,  
 18 statements, schedules.  
 19 MR. LERNER: We will get you the tax returns.  
 20 THE WITNESS: I tell you how I keep track of  
 21 it, I do the sheet on the old calculator, the tape sheet  
 22 because I get so many 1099's because there is different  
 23 annuities, different life insurance companies, then  
 24 Equialt, and my life settlement companies. So I keep a  
 25 record and then I write next to it, so that's where I got

Page 36

1 A Andre was Provident Trust.  
 2 **Q Provident Trust?**  
 3 A Yeah, IRA custodian.  
 4 **Q Self-directed IRA custodian?**  
 5 A Yes. I don't know that he worked directly for,  
 6 if that's what you're asking, for Equialt.  
 7 **Q You believe he worked for Provident?**  
 8 A Yes.  
 9 **Q How about Maria Sears, does that name sound**  
 10 **familiar?**  
 11 A No, not at all.  
 12 **Q Was it Mr. Rybicki who explained to you the**  
 13 **investments that were being offered by the investment**  
 14 **funds?**  
 15 A The houses you mean?  
 16 **Q The investments.**  
 17 A Yes.  
 18 **Q The primary investment objective, the risks,**  
 19 **things like that.**  
 20 A Yes.  
 21 **Q Did you have these conversations with Mr.**  
 22 **Rybicki?**  
 23 A Yes.  
 24 **Q Did Mr. Rybicki or Mr. Wassgreen ever tell you**  
 25 **whether these securities had to be the securities that**

Page 35

1 all my numbers plus the 1099's  
 2 BY MR. ZAMORANO:  
 3 **Q Okay.**  
 4 A It was filed every year  
 5 **Q Okay. What else do you recall or can you**  
 6 **remember about the conversations that you had with Paul**  
 7 **Wassgreen concerning the question of whether you had to be**  
 8 **licensed to sell these investments, is there anything else**  
 9 **that you can recall that he told you?**  
 10 A No  
 11 **Q Okay.**  
 12 MR. LERNER: If we could go back a second So  
 13 I believe I sent to you this document  
 14 MR. ZAMORANO: I didn't see that, I'll look for  
 15 it  
 16 This was your totals that you put together,  
 17 right?  
 18 THE WITNESS: Correct  
 19 MR. LERNER: 789,502 13  
 20 BY MR. ZAMORANO:  
 21 **Q Who was your primary contact at the Equialt**  
 22 **funds, was it Mr. Rybicki or Mr. Davison?**  
 23 A Barry Rybicki  
 24 **Q How about a person by the name of Andre Sears,**  
 25 **did you have any contact with him?**

Page 37

1 **were being offered by the investments funds had to be**  
 2 **registered with the SEC?**  
 3 A Registered, what's the definition of -- you  
 4 mean --  
 5 **Q The disclosure of information that's filed with**  
 6 **the Securities and Exchange Commission.**  
 7 A I knew they filed.  
 8 **Q Okay.**  
 9 A And he said they filed a couple different times.  
 10 **Q They told you that they had filed?**  
 11 A Yes.  
 12 MR. LERNER: Did they say they filed the  
 13 registration or --  
 14 THE WITNESS: I don't know what, they just used  
 15 the word filed.  
 16 BY MR. ZAMORANO:  
 17 **Q Okay. So you're not sure if they're referring**  
 18 **to a registration statement as opposed to a Form D, they**  
 19 **just said they had filed with the SEC?**  
 20 A I wasn't familiar with the Form D until this  
 21 year.  
 22 **Q Okay.**  
 23 **How did you find clients for the Equialt**  
 24 **investment funds?**  
 25 A Through my classes.



Page 38

1 **Q Did you discuss Equialt in your classes?**

2 A No. Never talked about companies only concepts.

3 **Q Did you talk about the concept that was being**  
4 **offered by the Equialt investment fund?**

5 A The ten percent return?

6 **Q No, the concept of buying and selling real**  
7 **estate.**

8 A No.

9 **Q Did you have existing clients that you offered**  
10 **investments in Equialt funds to?**

11 A Only if they needed -- after doing a needs  
12 analysis if they needed income then I would describe it,  
13 but never -- only if that was a concern of theirs, lack of  
14 income.

15 **Q Beside the classes that you referred to did you**  
16 **ever solicit investors for Equialt funds through e-mail?**

17 A No.

18 **Q Through cold calls?**

19 A No.

20 **Q Newsletters?**

21 A No.

22 **Q Or radio or television?**

23 A No.

24 **Q Did you provide prospective investors in Equialt**  
25 **funds with any written sales or marketing materials about**

Page 39

1 **the Equialt funds that you had prepared yourself?**

2 A No, only ones that they had supplied me.

3 **Q So it's your recollection that they provided you**  
4 **with some sales and marketing materials about the Equialt**  
5 **funds?**

6 A Yes. I believe it was a trifold.

7 **Q A trifold?**

8 A Yes, and other newsletters.

9 **Q What's a trifold?**

10 A Where it folds.

11 **Q Like a brochure?**

12 A Yes, a little brochure that opens up three  
13 pages.

14 **Q Okay.**

15 A I believe I mailed in other stuff too; didn't I?

16 **Q Did you provide those written sales and**  
17 **marketing materials to prospective clients in the**  
18 **investment funds?**

19 A Prospective.

20 **Q Your clients that you were considering referring**  
21 **or recommending investment in the investment funds to?**

22 A Yeah, I had a folder, my live wealthy folder  
23 that had all my investments inside of it. So if somebody  
24 wanted to know about me after classes and after a meeting  
25 I would give them that.

Page 40

1 **Q Was that trifold included in that?**

2 A Yes.

3 **Q Okay.**

4 **When you had a particular client that was**  
5 **interested in investing in the Equialt funds what sort of**  
6 **information did you provide to them regarding the**  
7 **investments, what did you discuss in general?**

8 A I told them what they were doing as far as  
9 buying foreclosure homes in Florida, Arizona, and I  
10 believe there is one other state.

11 **Q Did you discuss the -- I'm sorry, go ahead.**

12 A As being a wealth preservation planner I always  
13 want to make sure their principle is protected, so the  
14 reason why I liked this fund and this company is because  
15 they could not put mortgages on the real estate.

16 **Q Okay.**

17 A So I felt the best thing -- the worst thing for  
18 my clients would be as if these two gentlemen died, our  
19 worst case scenarios, we had 400 homes that were free and  
20 clear we would get our money back someday after we sold  
21 the homes.

22 **Q Okay.**

23 A That was my biggest thing is principle  
24 protection.

25 **Q Did you discuss the interest rate that was being**

Page 41

1 **offered by Equialt fund?**

2 A Yes.

3 **Q Did you ever negotiate with Equialt funds the**  
4 **interest rate that was being offered to your clients?**

5 A Yes, I did.

6 **Q And tell me a little bit about those**  
7 **negotiations.**

8 A There was two particular clients that put in a  
9 significant amount of money. And they wanted higher  
10 interest rates if they did so, so one of them negotiated  
11 on their own and I negotiated for the other one. I  
12 believe it's two clients.

13 **Q Did you provide your clients that were**  
14 **interested in purchasing or investing in the Equialt fund**  
15 **copies of the private placement memorandum?**

16 A Yes. It's inside each contract.

17 **Q And debenture, is that where you're referring to**  
18 **as the contract, the debenture?**

19 A I don't remember the name of it.

20 **Q How about a subscription agreement?**

21 A I believe it's all in that plastic folder that  
22 they give with their contracts.

23 **Q What was in that plastic folder that they give**  
24 **with their contracts?**

25 A The subscription. I'm not sure how you describe

Page 42

each one but there was several documents in there plus a questionnaire.

**Q Accredited investor.**

A Right, accredited investor.

**Q So your recollection is that the packet of materials that you would provide to your clients would include a private placement memorandum?**

A It came straight from Equialt, I never did it, Equialt did it all.

**Q Okay.**

MR. LERNER: Are you saying that Equialt sent the package to the investors and not you or you sent them out of your office?

THE WITNESS: I'm going to try to remember, some of them came to me and some went straight to the clients.

MR. LERNER: From Equialt?

THE WITNESS: From Equialt, yeah.

MR. LERNER: You would supply Equialt with the name of the person interested?

THE WITNESS: Correct.

BY MR. ZAMORANO:

**Q And then they would provide the --**

A Then they would send it back with the dollar amounts and everything. I would print it out, have them

Page 44

**Equialt fund?**

A Yes.

**Q Did you provide your clients who purchased investments in the Equialt funds with any advice or recommendations concerning whether to invest in these particular funds?**

A No. Not advice, I just gave them options.

**Q Okay. And what options would you give them typically?**

A Life insurance, annuities, life settlements, and Equialt.

**Q Did you sell private investments in any other investment funds besides Equialt?**

A Explain.

**Q Did you sell any other investments similar to Equialt?**

A Yes.

**Q Which companies?**

A First Global.

**Q First Global. Okay.**

A Merchant Cash Advance.

**Q Who offered Merchant Cash Advance?**

A First Global.

**Q That's a First Global product?**

A Yeah.

Page 43

sign the questionnaire, the front page, and then is it called a subscription or the debenture, there is not very many pages.

**Q The debenture?**

A Yeah. And then send that and they would send all that bound in a plastic container back to the client.

**Q Okay. So it would facilitate some of the paperwork that was necessary in order to invest in these investment funds?**

A I would give them the numbers, the dollar amounts.

**Q When you say they --**

A Barry Rybicki; and then he would send us back the filled in dollar amounts and everything.

**Q Okay.**

**Did you ever take possession of any of the investment funds?**

A Nobody has ever written me a check in my practice.

**Q Okay.**

Were you responsible for transmitting the signed agreements to Equialt funds from your clients?

A Correct.

**Q So your clients would fill out the paperwork and provide it to you and you in turn would provide it to**

Page 45

**Q Okay. Any others?**

A No.

**Q Woodbridge?**

A No.

**Q So just First Global and Equialt?**

A Yes.

**Q And the investments that were offered and First Global was something called the Merchant Cash Advance?**

A That's my understanding.

**Q Is that a debt or an equity product?**

A No, it would be a debt product.

**Q Okay. The Equialt product was also a debt product as well. Correct?**

A On the houses you mean?

**Q Yes.**

A Yes, there is no Equialt, yeah.

**Q In other words, your clients weren't -- they were getting a promissory note or a debenture in exchange for their investment as opposed to actual equity shares?**

A Right. It was a note which I liked because it was similar to annuities. But you didn't have to wait as long.

**Q Okay.**

**Did you and Mr. Wassgreen ever discuss whether the clients that you were selling the Equialt**

1 investment funds to had to be accredited investors?

2 A Yes, all except for 35 per fund.

3 Q Tell me about what you and Mr. Wassgreen  
4 discussed about that to your recollection.

5 A To my recollection that was it, just that  
6 they're only allowed 35 nonaccredited.

7 Q And all the rest had to be accredited?

8 A Correct.

9 Q Was that what Mr. Wassgreen told you?

10 A Yes. But most of my clients are all accredited  
11 because they cannot come to my class unless they're worth  
12 two and a half million dollars or make at least 300  
13 thousand if they're married in income.

14 Q So you believe all the clients to whom you sold  
15 Equialt investments were accredited investors?

16 A No, there was a couple that were not. But I got  
17 permission before.

18 Q Permission from who?

19 A Barry Rybicki.

20 Q Were they sophisticated investors?

21 A Uh-huh.

22 MR. LERNER: You have to answer verbally.

23 A Yes, sorry.

24 BY MR. ZAMORANO:

25 Q Did you and Mr. Rybicki ever discuss how you

1 take me through the process that would occur.

2 A From the class till that point?

3 Q Yes.

4 A So when I was done with the classes they were  
5 offered a one-hour free consultation if something hit home  
6 with them.

7 But they were also there to critique my class  
8 so they had questionnaires to fill out, how they would  
9 change things, you know, for their own world, so it helped  
10 me make a better presentation each time.

11 But at the end they were offered a free one-hour  
12 consultation.

13 So for those people that wanted that I  
14 would have 13 questions, it's a form I ask every single  
15 one the exact same questions pertaining to long-term care,  
16 pertaining to if they're in the market where they invested  
17 to asking them questions about their own personal  
18 situation, and then in the end I would say now that you  
19 know what I do for a living is there anything you think  
20 maybe I could help you with. That's how it ends.

21 Q If someone expressed to you that they were  
22 interested in generating income would you then discuss the  
23 Equialt investment?

24 A No, I never talked business at a one-hour free  
25 consultation.

1 would solicit investors for his funds?

2 A He came to my classes.

3 Q Mr. Rybicki did?

4 A Yeah. And he liked what I was doing.

5 Q Did you and Mr. Rybicki have any joint  
6 discussions about how to promote or market the Equialt  
7 funds?

8 A Yes.

9 Q What did you discuss?

10 A To add it in my power points.

11 Q Okay.

12 A Just the ten percent, no company name, no  
13 nothing, just tied it to how -- and via the bank I teach  
14 people the difference between simple interest, amortized  
15 interest, and compound interest, and how to take advantage  
16 of both to become your own bank, so I would show ten  
17 percent simple interest.

18 Q Simple interest ten percent being the braid that  
19 was being offered by Equialt investment funds?

20 A Correct, but never a company name.

21 Q Okay.

22 If you can just take me through the steps  
23 that or process that would occur if somebody, one of your  
24 clients or one of these individuals that attended your  
25 classes was interested in the Equialt investment fund,

1 Q Okay.

2 Would these clients or prospective clients  
3 then contact you at a later time?

4 A Yeah, I give them a folder of everything they  
5 saw. If they came to all four days, the classes, I  
6 provide them with that folder of all the companies  
7 afterwards if they wanted to pursue something.

8 Q Okay.

9 A But first they had to -- let me rephrase that.  
10 They first had to fill out a confidential worksheet  
11 because I wanted to make sure they were accredited if they  
12 wanted me to work with them. So if they did not fill out  
13 a confidential worksheet for me and bring that back I  
14 wouldn't go any further.

15 Q And what would happen once one of these persons  
16 or individuals decided that they were interested in the  
17 Equialt products, what would happen next?

18 A It would probably be the third or fourth meeting  
19 that I had with them, and if they needed income then I  
20 would show them the Equialt approach.

21 Q Okay. They said they were interested in the  
22 Equialt approach; what would be the next step, what would  
23 happen next?

24 A Then I would describe the risk involved in it,  
25 the percentage they can get, how long the contract is, the

Page 50

1 website so they can see the houses physically, then  
2 explain my story, how I did my due diligence with them  
3 meeting with each person individually, going to see the  
4 houses, and let them know that they haven't missed a check  
5 once, and explain that to me it's like an annuity, it's a  
6 note.

7 And so far it's been a -- I don't like to use the  
8 word guarantee but they never missed a check.

9 **Q Okay.**

10 A Then I gave them three references at least to  
11 talk to other people to see if they were happy with the  
12 fund.

13 **Q Okay.**

14 A But I had these people say it was okay first, I  
15 just don't give out phone numbers.

16 **Q Okay.**

17 **Did you personally invest in Equialt?**

18 A I did.

19 **Q How much?**

20 A 244,500.

21 **Q Are you still an investor?**

22 A I am.

23 **Q And are you receiving monthly payments or did  
24 you choose the growth option?**

25 A There is no growth option for what I'm -- what I

Page 52

1 down to 50 left that 159.

2 **Q Of the 159 that you invested with Equialt?**

3 A There is one more payment left of 50 grand, yes.

4 **Q And all your clients have a similar arrangement  
5 with Equialt?**

6 A No, but I do like this plan but I wanted to make  
7 sure they could afford doing principle and interest.

8 **Q Okay.**

9 A So they came up with this is how they can do it.  
10 The second one is 31,500 and that's to pay for my car, my  
11 truck.

12 If I recall that one is a six-year contract and it  
13 pays out 691.70 per month on the first of each month, and  
14 then the 15th the bank pulls out that amount to pay my  
15 truck payment.

16 **Q Okay.**

17 **So you invested the second amount of  
18 \$31,500 with Equialt?**

19 A Correct.

20 **Q And that pays out?**

21 A 691.70 per month, that's principle and interest.

22 **Q Principle and interest?**

23 A Yes.

24 **Q Okay.**

25 A Again, it's another design I did in the bank

Page 51

1 can offer.

2 **Q Okay.**

3 A What I do or what I could offer I should say.  
4 One of them is -- do you want me to describe each one how  
5 I do it?

6 **Q Yes.**

7 A The first one was \$159 thousand. And the reason  
8 for this is a life insurance policy I took out on myself  
9 that required five years of payments of \$50 thousand each  
10 which would equal 250 thousand. So between Wassgreen,  
11 Barry, and myself we created a calculator and this is when  
12 I engaged Wassgreen.

13 **Q I'm not going to ask you questions about what  
14 you and Mr. Wassgreen discussed.**

15 A Okay. The \$159 thousand, if you take that times  
16 ten percent over five years it's 200, it comes out to 200,  
17 so I would get a payment each year of 50 thousand to pay  
18 to the life insurance company the premium. Because the  
19 problem I was having with clients is they would take out  
20 these life insurance policies and make the first years  
21 payment but then they wouldn't have the 50 grand for the  
22 second or third year so my plan fell apart if they didn't  
23 have the money, so by putting the 159 in I know 50  
24 thousand is going to come out each year to pay their  
25 retirement plan, the tax free retirement plan. So that's

Page 53

1 class.

2 **Q Okay.**

3 A The third one is 54 thousand, my SEP.

4 **Q What's a SEP?**

5 A Self-employed IRA because they told me they were  
6 going to discontinue the ten percent and go to eight  
7 percent.

8 **Q When you say they who are you referring to?**

9 A Equialt fund Barry Rybicki. So the most I can  
10 contribute to my SEP each year is 54 thousand in that year  
11 which I believe was two or three years ago. So I wanted  
12 to get that ten percent.

13 **Q So you invested 54 thousand with the return of  
14 ten percent?**

15 A Correct.

16 And I'm getting interest only payments  
17 into my SEP every single month. Which helps pay for my  
18 life settlement premiums. It's a design plan that I do.  
19 I don't sell a product, I sell a plan.

20 **Q Okay.**

21 (SEC Exhibit No. 56 was marked  
22 for identification.)

23 BY MR. ZAMORANO:

24 **Q I'm going to show you what we've marked as  
25 Exhibit Number 56 which is document that your attorney**

1 provided to me this morning prior to your testimony. I  
2 would like for you to take look at that and tell me what  
3 this bonus program is that's referenced in this document.

4 A As I mentioned earlier I was -- I've always been  
5 involved in real estate so I liked the program, I liked  
6 what they were doing, I was curious how they could make so  
7 much money in this business, and so I asked to be part of  
8 the company, if there was a way that possibly whether it's  
9 employment or a partner or anything and they said they  
10 don't really have a position for me but they could come up  
11 with some kind of future program to keep me working with  
12 them so they came up with this bonus plan.

13 Q So first you've never been employed by Equialt  
14 or the funds?

15 A No.

16 Q As an employee or an as an independent  
17 contractor?

18 A No.

19 Q Instead they came up with this bonus program in  
20 lieu of you becoming an actual employee of the company?

21 A Yeah. On top of the marketing plan, this is on  
22 top of the marketing.

23 Q Okay.

24 What does this bonus program provide in  
25 general terms?

1 A It was supposed to be if I hit certain levels  
2 that I would get a bonus at the end of the three-year  
3 contract of whatever sales I did that year paid out three  
4 years later at a 15 percent rate or possibly a free house  
5 if they didn't have the funds or a portion of a piece of  
6 real estate.

7 Q Okay.

8 And have you received any bonuses or  
9 compensation pursuant to the funds?

10 A Zero.

11 Q Okay. Were your clients ever offered the growth  
12 option in lieu of monthly interest payments?

13 A No.

14 Q Was that an option that was available to you?

15 A No.

16 Q So the only investment option that was available  
17 to them was ten percent?

18 A Ten percent simple interest.

19 Q Simple interest per annum paid monthly?

20 A Yes. Not just monthly, the life insurance is  
21 once a year.

22 Q Okay.

23 If there was an issue concerning payment  
24 of the monthly interest -- well, first of all, has there  
25 been any problems regarding the payment of monthly

1 interest?

2 A Never.

3 Q If there were problems concerning account  
4 discrepancies with respect to the self-directed IRA and  
5 the account, Equialt investment funds, would you and your  
6 assistant assist in trying to resolve those problems on  
7 behalf of your clients?

8 A Yeah.

9 Q Did that happen on occasion?

10 A Where it happened was the CPA firm that they  
11 hired, always thought everything was interest only, so we  
12 would -- they would send out -- it's not a 1099, what's  
13 the bank interest?

14 Q Not sure but there's some tax form.

15 A Taxable plan but they would include the  
16 principle so I would catch that and say no, this was  
17 principle and interest payments monthly or annually so  
18 they would change the -- we'll just call it the 1099 since  
19 I can't remember the number, they would change that so  
20 they were always good about that.

21 Q Okay.

22 A I keep track of all my clients.

23 Q You keep track of all your clients investments  
24 in Equialt?

25 A Yes, very detailed.

1 Q What do you do with respect to that?

2 A I keep an Excel spreadsheet.

3 Q What does that Excel spreadsheet show?

4 A Shows their name, the date of investment, the  
5 dollar amount, the percentage they're getting, and when  
6 the contract is up.

7 Q Did Equialt fund, the funds, Equialt funds  
8 provide you with any quarterly updates?

9 A Statements?

10 Q Quarterly updates.

11 A Newsletter.

12 Q Like a newsletter.

13 A Newsletter.

14 Q On a quarterly basis?

15 A I believe they do it every quarter.

16 Q Okay. And do your clients receive those  
17 quarterly updates or do you provide it to them?

18 A I mainly provide it to them I believe.

19 Q Okay.

20 A I don't think they mail it out to everybody.

21 Q Mr. Tenhulzen, I don't have any additional  
22 questions for you today. Is there anything you would like  
23 to add or clarify or amend to the record or to your  
24 testimony?

25 A Yeah, give me a minute.



<p style="text-align: right;">Page 58</p> <p>1 MR. ZAMORANO: We'll go off the record at</p> <p>2 11:35.</p> <p>3 (Whereupon, a recess was had.)</p> <p>4 MR. ZAMORANO: Back on the record.</p> <p>5 BY MR. ZAMORANO:</p> <p>6 <b>Q One additional question before you respond.</b></p> <p>7 <b>During the time that you were discussing the possibility</b></p> <p>8 <b>of employment with the Equialt funds did Mr. Rybicki or</b></p> <p>9 <b>Mr. Davison share any information concerning their</b></p> <p>10 <b>internal operations, finances, accounting profits,</b></p> <p>11 <b>anything of that nature?</b></p> <p>12 A No. I asked for them but no.</p> <p>13 MR. LERNER: You asked for financial</p> <p>14 statements?</p> <p>15 THE WITNESS: Yeah. I had some clients that</p> <p>16 asked for them.</p> <p>17 BY MR. ZAMORANO:</p> <p>18 <b>Q And did they ever provide any financial</b></p> <p>19 <b>statements --</b></p> <p>20 A No.</p> <p>21 <b>Q -- to you or to your clients?</b></p> <p>22 A No.</p> <p>23 MR. LERNER: Did they tell you why they</p> <p>24 wouldn't give it to you?</p> <p>25 THE WITNESS: They don't have to.</p>	<p style="text-align: right;">Page 60</p> <p>1 PROOFREADER'S CERTIFICATE</p> <p>2</p> <p>3 In the Matter of: CERTAIN UNREGISTERED SECURITIES</p> <p>4 Witness: Dale Tenhulzen</p> <p>5 File No: FL-04167-A</p> <p>6 Date: Friday, December 20, 2019</p> <p>7 Location: Miami, Florida</p> <p>8</p> <p>9 This is to certify that I, Christine Boyce,</p> <p>10 (the undersigned) do hereby certify that the foregoing</p> <p>11 transcript is a complete, true and accurate transcription</p> <p>12 of all matters contained on the recorded proceedings of</p> <p>13 the investigative testimony.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 (Proofreader's Name) (Date)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. LERNER: That's what they said, they don't</p> <p>2 have to?</p> <p>3 THE WITNESS: Yeah.</p> <p>4 MR. ZAMORANO: That was my last question.</p> <p>5 Is there something you would like to add?</p> <p>6 MR. LERNER: No, we have nothing to add. Thank</p> <p>7 you.</p> <p>8 MR. ZAMORANO: Do you have any clarifying</p> <p>9 questions?</p> <p>10 MR. LERNER: Nothing to clarify, nothing to</p> <p>11 add, we're fine. We appreciate the courtesy that you</p> <p>12 provided us.</p> <p>13 MR. ZAMORANO: Off the record.</p> <p>14 (Whereupon, at 11:45 a.m., the examination was</p> <p>15 concluded.)</p> <p>16 * * * * *</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 61</p> <p>1 UNITED STATES SECURITIES AND EXCHANGE</p> <p>2 REPORTER'S CERTIFICATE</p> <p>3</p> <p>4 I, MICHELLE R PAYNE, Reporter, hereby certify that</p> <p>5 the foregoing transcript (December 20, 2019)</p> <p>6 is a complete, true, and accurate transcript of the</p> <p>7 testimony indicated held on December 20, 2019 at 10:00</p> <p>8 a m in the matter of: CERTAIN UNREGISTERED SECURITIES</p> <p>9 I further certify that this proceeding was recorded</p> <p>10 by me, and that the foregoing transcript was prepared</p> <p>11 under my direction</p> <p>12 Date: December 28, 2019</p> <p>13 Official Reporter: Michelle R Payne</p> <p>14 Diversified Reporting Services, Inc</p> <p>15</p> <p>16 _____</p> <p>17 MICHELLE PAYNE, Court Reporter</p> <p>18</p> <p>19 Notary Public-State of Florida</p> <p>20 Commission No GG137749</p> <p>21 Expires: September 28, 2021</p> <p>22 Transmittal Number: M000053</p> <p>23</p> <p>24</p> <p>25</p>

<b>A</b>	27:13 28:5,6,8 41:20	16:19 33:14	8:21	<b>brief</b> 4:15 11:22
<b>A-L-G-O-N-Q...</b>	<b>agreements</b>	<b>arbitration</b>	<b>banks</b> 9:25	<b>bring</b> 49:13
7:9	43:22	10:18	<b>Barry</b> 22:5	<b>brochure</b> 39:11
<b>a.m</b> 1:14 59:14	<b>ahead</b> 40:11	<b>Arizona</b> 40:9	23:16 26:24	39:12
61:8	<b>Algonquin</b> 7:7	<b>Arkansas</b> 18:10	32:13 35:23	<b>broker</b> 13:12
<b>able</b> 27:15,25	<b>Allan</b> 2:14,15	23:15	43:13 46:19	<b>brought</b> 10:25
<b>above-entitled</b>	5:24,24	<b>arrangement</b>	51:11 53:9	<b>business</b> 7:6,12
1:13	<b>alleging</b> 11:15	24:3,4 52:4	<b>base</b> 29:3	7:14,19 8:13
<b>account</b> 56:3,5	<b>allowed</b> 28:4	<b>asked</b> 23:24	<b>based</b> 30:20	12:9,10,10,12
<b>accountant</b> 17:2	46:6	31:16 33:18	33:13	14:14 19:11
<b>accounting</b> 12:8	<b>amend</b> 57:23	34:10 54:7	<b>basis</b> 57:14	22:4,18 48:24
58:10	<b>amortized</b> 47:14	58:12,13,16	<b>Bates</b> 26:5	54:7
<b>accounts</b> 9:18	<b>amount</b> 28:24	<b>asking</b> 19:17	<b>Beach</b> 7:2,10	<b>buy</b> 24:12
9:20,23,25	30:25 32:17	36:6 48:17	<b>becoming</b> 54:20	<b>buying</b> 24:17
10:2	41:9 52:14,17	<b>assert</b> 29:12	<b>behalf</b> 2:3,13	38:6 40:9
<b>accredited</b> 42:3	57:5	<b>asserting</b> 29:15	56:7	
42:4 46:1,7,10	<b>amounts</b> 30:21	<b>asset</b> 14:23 15:3	<b>believe</b> 8:21	<b>C</b>
46:15 49:11	42:25 43:11,14	<b>assets</b> 24:18	12:23 21:17,20	<b>C</b> 3:1 4:1 17:15
<b>accurate</b> 29:18	<b>analysis</b> 38:12	<b>assist</b> 56:6	22:16 23:21	17:15
32:25 60:11	<b>Andre</b> 2:4 4:16	<b>assistant</b> 56:6	25:6 30:6,12	<b>calculated</b> 30:20
61:6	34:14 35:24	<b>assume</b> 18:23	32:9 35:13	<b>calculator</b> 34:21
<b>action</b> 10:25	36:1	20:22	36:7 39:6,15	51:11
11:14	<b>Angeles</b> 27:2	<b>attached</b> 5:13	40:10 41:12,21	<b>California</b> 7:3
<b>active</b> 8:18,20	<b>annual</b> 15:10	<b>attend</b> 11:23,25	46:14 53:11	7:10 12:22
<b>actual</b> 14:9	<b>annually</b> 56:17	<b>attended</b> 47:24	57:15,18	13:7 15:7 18:6
45:19 54:20	<b>annuities</b> 14:16	<b>attorney</b> 26:25	<b>Bellevue</b> 17:10	20:17,18
<b>add</b> 26:14 47:10	14:18 15:5,18	27:3 29:11,12	<b>beneficial</b> 8:1,5	<b>call</b> 56:18
57:23 59:5,6	23:8 34:23	53:25	<b>best</b> 27:24 40:17	<b>called</b> 4:9 12:15
59:11	44:10 45:21	<b>Authority</b> 10:14	<b>better</b> 48:10	43:2 45:8
<b>addition</b> 22:22	<b>annuity</b> 50:5	<b>authorized</b> 15:4	<b>biggest</b> 40:23	<b>calls</b> 21:7 38:18
30:24	<b>annum</b> 55:19	<b>available</b> 5:5	<b>birth</b> 6:20	<b>car</b> 52:10
<b>additional</b> 57:21	<b>answer</b> 46:22	55:14,16	<b>bit</b> 14:14 17:16	<b>care</b> 48:15
58:6	<b>anybody</b> 22:12	<b>Avenue</b> 1:9 2:7	27:17 28:10	<b>Carolina</b> 18:10
<b>address</b> 7:1,6,21	<b>anymore</b> 19:10	<b>awhile</b> 27:23	41:6	<b>case</b> 40:19
<b>Advance</b> 44:21	31:14		<b>bonus</b> 30:19,20	<b>Cash</b> 44:21,22
44:22 45:8	<b>apart</b> 51:22	<b>B</b>	54:3,12,19,24	45:8
<b>advantage</b> 47:15	<b>apparently</b> 26:7	<b>back</b> 24:9 26:1	55:2	<b>catch</b> 56:16
<b>advertise</b> 21:2	<b>APPEARAN...</b>	29:8 31:12,13	<b>bonuses</b> 55:8	<b>cease</b> 8:20
<b>advice</b> 44:4,7	2:1	31:20,21 32:2	<b>Boulevard</b> 2:16	<b>cell</b> 7:18
<b>advisor</b> 13:12,15	<b>appearing</b> 6:12	35:12 40:20	<b>bound</b> 43:6	<b>Central</b> 27:2
<b>affirm</b> 4:4	<b>Apple</b> 8:12,13	42:24 43:6,13	<b>box</b> 7:10,11,12	<b>certain</b> 1:5 4:21
<b>afford</b> 52:7	<b>appreciate</b>	49:13 58:4	7:12 20:12,13	4:22 55:1 60:3
<b>agency</b> 10:8	59:11	<b>background</b>	<b>Boyce</b> 60:9	61:8
11:4,6	<b>approach</b> 49:20	6:15 24:14,16	<b>BR</b> 32:14 33:12	<b>CERTIFICA...</b>
<b>agent</b> 13:17	49:22	<b>bank</b> 9:17,20,21	<b>braid</b> 47:18	60:1 61:2
<b>agents</b> 23:2	<b>Approximate</b>	9:23,23 15:1	<b>break</b> 26:4	<b>certification</b>
<b>ago</b> 9:15 27:23	18:3	47:13,16 52:14	29:10	12:15,17,19,25
31:18,19 53:11	<b>approximately</b>	52:25 56:13	<b>Brian</b> 22:14,15	<b>certify</b> 60:9,10
<b>agreement</b>		<b>bankruptcy</b>	<b>Brickell</b> 1:9 2:7	61:4,9

<b>change</b> 48:9 56:18,19	52:4 55:11 56:7,22,23	<b>concern</b> 38:13	<b>copy</b> 5:3,11,12 6:2 17:22,23	<b>death</b> 32:2
<b>changing</b> 17:6	57:16 58:15,21	<b>concerned</b> 23:20	<b>corporate</b> 16:16	<b>debenture</b> 41:17 41:18 43:2,4
<b>charge</b> 14:22 26:16 31:21	<b>cold</b> 21:7 38:18	<b>concerning</b> 5:18 17:13 27:18,19	<b>corporation</b> 16:13	45:18
<b>charged</b> 31:12 31:13	<b>collect</b> 17:17	27:20 34:17	<b>correct</b> 18:22	<b>debt</b> 45:10,11,12
<b>Chase</b> 9:21,23 32:11	<b>collecting</b> 19:4	35:7 44:5	26:9,10 28:22	<b>December</b> 1:11 4:3 60:6 61:5,7
<b>check</b> 32:6,7,8,9 43:18 50:4,8	<b>college</b> 11:23,25 12:6	55:23 56:3	29:1 31:2	61:12
<b>checks</b> 32:10,12	<b>come</b> 46:11 51:24 54:10	58:9	35:18 42:21	<b>decided</b> 31:10 49:16
<b>choose</b> 50:24	<b>comes</b> 51:16	<b>concluded</b> 59:15	43:23 45:13	<b>dedicated</b> 19:14
<b>Christine</b> 60:9	<b>commission</b> 1:1 2:3,6 4:17,20	<b>conduct</b> 22:3	46:8 47:20	<b>defendant</b> 10:24 11:14,17
<b>churches</b> 8:15	10:6 26:14	<b>conducted</b> 10:5 22:4	52:19 53:15	<b>definition</b> 37:3
<b>citizenship</b> 6:22	27:9 30:15,24	<b>conference</b> 21:1	<b>costs</b> 24:7	<b>counsel</b> 5:20,22 26:4,18 29:2
<b>civil</b> 4:25	32:5 37:6	<b>confidential</b> 49:10,13	29:11	<b>Country</b> 6:22
<b>clarify</b> 57:23 59:10	61:19	<b>confirmation</b> 30:11	<b>couple</b> 11:21 30:9 37:9	46:16
<b>clarifying</b> 59:8	<b>Commission's</b> 5:11	<b>connection</b> 25:19 32:22	46:16	<b>course</b> 5:6 12:15
<b>class</b> 14:21 15:3 23:4 24:7	<b>commissions</b> 23:24,25 25:4	<b>consider</b> 9:2	<b>courses</b> 12:9	<b>court</b> 10:10,21 61:16
46:11 48:2,7	25:19 26:8,16	<b>considering</b> 39:20	<b>courtesy</b> 59:11	<b>CPA</b> 17:8 56:10
53:1	32:17,23 33:15	<b>constitute</b> 4:24	<b>created</b> 51:11	<b>criminal</b> 4:25 11:17
<b>classes</b> 14:19,20 14:22 20:24,25	<b>communicatio...</b> 29:11,13,16,25	<b>consult</b> 29:2	<b>critique</b> 48:7	<b>curious</b> 54:6
24:3,6 27:14	30:2,3	<b>consultation</b> 48:5,12,25	<b>custodian</b> 36:3,4	
37:25 38:1,15	<b>companies</b> 15:4 16:12 34:23,24	<b>contact</b> 21:6 26:25 35:21,25		<b>D</b>
39:24 47:2,25	38:2 44:18	49:3		<b>D 4:1</b> 37:18,20
48:4 49:5	49:6	<b>contained</b> 60:12		<b>D-A-L-E</b> 4:13
<b>clear</b> 40:20	<b>company</b> 7:24 8:3,7,9,16,18	<b>container</b> 43:6		<b>Dale</b> 1:7 3:4 4:8 4:13 60:4
<b>client</b> 17:19,21 19:7 20:19	8:25 9:6 13:12	<b>contract</b> 15:23 31:4,5,11		<b>Dale@livewea...</b> 7:20
29:11,12 40:4	14:2 22:12,16	41:16,18 49:25		<b>date</b> 1:11 6:20 9:14 33:18
43:6	23:1 40:14	52:12 55:3		57:4 60:6,17
<b>clients</b> 17:25 18:5,14,22	47:12,20 51:18	57:6		61:12
19:9 20:17,21	54:8,20	<b>contracted</b> 15:24		<b>Davison</b> 22:14 22:15 24:23
20:23 21:4,10	<b>compensation</b> 26:11 28:9,11	<b>contractor</b> 14:8 14:10 54:17		35:22 58:9
21:20,22 23:9	28:23 34:17	<b>contracts</b> 14:13 41:22,24		<b>days</b> 49:5
26:17 31:6,10	55:9	<b>contribute</b> 53:10		<b>dealer</b> 13:12,13
37:23 38:9	<b>complete</b> 60:11 61:6	<b>conversation</b> 24:9 29:10		
39:17,20 40:18	<b>compound</b> 47:15	<b>conversations</b> 30:6 35:6		
41:4,8,12,13	<b>computers</b> 19:16	36:21		
42:6,16 43:22	<b>concept</b> 38:3,6	<b>copies</b> 41:15		
43:24 44:3	<b>concepts</b> 38:2			
45:17,25 46:10				
46:14 47:24				
49:2,2 51:19				

<b>discontinue</b> 53:6	<b>early</b> 31:17,24	47:6,19,25	<b>federal</b> 4:23,25	<b>folds</b> 39:10
<b>discrepancies</b>	31:24	48:23 49:17,20	10:8,10 11:3	<b>following</b> 18:15
56:4	<b>ease</b> 19:3	49:22 50:17	11:15	<b>follows</b> 4:10
<b>discuss</b> 27:7	<b>East</b> 2:16 5:25	52:2,5,18 53:9	<b>fee</b> 24:3,4 31:8	<b>foreclosure</b> 40:9
38:1 40:7,11	27:2	54:13 56:5,24	<b>fees</b> 26:17	<b>foregoing</b> 60:10
40:25 45:24	<b>education</b> 12:6	57:7,7 58:8	<b>fell</b> 51:22	61:5,10
46:25 47:9	<b>educational</b>	<b>equity</b> 45:10,19	<b>felt</b> 24:11,11	<b>foreign</b> 10:8,10
48:22	11:22	<b>ESQ</b> 2:4,14	40:17	11:3
<b>discussed</b> 27:8	<b>eight</b> 53:6	<b>estate</b> 24:12,13	<b>figure</b> 32:25	<b>form</b> 5:12 14:2
46:4 51:14	<b>electronic</b> 17:21	24:14,15,17,18	<b>file</b> 1:4 16:2,10	33:9,10,11
<b>discussing</b> 58:7	17:24 19:11	24:25 38:7	16:25 60:5	37:18,20 48:14
<b>discussion</b> 25:24	32:6	40:15 54:5	<b>filed</b> 8:21 16:4	56:14
27:17 29:6	<b>emergency</b> 32:1	55:6	35:4 37:5,7,9	<b>formal</b> 5:3,8
<b>discussions</b> 47:6	32:3	<b>event</b> 31:9	37:10,12,15,19	29:14,22
<b>Diversified</b> 1:24	<b>employed</b> 54:13	<b>everybody</b> 57:20	<b>files</b> 17:2,19,21	<b>Fort</b> 2:17
61:14	<b>employee</b> 13:11	<b>exact</b> 9:14 16:18	19:8,9 20:13	<b>found</b> 23:1 33:2
<b>Division</b> 2:5	14:9 23:11	18:2 48:15	20:19	<b>four</b> 12:5 31:6
<b>document</b> 3:14	54:16,20	<b>examination</b> 3:3	<b>fill</b> 43:24 48:8	49:5
5:15 6:10 25:3	<b>employees</b> 14:4	5:5 6:6 59:14	49:10,12	<b>four-year</b> 31:4
25:4,16 35:13	<b>employer</b> 13:22	<b>examined</b> 4:10	<b>filled</b> 43:14	<b>fourth</b> 15:3
53:25 54:3	<b>employment</b>	<b>Excel</b> 57:2,3	<b>finances</b> 58:10	49:18
<b>documents</b> 5:5	54:9 58:8	<b>exchange</b> 1:1	<b>financial</b> 10:14	<b>Fox</b> 27:1
6:9 17:13,14	<b>ends</b> 48:20	2:3,6 4:20 10:5	34:17 58:13,18	<b>free</b> 14:21 40:19
17:17 19:4,12	<b>Enforcement</b>	10:12 11:12	<b>find</b> 24:15 28:7	48:5,11,24
19:21,22 20:3	2:5	37:6 45:18	37:23	51:25 55:4
32:21 34:16	<b>engaged</b> 29:24	61:1	<b>fine</b> 16:19 19:2	<b>Friday</b> 1:11 60:6
42:1	51:12	<b>Excuse</b> 8:8	59:11	<b>front</b> 43:1
<b>doing</b> 21:3 31:14	<b>engagement</b>	<b>Exhibit</b> 6:3,4	<b>Finra</b> 11:8	<b>full</b> 4:11
38:11 40:8	29:14,16,22,23	17:14 25:10,14	<b>firm</b> 5:24 56:10	<b>fund</b> 8:14 18:15
47:4 52:7 54:6	<b>entire</b> 5:6	26:20,24 53:21	<b>first</b> 4:9 14:21	18:16,17,20,21
<b>dollar</b> 42:24	<b>entities</b> 18:25	53:25	18:19,20 22:4	23:21 24:3,6
43:10,14 57:5	<b>equal</b> 51:10	<b>EXHIBITS</b> 3:7	26:11 30:2	25:6,7,15,20
<b>dollars</b> 15:17	<b>Equialt</b> 18:1,15	<b>existing</b> 38:9	31:13 44:19,20	26:7 30:8 38:4
28:19 33:15	18:16,16,17,20	<b>expand</b> 27:17	44:23,24 45:5	40:14 41:1,14
46:12	18:21 21:21	<b>expenses</b> 27:14	45:7 49:9,10	44:1 46:2
<b>Drive</b> 7:2	23:10,10 24:10	<b>expiration</b> 31:11	50:14 51:7,20	47:25 50:12
<b>drop</b> 7:11	25:15 26:7,12	<b>Expires</b> 61:20	52:13 54:13	53:9 57:7
<b>due</b> 22:2,3,23	28:19 30:8,15	<b>explain</b> 44:14	55:24	<b>funds</b> 18:15,21
23:19 50:2	32:18,21 34:24	50:2,5	<b>five</b> 8:2 9:15	18:22,25 21:16
<b>duly</b> 4:9	35:21 36:6	<b>explained</b> 36:12	15:8,9 51:9,16	21:21 22:13
	37:23 38:1,4	<b>expressed</b> 48:21	<b>FL-04167-A</b> 1:4	24:10,19 25:1
	38:10,16,24		60:5	26:12 27:22
<b>E</b>	39:1,4 40:5	<b>F</b>	<b>Florida</b> 1:10 2:9	30:15 32:18,24
<b>E</b> 3:1 4:1,1	41:1,3,14 42:8	<b>facilitate</b> 43:7	2:17 5:25 13:8	35:22 36:14
<b>E-A-S-I-P</b> 18:16	42:9,11,17,18	<b>facts</b> 4:23	24:22 40:9	37:1,24 38:10
<b>e-mail</b> 3:12 7:19	42:19 43:22	<b>familiar</b> 32:15	60:7 61:18	38:16,25 39:1
7:21 26:24	44:1,4,11,13	36:10 37:20	<b>folder</b> 39:22,22	39:5,18,21
30:4 38:16	44:16 45:5,12	<b>far</b> 23:19 40:8	41:21,23 49:4	40:5 41:3 43:9
<b>e-mails</b> 19:12,20	45:16,25 46:15	50:7	49:6	43:17,22 44:4
<b>earlier</b> 54:4				

44:6,13 46:1 47:1,7,19 54:14 55:5,9 56:5 57:7,7 58:8 <b>further</b> 49:14 61:9 <b>future</b> 54:11	<b>good</b> 56:20 <b>graduate</b> 12:2 <b>grand</b> 51:21 52:3 <b>growth</b> 23:9 50:24,25 55:11 <b>guarantee</b> 50:8 <b>guess</b> 14:8	26:21 53:22 <b>IDENTIFIED</b> 3:7 <b>identify</b> 5:22 <b>II</b> 18:16,21 <b>Illinois</b> 12:23 <b>inception</b> 9:24 14:1 <b>include</b> 12:13 42:7 56:15 <b>included</b> 40:1 <b>including</b> 34:17 <b>income</b> 15:24,25 16:1,5,11,17 16:20 23:8,10 38:12,14 46:13 48:22 49:19 <b>incorporated</b> 9:4,12 <b>independent</b> 14:7,10 54:16 <b>indicate</b> 32:22 <b>indicated</b> 61:7 <b>indirectly</b> 8:2,6 <b>individually</b> 16:7,10,13 50:3 <b>individuals</b> 47:24 49:16 <b>Industry</b> 10:14 <b>information</b> 5:12 23:18 26:25 33:25 37:5 40:6 58:9 <b>initial</b> 24:9 30:17 <b>inside</b> 39:23 41:16 <b>instances</b> 31:23 <b>Institute</b> 9:3,17 9:22 13:23,25 14:15 15:11 16:2 20:9,21 <b>insurance</b> 12:11 12:13,14 14:16 14:18 15:5,10 16:12 23:2,3 34:23 44:10 51:8,18,20	55:20 <b>intent</b> 29:12 <b>interest</b> 40:25 41:4,10 47:14 47:15,15,17,18 52:7,21,22 53:16 55:12,18 55:19,24 56:1 56:11,13,17 <b>interested</b> 40:5 41:14 42:20 47:25 48:22 49:16,21 <b>internal</b> 58:10 <b>internet</b> 21:4 <b>introduced</b> 23:9 23:16 <b>introduction</b> 4:16 <b>invest</b> 43:8 44:5 50:17 <b>invested</b> 18:14 31:19 48:16 52:2,17 53:13 <b>investigation</b> 4:19,24 5:3 <b>investigative</b> 60:13 <b>investing</b> 40:5 41:14 <b>investment</b> 13:12,12 18:15 18:22 24:19 25:1,19 27:22 28:21,23 30:21 30:25 31:10 36:13,18 37:24 38:4 39:18,21 39:21 43:9,17 44:13 45:19 46:1 47:19,25 48:23 55:16 56:5 57:4 <b>investments</b> 18:1 21:16,21 30:8,14 32:18 32:23 35:8 36:13,16 37:1 38:10 39:23	40:7 44:4,12 44:15 45:7 46:15 56:23 <b>investor</b> 42:3,4 50:21 <b>investors</b> 38:16 38:24 42:12 46:1,15,20 47:1 <b>invited</b> 23:2 <b>involved</b> 49:24 54:5 <b>involving</b> 11:18 <b>Iowa</b> 12:1 <b>IRA</b> 36:3,4 53:5 56:4 <b>issue</b> 55:23
<b>G</b>	<b>H</b>			<b>J</b>
<b>G</b> 4:1 <b>general</b> 40:7 54:25 <b>generated</b> 16:11 <b>generating</b> 48:22 <b>gentleman</b> 12:20 23:4,6 <b>gentleman's</b> 26:19 <b>gentlemen</b> 40:18 <b>getting</b> 27:9 45:18 53:16 57:5 <b>GG137749</b> 61:19 <b>give</b> 39:25 41:22 41:23 43:10 44:8 49:4 50:15 57:25 58:24 <b>given</b> 10:21 12:19 24:2 <b>giving</b> 28:18 <b>Global</b> 44:19,20 44:23,24 45:5 45:8 <b>go</b> 6:15 12:10 25:21 26:14 29:4 35:12 40:11 49:14 53:6 58:1 <b>going</b> 6:3,15 11:21 18:23,25 20:22 24:9 25:13 26:23 27:9 42:14 50:3 51:13,24 53:6,24	<b>H-A-U-S-E-R</b> 17:7 <b>half</b> 30:18 46:12 <b>handles</b> 14:13 <b>happen</b> 49:15,17 49:23 56:9 <b>happened</b> 31:9 56:10 <b>happy</b> 50:11 <b>hard</b> 17:22,23 <b>Hauser</b> 17:6,8 <b>hearing</b> 1:13 <b>held</b> 7:24 8:3,6,9 8:25 13:2 25:24 61:7 <b>help</b> 48:20 <b>helped</b> 48:9 <b>helps</b> 53:17 <b>high</b> 12:9 <b>higher</b> 41:9 <b>hired</b> 56:11 <b>history</b> 11:22 <b>hit</b> 48:5 55:1 <b>hold</b> 13:2,4 20:25 <b>home</b> 20:16,19 48:5 <b>homes</b> 40:9,19 40:21 <b>house</b> 7:13 55:4 <b>houses</b> 36:15 45:14 50:1,4 <b>hundred</b> 15:17 28:14,18 <b>Huntington</b> 7:2 7:9			<b>January</b> 33:18 <b>joint</b> 47:5 <b>Jones</b> 17:6
				<b>K</b>
				<b>keep</b> 17:6 20:13 34:20,24 54:11 56:22,23 57:2 <b>key</b> 20:1,14 <b>kind</b> 12:11 32:3 54:11 <b>knew</b> 37:7 <b>know</b> 15:7 18:13 22:6 27:13 32:12,17 36:5 37:14 39:24 48:9,19 50:4 51:23 <b>known</b> 6:17
				<b>L</b>
				<b>L-I-S-T-E-R</b> 4:14 <b>lack</b> 38:13 <b>landing</b> 21:6 <b>Lauderdale</b> 2:17 <b>law</b> 2:15 5:24 20:13 <b>laws</b> 4:23 5:1 11:15 <b>learn</b> 23:3
	<b>I</b>			
	<b>identification</b> 6:5 25:11			



<p>left 52:1,3 legally 28:1 legitimate 22:1 Lerner 2:14,15 5:24,24,25 16:6 22:17,19 25:21 26:13 28:16 29:4,19 29:21 33:3,23 34:2,12,14,19 35:12,19 37:12 42:11,17,19 46:22 58:13,23 59:1,6,10 letter 17:15 30:10 levels 55:1 leverage 24:14 liability 9:6 license 13:4,5 16:16 27:21 28:1 29:3,18 licensed 13:8 16:13 27:15,20 30:8 35:8 licenses 13:3,9 lieu 54:20 55:12 life 13:4,4 14:16 14:18 15:4,10 16:12 23:1,3 27:15 34:23,24 44:10,10 51:8 51:18,20 53:18 55:20 liked 23:6 40:14 45:20 47:4 54:5,5 Limited 9:6 list 18:14 listed 15:6 Lister 4:13 little 14:14 17:16 27:17 28:10 39:12 41:6 live 9:2,10,17,22 13:23,24 14:4 14:14 15:11 16:2 20:9</p>	<p>23:14 39:22 lived 7:4 living 48:19 LLC 9:5 16:6 18:15,16,16,20 18:21 25:15 26:7 located 17:9 18:5 location 20:14 60:7 lock 7:12 20:14 long 7:4 9:22 13:24 19:7 28:4 45:22 49:25 long-term 48:15 look 22:7 35:14 54:2 looking 23:8 Los 27:2 LP 18:17</p> <hr/> <p><b>M</b></p> <p>M 2:15 M000053 61:21 mail 57:20 mailed 39:15 mailing 21:3 main 17:8 maintained 20:19 management 24:2,4 25:15 manager 8:25 22:5,18 Maria 36:9 Marital 6:24 marked 6:3,4 17:14 25:10,13 26:20,23 53:21 53:24 market 47:6 48:16 marketing 24:3 24:4 27:12 28:5,6,8 38:25 39:4,17 54:21 54:22</p>	<p>married 6:25 46:13 materials 17:20 38:25 39:4,17 42:6 matter 1:3,13 4:20 5:4 32:22 60:3 61:8 matters 60:12 mean 12:12 21:19 36:15 37:4 45:14 meeting 39:24 49:18 50:3 member 8:25 memorandum 25:8,14 26:5,6 41:15 42:7 mentioned 9:1 20:12 25:3 54:4 mentions 25:18 Merchant 44:21 44:22 45:8 met 24:23 Miami 1:10 2:9 60:7 Michelle 61:4,13 61:16 Michigan 18:10 Midwest 12:23 million 30:18 46:12 mind 33:24 minor 11:18 minute 57:25 missed 50:4,8 mistaken 25:20 money 31:16,20 32:2 40:20 41:9 51:23 54:7 month 30:18 52:13,13,21 53:17 monthly 22:1 50:23 55:12,19 55:20,24,25 56:17</p>	<p>morning 7:2 54:1 mortgages 24:13 40:15 municipal 13:13 13:15</p> <hr/> <p><b>N</b></p> <p>N 3:1,1 4:1 name 4:11,12,16 8:11 12:20 17:7 22:6 23:13 26:19 35:24 36:9 41:19 42:20 47:12,20 57:4 60:17 named 10:24 26:25 names 6:17 15:7 17:6 nationally 13:19 nature 30:3 58:11 necessary 43:8 need 22:7 28:1 needed 30:7 38:11,12 49:19 needs 38:11 negotiate 41:3 negotiated 31:5 41:10,11 negotiations 41:7 Net 16:20 never 19:9 21:17 38:2,13 42:8 47:20 48:24 50:8 54:13 56:2 new 15:3 newsletter 57:11 57:12,13 newsletters 21:9 38:20 39:8 non 8:14 nonaccredited 46:6 North 18:10</p>	<p>Northern 20:17 Notary 61:18 note 45:18,20 50:6 notice 1:14 5:12 5:18 number 6:1,3 7:9,15,17 16:18 17:15 18:2,3 26:24 33:3 53:25 56:19 61:21 numbers 15:16 26:5 35:1 43:10 50:15</p> <hr/> <p><b>O</b></p> <p>O 3:1 4:1 Oakland 2:16 5:25 objective 36:18 obligated 28:9 obtain 12:25 20:23 occasion 56:9 occur 47:23 48:1 occurred 29:16 29:22 offense 11:19 offer 51:1,3 offered 36:13 37:1 38:4,9 41:1,4 44:22 45:7 47:19 48:5,11 55:11 offering 21:15 office 2:15 20:10 24:24 42:13 officer 4:17 7:23 Official 61:13 Oh 16:1 Ohio 6:21 okay 7:14 8:23 14:25 15:2,8 16:9,14 19:1 19:11 20:3,15 22:10 23:19 27:7 30:24 31:3,9,22,25</p>
--	---	---	--	---

33:22 34:2,9 34:11 35:3,5 35:11 37:8,17 37:22 39:14 40:3,16,22 42:10 43:7,15 43:20 44:8,20 45:1,12,23 47:11,21 49:1 49:8,21 50:9 50:13,14,16 51:2,15 52:8 52:16,24 53:2 53:20 54:23 55:7,11,22 56:21 57:16,19 old 34:21 once 49:15 50:5 55:21 one-hour 48:5 48:11,24 ones 9:1 39:2 opening 5:2,10 opens 39:12 operations 58:10 opinion 30:10 opportunity 5:7 5:14 18:17 opposed 37:18 45:19 option 50:24,25 55:12,14,16 options 44:7,8 order 5:3,8 17:17 27:21,21 30:8 43:8 organization 11:10 13:20 organizations 10:16 organized 9:8 9:12 owned 24:19 25:1 owner 8:2,6,10 8:16,17 owners 9:10	<b>P</b> <b>P</b> 4:1 <b>P.A</b> 2:15 5:25 <b>package</b> 42:12 <b>packet</b> 42:5 <b>page</b> 21:5,6 43:1 <b>pages</b> 1:8 39:13 43:3 <b>paid</b> 23:24,25 25:4,19 26:8 26:17 27:9,10 27:14 29:23 32:5,5,6,7 55:3 55:19 <b>paperwork</b> 14:13 43:8,24 <b>paragraph</b> 17:15 <b>Park</b> 2:16 5:25 27:2 <b>part</b> 54:7 <b>part-time</b> 14:5 <b>Partial</b> 8:17 <b>particular</b> 20:6 40:4 41:8 44:6 <b>partner</b> 27:1 54:9 <b>pass</b> 16:6 <b>Paul</b> 26:19,25 35:6 <b>pay</b> 21:25 51:17 51:24 52:10,14 53:17 <b>payment</b> 51:17 51:21 52:3,15 55:23,25 <b>payments</b> 50:23 51:9 53:16 55:12 56:17 <b>Payne</b> 61:4,13 61:16 <b>pays</b> 52:13,20 <b>people</b> 23:6 47:14 48:13 50:11,14 <b>percent</b> 8:2 16:1 28:11,13,24,25 30:16,17,19,22 30:25,25 31:7	38:5 47:12,17 47:18 51:16 53:6,7,12,14 55:4,17,18 <b>percentage</b> 49:25 57:5 <b>period</b> 31:11 34:4 <b>permission</b> 46:17,18 <b>person</b> 14:6 23:12 35:24 42:20 50:3 <b>personal</b> 7:17,21 16:17 19:14 30:4 48:17 <b>personally</b> 19:20 50:17 <b>persons</b> 49:15 <b>pertaining</b> 48:15 48:16 <b>phone</b> 7:18 50:15 <b>physical</b> 20:9 <b>physically</b> 50:1 <b>piece</b> 55:5 <b>place</b> 1:9 6:20 20:16 29:13 <b>placement</b> 25:7 25:14 26:5,6 41:15 42:7 <b>plan</b> 51:22,25,25 52:6 53:18,19 54:12,21 56:15 <b>planner</b> 12:16 40:12 <b>planning</b> 12:17 12:18 <b>plastic</b> 41:21,23 43:6 <b>please</b> 4:11 5:22 <b>plus</b> 33:1 35:1 42:1 <b>PO</b> 20:12,13 <b>point</b> 27:18 48:2 <b>points</b> 47:10 <b>policies</b> 51:20 <b>policy</b> 51:8 <b>Portfolio</b> 18:18	<b>portion</b> 55:5 <b>position</b> 22:17 54:10 <b>possession</b> 43:16 <b>possibility</b> 58:7 <b>possibly</b> 54:8 55:4 <b>power</b> 47:10 <b>PPM</b> 3:10 25:9 26:19 27:8,16 27:19 28:4 30:13 <b>practice</b> 43:19 <b>practices</b> 23:5,7 <b>Premed</b> 12:5 <b>premium</b> 51:18 <b>premiums</b> 53:18 <b>prepared</b> 39:1 61:10 <b>Prescott</b> 23:15 <b>present</b> 13:22 <b>presentation</b> 48:10 <b>preservation</b> 12:16 40:12 <b>president</b> 22:16 <b>primarily</b> 18:5 <b>primary</b> 7:1 35:21 36:18 <b>principle</b> 40:13 40:23 52:7,21 52:22 56:16,17 <b>print</b> 42:25 <b>prior</b> 5:2,10 29:16,24 54:1 <b>private</b> 25:7,14 26:5,6 41:15 42:7 44:12 <b>privately</b> 8:6,9 8:25 <b>privilege</b> 29:12 29:15 <b>probably</b> 13:1 15:16,21 16:22 16:24 18:4 31:19 49:18 <b>problem</b> 51:19 <b>problems</b> 55:25 56:3,6	<b>proceeding</b> 4:18 5:6 10:4,19,22 10:25 61:9 <b>proceedings</b> 11:18 60:12 <b>process</b> 47:23 48:1 <b>produced</b> 18:14 <b>product</b> 44:24 45:10,11,12,13 53:19 <b>products</b> 15:11 49:17 <b>professional</b> 13:3 <b>profits</b> 8:14 58:10 <b>program</b> 54:3,5 54:11,19,24 <b>promissory</b> 45:18 <b>promote</b> 47:6 <b>Proofreader's</b> 60:1,17 <b>prospective</b> 38:24 39:17,19 49:2 <b>protected</b> 40:13 <b>protection</b> 14:23 40:24 <b>provide</b> 6:13 28:8 30:10 33:19,22 34:7 38:24 39:16 40:6 41:13 42:6,23 43:25 43:25 44:3 49:6 54:24 57:8,17,18 58:18 <b>provided</b> 5:3,11 32:21 33:25 34:4 39:3 54:1 59:12 <b>Provident</b> 36:1 36:2,7 <b>provider</b> 19:15 <b>provision</b> 26:8 <b>provisions</b> 4:22
--	---	---	--	--

<b>Public-State</b> 61:18 <b>publicly</b> 7:24 8:3 <b>pulled</b> 17:19 <b>pulls</b> 52:14 <b>purchase</b> 18:22 <b>purchased</b> 17:25 44:3 <b>purchasing</b> 41:14 <b>purpose</b> 18:24 20:7 <b>purposes</b> 4:17 <b>pursuant</b> 1:14 6:13 29:14 34:16 55:9 <b>pursue</b> 49:7 <b>put</b> 17:23 24:7 26:18 27:8 35:16 40:15 41:8 <b>putting</b> 51:23	<b>R-Y-B-A-K</b> 22:7 <b>R-Y-B-I-C-K-I</b> 22:8 <b>radio</b> 21:11 38:22 <b>raising</b> 8:14 <b>rate</b> 40:25 41:4 55:4 <b>rates</b> 41:10 <b>rating</b> 13:19 <b>read</b> 5:14 23:21 23:22 25:3 <b>real</b> 24:12,13,14 24:15,17,18,25 38:6 40:15 54:5 55:6 <b>really</b> 21:17 54:10 <b>reason</b> 40:14 51:7 <b>recall</b> 9:14 13:1 15:16 16:18 18:2,11,13,19 25:4,6,18 28:7 31:23 35:5,9 52:12 <b>receive</b> 26:11 33:11 57:16 <b>received</b> 30:15 30:25 32:18,22 33:6,14,14 55:8 <b>receiving</b> 50:23 <b>recess</b> 58:3 <b>recognize</b> 6:10 25:15 <b>recognized</b> 13:19 <b>recollection</b> 27:24 39:3 42:5 46:4,5 <b>recommendati...</b> 44:5 <b>recommending</b> 39:21 <b>record</b> 4:2,12 5:2,11,23 6:18 25:21,22,25 26:1 29:4,7,8	29:22 33:7 34:25 57:23 58:1,4 59:13 <b>recorded</b> 60:12 61:9 <b>records</b> 34:17 <b>Red</b> 8:12,13 19:16,19 <b>redeem</b> 31:10 <b>redemption</b> 31:16 <b>REET</b> 18:18 <b>refer</b> 18:25 <b>reference</b> 19:3 <b>referenced</b> 26:4 26:18 54:3 <b>references</b> 50:10 <b>referrals</b> 18:12 20:24 <b>referred</b> 38:15 <b>referring</b> 19:24 27:3 28:17 37:17 39:20 41:17 53:8 <b>regarding</b> 40:6 55:25 <b>registered</b> 37:2 37:3 <b>registration</b> 37:13,18 <b>regulatory</b> 10:14,16 11:10 <b>related</b> 10:19 12:9,10 13:9 17:20 <b>relating</b> 26:12 <b>remember</b> 17:8 35:6 41:19 42:14 56:19 <b>renew</b> 31:7 <b>renewal</b> 31:8 <b>renewals</b> 31:4 <b>Repeat</b> 33:3 <b>rephrase</b> 49:9 <b>reportedly</b> 25:1 <b>Reporter</b> 61:4 61:13,16 <b>REPORTER'S</b> 61:2	<b>Reporting</b> 1:24 61:14 <b>represented</b> 5:20 <b>request</b> 19:22 33:20 <b>requested</b> 17:14 17:17 19:5 20:3 34:5,14 34:16 <b>required</b> 29:3 29:17 51:9 <b>residence</b> 7:1 <b>resolve</b> 56:6 <b>Resources</b> 8:12 8:13 <b>respect</b> 29:13,15 29:17 30:7,14 56:4 57:1 <b>respond</b> 58:6 <b>respondent</b> 10:25 <b>response</b> 33:19 <b>responsible</b> 19:4 43:21 <b>responsive</b> 19:22 <b>rest</b> 46:7 <b>retain</b> 19:7,11 <b>retainer</b> 29:23 <b>retirement</b> 14:21 51:25,25 <b>return</b> 16:4 38:5 53:13 <b>returns</b> 16:2,10 16:25 33:16,17 34:7,12,13,19 <b>review</b> 5:7 19:20 <b>right</b> 9:7 14:11 22:8 24:7 32:4 35:17 42:4 45:20 <b>risk</b> 24:11 49:24 <b>risks</b> 36:18 <b>Rocky</b> 12:20 <b>Ron</b> 23:13 <b>rooms</b> 21:1 <b>Rothchild</b> 27:1 <b>Rybicki</b> 22:5,10	23:17 26:24 32:13 35:22,23 36:12,22,24 43:13 46:19,25 47:3,5 53:9 58:8 <b>Rybicki's</b> 22:17 <hr/> <b>S</b> <hr/> <b>S</b> 3:1 4:1 <b>safe</b> 24:12 <b>sales</b> 15:10 38:25 39:4,16 55:3 <b>Sarah</b> 14:7 19:6 <b>saw</b> 49:5 <b>saying</b> 42:11 <b>says</b> 23:24 26:8 <b>scenarios</b> 40:19 <b>schedules</b> 34:18 <b>school</b> 12:9 <b>schools</b> 8:14 <b>search</b> 20:1 <b>Sears</b> 35:24 36:9 <b>Seattle</b> 17:10 <b>SEC</b> 6:4 11:1 25:10 26:20 37:2,19 53:21 <b>second</b> 14:23 31:18 35:12 51:22 52:10,17 <b>section</b> 23:23 <b>securities</b> 1:1,5 2:3,6 4:20,21 4:23 10:2,3,3,5 10:19 11:6,15 12:8 13:9,13 27:21 28:1 29:3 36:25,25 37:6 60:3 61:1 61:8 <b>Security</b> 18:18 <b>see</b> 34:12,13 35:14 50:1,3 50:11 <b>self</b> 10:16 11:10 <b>self-directed</b> 36:4 56:4 <b>Self-employed</b>
<hr/> <b>Q</b> <hr/> <b>Qualified</b> 18:16 18:18 <b>quarter</b> 26:2 57:15 <b>quarterly</b> 57:8 57:10,14,17 <b>question</b> 12:10 27:15 29:17 30:7 35:7 58:6 59:4 <b>questionnaire</b> 42:2 43:1 <b>questionnaires</b> 48:8 <b>questions</b> 5:17 6:15 11:21,22 17:12 23:23 48:14,15,17 51:13 57:22 59:9 <b>quite</b> 27:23	<hr/> <b>R</b> <hr/> <b>R</b> 4:1 26:25 61:4 61:13			

53:5 <b>sell</b> 15:4 27:15 27:22 28:1,4 30:8 35:8 44:12,15 53:19 53:19 <b>selling</b> 21:15 24:17 32:18,23 38:6 45:25 <b>sells</b> 14:17,18 <b>seminar</b> 23:2 <b>seminars</b> 12:11 12:15 20:25 23:3 <b>send</b> 17:24 42:24 43:5,5 43:13 56:12 <b>sent</b> 31:20 35:13 42:11,12 <b>SEP</b> 53:3,4,10 53:17 <b>September</b> 61:20 <b>server</b> 19:14 <b>service</b> 19:15,19 <b>Services</b> 1:24 32:14 61:14 <b>set</b> 28:3 <b>settlement</b> 13:4 34:24 53:18 <b>settlements</b> 44:10 <b>share</b> 58:9 <b>shares</b> 45:19 <b>sheet</b> 34:21,21 <b>show</b> 25:13 26:23 47:16 49:20 53:24 57:3 <b>Shows</b> 57:4 <b>sign</b> 28:6 43:1 <b>signed</b> 43:22 <b>significant</b> 41:9 <b>similar</b> 23:7 44:15 45:21 52:4 <b>simple</b> 47:14,17 47:18 55:18,19 <b>single</b> 48:14	53:17 <b>Sir</b> 6:2 <b>sitting</b> 23:4 <b>situation</b> 31:15 48:18 <b>six</b> 16:1 31:7 <b>six-year</b> 52:12 <b>sold</b> 21:21 30:14 40:20 46:14 <b>solicit</b> 21:4 38:16 47:1 <b>somebody</b> 31:15 39:23 47:23 <b>someday</b> 40:20 <b>sophisticated</b> 46:20 <b>sorry</b> 29:20 40:11 46:23 <b>sort</b> 40:5 <b>sound</b> 22:8 32:14,25 36:9 <b>Southern</b> 18:6 20:18 <b>speak</b> 22:12 26:13,18 <b>speaking</b> 22:22 <b>specifically</b> 34:15 <b>spell</b> 4:12 7:8 12:21 22:6 <b>spoke</b> 22:10 <b>spotted</b> 18:8 <b>spreadsheet</b> 57:2,3 <b>staff</b> 10:5 <b>started</b> 21:18 23:7 <b>state</b> 4:11,25 10:8,10 11:6 13:6 15:6 18:11 40:10 <b>stated</b> 6:18 29:21 32:1 <b>statement</b> 37:18 <b>statements</b> 34:18 57:9 58:14,19 <b>states</b> 1:1 4:19 13:7 18:7,9,11	61:1 <b>statistical</b> 13:19 <b>status</b> 6:24 <b>step</b> 49:22 <b>steps</b> 47:22 <b>Stevenson</b> 23:13 23:14,16 24:10 <b>Stock</b> 10:12 <b>story</b> 50:2 <b>straight</b> 42:8,15 <b>Street</b> 7:7,9 <b>study</b> 12:4 <b>stuff</b> 39:15 <b>subpoena</b> 3:8 5:13 6:2,8,8,13 17:13,18 34:16 <b>subscription</b> 41:20,25 43:2 <b>substance</b> 6:16 <b>Suite</b> 1:9 2:8 27:2 <b>Supplemental</b> 5:12 <b>supplemented</b> 5:4 <b>supplied</b> 39:2 <b>supply</b> 42:19 <b>Support</b> 32:14 33:12 <b>supposed</b> 55:1 <b>sure</b> 21:25 22:1 25:22 26:15 27:25 29:5 30:9 37:17 40:13 41:25 49:11 52:7 56:14 <b>swear</b> 4:4 <b>sworn</b> 4:10 <b>Synagogues</b> 8:15 <hr/> <b>T</b> <hr/> <b>T</b> 3:1,1 <b>T-E-N-H-U-L...</b> 4:14 <b>Tail</b> 19:17,19 <b>take</b> 43:16 47:15 47:22 48:1	51:15,19 54:2 <b>taken</b> 12:8 29:13 <b>talk</b> 23:5 38:3 50:11 <b>talked</b> 38:2 48:24 <b>talking</b> 15:25 22:4 23:5,7 28:21 <b>Tampa</b> 24:22 <b>tape</b> 34:21 <b>tax</b> 14:21 16:2,4 16:10,25 33:9 33:10,11,16,17 34:7,12,13,19 51:25 56:14 <b>taxable</b> 16:20 56:15 <b>teach</b> 14:18,20 47:13 <b>telephone</b> 6:1 7:14,17 30:4,5 <b>television</b> 21:13 38:22 <b>tell</b> 4:4 14:14 17:16 24:10 27:11 28:2,10 30:12 34:20 36:24 41:6 46:3 54:2 58:23 <b>ten</b> 28:11,13,24 28:25 30:16,17 30:24 38:5 47:12,16,18 51:16 53:6,12 53:14 55:17,18 <b>Tenhulzen</b> 1:7 3:4 4:4,6,8,13 57:21 60:4 <b>terms</b> 28:9 54:25 <b>tested</b> 21:17,19 21:24 <b>testified</b> 4:10 10:4,18 29:25 <b>testimony</b> 6:8,13 6:16 18:24 54:1 57:24 60:13 61:7	<b>Thank</b> 59:6 <b>theirs</b> 38:13 <b>thing</b> 12:11 40:17,17,23 <b>things</b> 36:19 48:9 <b>think</b> 13:8 17:7 20:2 22:18 48:19 57:20 <b>third</b> 15:1 49:18 51:22 53:3 <b>thought</b> 56:11 <b>thousand</b> 15:17 15:23 24:8 28:14,15,18 31:1 32:20 33:15 46:13 51:7,9,10,15 51:17,24 53:3 53:10,13 <b>three</b> 31:7,18,19 39:12 50:10 53:11 55:3 <b>three-year</b> 31:5 55:2 <b>tied</b> 7:2 47:13 <b>till</b> 25:22 26:2 48:2 <b>time</b> 16:4 22:19 29:23 48:10 49:3 58:7 <b>times</b> 37:9 51:15 <b>today</b> 6:13 57:22 <b>told</b> 24:1 35:9 37:10 40:8 46:9 53:5 <b>top</b> 54:21,22 <b>total</b> 30:22 32:17 <b>totals</b> 35:16 <b>track</b> 34:20 56:22,23 <b>traffic</b> 11:18 <b>transactions</b> 4:21 10:19 <b>transcript</b> 60:11 61:5,6,10 <b>transcription</b> 60:11
--	---	--	--	--

32:6 <b>Transmittal</b> 61:21 <b>transmitting</b> 43:21 <b>trifold</b> 39:6,7,9 40:1 <b>triggered</b> 33:23 <b>truck</b> 52:11,15 <b>true</b> 60:11 61:6 <b>Trust</b> 36:1,2 <b>trustee</b> 31:16 <b>truth</b> 4:5,5,5 <b>try</b> 42:14 <b>trying</b> 56:6 <b>turn</b> 43:25 <b>two</b> 18:19,20,21 18:25 21:20,21 25:20 30:19,22 30:25 31:19,23 31:24 40:18 41:8,12 46:12 53:11 <b>type</b> 8:13 14:20 <b>typically</b> 19:7 44:9	50:7 <b>uses</b> 23:10 <b>usually</b> 23:5	13:24 14:4,15 15:11 16:2 20:9 39:22 <b>website</b> 21:5 50:1 <b>went</b> 17:19 27:13 30:13,18 42:15 <b>weren't</b> 45:17 <b>William</b> 19:25 <b>Williams</b> 14:7 19:6 20:1 <b>withholding</b> 20:6 <b>witness</b> 1:7 2:13 3:3 4:9,13 5:9 5:16,19,21 22:18,20 28:18 29:20 34:1,20 35:18 37:14 42:14,18,21 58:15,25 59:3 60:4 <b>woman</b> 31:19 <b>Woodbridge</b> 45:3 <b>word</b> 20:2 37:15 50:8 <b>words</b> 45:17 <b>work</b> 19:10 31:14 49:12 <b>worked</b> 13:24 36:5,7 <b>working</b> 33:25 54:11 <b>worksheet</b> 49:10 49:13 <b>world</b> 48:9 <b>worst</b> 40:17,19 <b>worth</b> 46:11 <b>wouldn't</b> 49:14 51:21 58:24 <b>write</b> 34:25 <b>writing</b> 30:11 <b>written</b> 30:10 38:25 39:16 43:18 <b>wrote</b> 30:12 32:12	<b>Wyoming</b> 9:9	10 28:14 <b>10/9/58</b> 6:21 <b>10:00</b> 61:7 <b>10:07</b> 1:14 4:2 <b>104</b> 7:9 <b>1099</b> 16:15 33:8 56:12,18 <b>1099's</b> 33:1,6,6 33:14,19 34:4 34:22 35:1 <b>11</b> 13:1 25:23 26:2 <b>11:35</b> 58:2 <b>11:45</b> 59:14 <b>13</b> 48:14 <b>1387</b> 26:5 <b>1406</b> 26:6 <b>15</b> 34:1 55:4 <b>159</b> 51:7,15,23 52:1,2 <b>15th</b> 52:14 <b>16835</b> 7:7 <b>170</b> 20:22 <b>1800</b> 1:9 2:8 27:2
<b>U</b>	<b>V</b>	<b>W</b>	<b>X</b>	<b>Y</b>
<b>U.S</b> 6:23 10:8,10 11:3 <b>Uh-huh</b> 46:21 <b>undersigned</b> 60:10 <b>understand</b> 6:12 <b>understanding</b> 33:13 45:9 <b>unemployed</b> 13:23 <b>United</b> 1:1 4:19 61:1 <b>University</b> 12:1 <b>unlocking</b> 14:24 <b>Unregistered</b> 1:5 4:21 60:3 61:8 <b>updates</b> 57:8,10 57:17 <b>UPS</b> 7:10,11 <b>use</b> 7:22 19:19	<b>varied</b> 30:16 <b>varies</b> 30:17 <b>verbally</b> 46:22 <b>version</b> 26:7 <b>violations</b> 4:22 4:25 11:15 <b>visit</b> 24:18 <b>visited</b> 24:25	<b>W-A-S-S-G-R...</b> 27:1 <b>W2</b> 33:8 <b>wait</b> 45:21 <b>want</b> 21:6 31:6 40:13 51:4 <b>wanted</b> 21:25 22:1 24:15 27:13,25 31:20 39:24 41:9 48:13 49:7,11 49:12 52:6 53:11 <b>Washington</b> 17:10,10 <b>wasn't</b> 37:20 <b>Wassgreen</b> 26:19 27:1,7 27:18 28:2 29:14 35:7 36:24 45:24 46:3,9 51:10 51:12,14 <b>way</b> 4:15 23:1 28:3 54:8 <b>we'll</b> 56:18 58:1 <b>we're</b> 23:8 26:1 59:11 <b>we've</b> 26:23 53:24 <b>wealth</b> 12:16,18 14:24 20:21 30:15 40:12 <b>wealthy</b> 9:2,10 9:17,22 13:23	<b>yeah</b> 9:16 15:9 16:12 25:9 27:4,4,6 36:3 39:22 42:18 43:5 44:25 45:16 47:4 49:4 54:21 56:8 57:25 58:15 59:3 <b>year</b> 34:2 35:4 37:21 51:17,22 51:24 53:10,10 55:3,21 <b>years</b> 9:15 12:5 31:6,7,18,19 32:19 51:9,16 51:20 53:11 55:4	<b>Z</b> <b>Zamorano</b> 2:4 4:2,11,15,16 5:10,17,20,22 6:2,7 16:8 22:21 25:12,22 26:1,3,22 28:20 29:5,8,9 30:1 33:4,5 34:3,13,15 35:2,14,20 37:16 42:22 46:24 53:23 58:1,4,5,17 59:4,8,13 <b>zamoranoa@s...</b> 2:11 <b>zero</b> 14:5 15:19 15:21 55:10
			<b>0</b>	<b>1</b>
			<b>1</b> 1:8 33:18 <b>1,142,112</b> 32:23 33:4	<b>2018</b> 4:3 15:13 15:20 16:17 <b>2019</b> 1:11 15:11 15:12,18 60:6 61:5,7,12 <b>202)467-9200</b>



1:25	<b>8</b>			
<b>2021</b> 61:20	<b>801</b> 1:9 2:7			
<b>244,500</b> 50:20	<b>846-8601</b> 7:16			
<b>25</b> 3:10				
<b>250</b> 51:10	<b>9</b>			
<b>26</b> 3:12	<b>92648</b> 7:2			
<b>28</b> 61:12,20	<b>9269</b> 7:10			
<b>2888</b> 2:16	<b>954</b> 6:1			
<b>2889</b> 5:25	<b>954)563-8111</b>			
	2:18			
<b>3</b>				
<b>300</b> 27:2 46:12				
<b>300s</b> 16:22				
<b>305)982-6393</b>				
2:10				
<b>31,500</b> 52:10,18				
<b>33131</b> 1:10 2:9				
<b>33306</b> 2:17 5:25				
<b>35</b> 46:2,6				
<b>4</b>				
<b>400</b> 16:24 40:19				
<b>5</b>				
<b>50</b> 18:3,3,4 51:9				
51:17,21,23				
52:1,3				
<b>500</b> 15:23 16:1				
30:22,23 31:1				
<b>53</b> 3:8,14 6:3,4				
17:14				
<b>54</b> 3:10 25:10,14				
53:3,10,13				
<b>55</b> 3:12 26:20,24				
<b>56</b> 3:14 53:21,25				
<b>563-8111</b> 6:1				
<b>6</b>				
<b>6</b> 3:4,8				
<b>606-8600</b> 7:18				
<b>61</b> 1:8				
<b>6711</b> 7:2				
<b>691.70</b> 52:13,21				
<b>7</b>				
<b>700</b> 32:20 33:1				
33:15				
<b>714</b> 7:16,18				
<b>789,502.13</b>				
35:19				

# **EXHIBIT 3**

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

**CIVIL ACTION 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,  
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,  
TB OLDEST HOUSE EST. 1842, LLC,**

**Relief Defendants.**

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**AFFIDAVIT OF JAMES GRAY**

STATE OF Arizona §

Maricopa COUNTY §

Before me, the undersigned authority, personally appeared James Gray, who being by me duly sworn, deposed as follows:

1. My name is James Gray. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts stated herein.

2. I currently live in Arizona.

3. I was employed as a sales agent for EquiAlt from February 2016 to February 2020.

4. I first met Barry Rybicki in February 2016 when I was seeking employment at EquiAlt as a sales agent.

5. At that time, Barry and I spoke about EquiAlt, the Funds, and the opportunity to sell debentures to investors.

6. As part of our discussions, I asked Barry if a license was necessary to sell the debentures.

7. Barry informed me that sales agents did not need a license to sell debentures for the EquiAlt Funds.

8. Barry explained that he had spoken to Paul Wassgren, the attorney for EquiAlt, who advised Barry that sales agents did not need to be licensed to sell notes for the EquiAlt Funds.

9. In 2018, EquiAlt created another fund called the REIT.

10. When this fund was created, I had a conference call with Rybicki to discuss the proper protocol for the sale of notes for the REIT fund.

11. Barry explained that he had spoken to Paul Wassgren, the attorney for EquiAlt, who advised Barry that sales agents needed a Series 7 license to sell notes for the REIT Funds.

12. I understood him to mean that a Series 7 license was necessary to sell the REIT Fund, but not the other EquiAlt Funds.

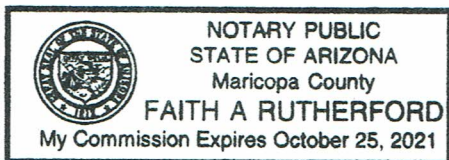
13. In early February 2020, Barry called me.

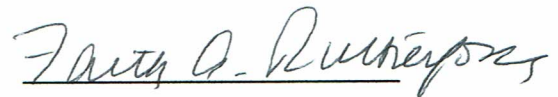
14. In that call, Barry informed me that he had just learned from another attorney that sale agents needed a Series 7 license to sell debentures for the EquiAlt Funds. Barry was upset and felt that he had been misled by Wassgren.

15. Barry then directed me to stop selling debentures for the EquiAlt Funds immediately.

  
(Name of Affiant)

Sworn to and subscribed before on the 21 day of July, 2020.





Notary Public (printed name)

My Commission expires: 10-25-2021

[SEAL]



# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CIVIL ACTION 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,  
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,  
TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.

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AFFIDAVIT OF JOHN FRIEDRICHSEN

STATE OF CALIFORNIA §

CONTRA COST COUNTY §

Before me, the undersigned authority, personally appeared JOHN FRIEDRICHSSEN, who being by me duly sworn, deposed as follows:

1. My name is John Friedrichsen. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts stated herein.
2. I currently live in California.
3. I was employed as a sales agent for EquiAlt from February 2016 to February 2020.
4. I first met Barry Rybicki in February 2016 when I was seeking employment at EquiAlt as a sales agent.
5. At that time, Barry and I spoke about EquiAlt, the Funds, and the opportunity to sell debentures to investors.
6. As part of our discussions, I asked Barry if a license was necessary to sell the debentures.
7. Barry informed me that sales agents did not need a license to sell debentures for the EquiAlt Funds.
8. Barry explained that he had spoken to Paul Wassgren, the attorney for EquiAlt, who advised Barry that sales agents did not need to be licensed to sell notes for the EquiAlt Funds.
9. In 2018, EquiAlt created another fund called the REIT.
10. When this fund was created, I had a conference call with Wassgren and Rybicki to discuss the proper protocol for the sale of debentures for the REIT Fund.

11. Wassgren knew I was a sales agent for the EquiAlt Funds and agreed to provide direction regarding requirements for the new REIT Fund.

12. The primary topic of the conversation was whether a Series 7 license was necessary to sell the REIT Fund, as many of the agents did not have one at the time.

13. Wassgren explained that financial agents needed to acquire a Series 7 license to sell debentures for the REIT Fund. I understood him to mean that a Series 7 license was necessary to sell the REIT Fund, but not the other EquiAlt Funds.

14. In either late January or early February 2020, Barry called me.

15. In that phone call, Barry informed me that he had just learned from another attorney that sales agents needed a Series 7 license to sell debentures for the EquiAlt Funds. Barry was upset and felt that he had been misled by Wassgren.

16. Barry then directed me to stop selling debentures for the EquiAlt Funds immediately.

John Friedrichsen  
(Name of Affiant)

Sworn to and subscribed before on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

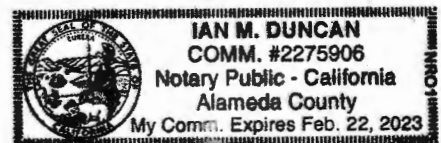
\_\_\_\_\_  
Notary Public (printed name)

My Commission expires: \_\_\_\_\_

[SEAL]

State of California County of Contra Costa  
Subscribed and sworn to (or affirmed)  
before me on this 20 day of July, 2020, by  
John Friedrichsen,  
proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.

Signature Laurel Duncan  
(Seal)



# **EXHIBIT 5**



**From:** Bertram [bertram@equialt.com](mailto:bertram@equialt.com)  
**Subject:** Re: Stephanie Janucik / Blue Waters  
**Date:** March 21, 2017 at 12:24 PM  
**To:** Barry Rybicki [barry@equialt.com](mailto:barry@equialt.com)

B

727-300-9004

Sent from my iPhone

On Mar 21, 2017, at 1:16 PM, Barry Rybicki <[barry@equialt.com](mailto:barry@equialt.com)> wrote:

Thank you and what is your cell number?

Cordially,

<PastedGraphic-1.png>

On Mar 21, 2017, at 8:26 AM, Bertram <[bertram@equialt.com](mailto:bertram@equialt.com)> wrote:

Hi Barry,

Just give me a call at anytime and I will be able to take the deposit  
Thank you  
Bertram

Sent from my iPhone

On Mar 21, 2017, at 11:20 AM, Barry Rybicki <[barry@equialt.com](mailto:barry@equialt.com)> wrote:


Hey Bertram,

My Cousin booked a room for August over at Blue Waters and I forgot to contact you on this so that the charges would be billed to my credit card. She just had \$243.30 charged to it and I want to take care of this for her asap. Can you help me on this or is Tony taking care of Blue Waters? I will get you or Tony my credit card right away so just let me know.

Thank you!

Cordially,

<PastedGraphic-1.png>

**From:** Accounting accounting@equialt.com   
**Subject:** FedEx Bill  
**Date:** February 15, 2017 at 3:28 PM  
**To:** Barry M Rybicki barry@equialt.com

A

Barry:

I'm sorry I forgot to send you this bill a couple of weeks ago. It is for the last overnight FedEx. I can get the details if you need them I can't remember the name of the client that this is for but if you want me to I can research it.  
Let me know, thanks!

Ivonne Hernandez

***GMCO – EquiAlt Accounting***  
1291 Galleria Drive, Suite 200  
Henderson, NV 89014  
Telephone: (702) 650-4466  
Fax: (702) 650-9830  
Email: [accounting@equialt.com](mailto:accounting@equialt.com)



Barry M. Rybicki  
14026...017.pdf

6 KB

Begin forwarded message:

**From:** <[bertram@equialt.com](mailto:bertram@equialt.com)>  
**Subject:** RE: Fwd: Your Blue Waters TI, LLC receipt [#1571-8999]  
**Date:** July 25, 2019 at 11:34:15 AM MST  
**To:** "Barry Rybicki" <[barry@equialt.com](mailto:barry@equialt.com)>

Thank you Sir!!

<image001.jpg>

----- Original Message -----

Subject: Fwd: Your Blue Waters TI, LLC receipt [#1571-8999]  
From: "Barry Rybicki" <[barry@equialt.com](mailto:barry@equialt.com)>  
Date: 7/25/19 2:30 pm  
To: "Bertram" <[bertram@equialt.com](mailto:bertram@equialt.com)>

Cordially,

<image002.png>

Begin forwarded message:

**From:** "Blue Waters TI, LLC"  
<[receipts+iwM8txWnuSXzyammzeTA@stripe.com](mailto:receipts+iwM8txWnuSXzyammzeTA@stripe.com)>  
**Subject:** Your Blue Waters TI, LLC receipt  
[#1571-8999]  
**Date:** July 25, 2019 at 6:33:45 AM MST  
**To:** [barry@equialt.com](mailto:barry@equialt.com)  
**Reply-To:** "Blue Waters TI, LLC"  
<[accounting@equialt.com](mailto:accounting@equialt.com)>

<image003.jpg>

<image004.jpg><image003.jpg>

Receipt from Blue Waters TI, LLC

Receipt #1571-8999

AMOUNT PAID	DATE PAID	PAYMENT METHOD
\$13,061.92	July 25, 2019	<image005.jpg> – 7965

SUMMARY

GLVS-021017-1	\$13,061.92
<b>Amount paid</b>	<b>\$13,061.92</b>

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If you have any questions, contact us  
at [accounting@equialt.com](mailto:accounting@equialt.com) or call at [+1 813-252-5112](tel:+1813-252-5112).

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Something wrong with the email? [View it in your browser](#).

You're receiving this email because you made a purchase at [Blue Waters  
TL LLC](#), which partners with [Stripe](#) to provide invoicing and payments  
processing.

# **EXHIBIT 6**



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CIVIL ACTION 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,  
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,  
TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.

AFFIDAVIT OF CHRISTOS ANASTASOPOLOUS

STATE OF Arizona §  
Pinal COUNTY §

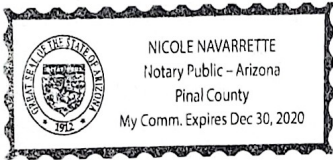
Before me, the undersigned authority, personally appeared Christos, who being by me duly sworn, deposed as follows:

1. My name is Christos Anastasopolous. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts stated herein.
2. I live in Florence, Arizona.
3. I was employed as a manager of communications and investor relations for BR Support Services and EquiAlt from October 2015 to February 2020.
4. I first met Barry Rybicki in October 2015 when I was seeking employment at EquiAlt.
5. At that time, Barry and I spoke about EquiAlt, the Funds, and the opportunity to provide marketing and administrative services for EquiAlt.
6. In January 2020, Barry called me and other employees at EquiAlt to a satellite office in Arizona.
7. In that meeting, Barry informed us that he had just learned from another attorney that BR Support Services and EquiAlt did not have a proper broker-dealership structure.
8. Barry then directed all of us to stop processing payments from agents who sell debentures for the EquiAlt Funds immediately.



(Name of Affiant)

Sworn to and subscribed before on the 23<sup>rd</sup> day of July, 2020



Nicole Navarrette 

Notary Public (printed name)

My Commission expires: 12/30/2020

[SEAL]

# **EXHIBIT 7**

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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**AFFIDAVIT OF ROSEMARIE RYBICKI**

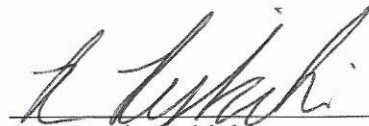


STATE OF ARIZONA  
COUNTY OF MARICOPA

Before me, the undersigned authority, personally appeared, who being by me duly sworn,  
deposed as follows:

1. My name is Rosemary Rybicki. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts stated herein.
2. I currently reside in Arizona along with my husband, Barry M. Rybicki, and our children.
3. I recently co-founded, along with my adult son Doug Fagan, a pool-service business named Brilliant Pools, LLC. While the business is not yet profitable, based on the clientele that have hired us, we project that the business will generate profits in the beginning of October of 2020.
4. My husband, Barry M. Rybicki, has been an employee of the company for nearly a month, has gone through a training program and is now servicing pools for Brilliant Pools, LLC.
5. Barry currently spends approximately ten (10) hours a day servicing pools for the company. While he has not yet received a salary, I will start paying him \$500 a week starting in October 2020.

FURTHER AFFIANT SAYETH NOT.



  
Rosemarie Rybicki

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of July, 2020, by ROSEMARIE RYBICKI who ( ) is personally known to me or ( ☒ ) has produced identification ARIZONA DL.

Notary Seal:

NOTARY PUBLIC:



  
Signature  
  
Printed Name