

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35AEP

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, et al.,

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
SETTLEMENT WITH PUTNAM LEASING  
RELATED TO 2018 PAGANI HUAYRA**

Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants<sup>1</sup> moves the Court to approve the Receiver's settlement of

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<sup>1</sup> The (“**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. *See* Doc. 184, at 6–7.

all claims related to the agreement between Putnam Leasing Company I LLC (“Putnam Leasing”) and EquiAlt LLC regarding the 2018 Pagani Huayra Roadster VIN: ZA9H12UA3JSF76050 (“Pagani”). As explained below, in order to stem additional charges from Putnam and obtain clear title of the Pagani for the future sale of the vehicle, the Receiver believes this settlement is in the best interest of the Receivership Estate.

### **BACKGROUND**

On February 11, 2020, the Securities and Exchange Commission (“SEC”) filed a complaint (Doc. 1) against the above-captioned Defendants and Relief Defendants. On July 9, 2020, the SEC filed an amended complaint (Doc. 138) (the “Amended Complaint”) against the same Defendants and Relief Defendants.

On February 14, 2020, the Court entered an order (Doc. 11) appointing Burton W. Wiand as temporary Receiver. The Court directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants . . . and to administer such assets as is required in order to comply with the directions contained in this Order.” Doc. 11 at ¶1. The Court also entered a temporary restraining order (Doc. 10) imposing a temporary injunction against the Defendants and Relief Defendants, freezing their assets and granting other relief. On August 17, 2020, the Court issued an order (Doc. 184) granting the

SEC's request for a preliminary injunction, extending the temporary restraining order pending the issuance of the preliminary injunction, and granting the Receiver's Motion to Expand the Receivership to Include REIT and QOZ Entities (Doc. 90).

The Amended Complaint charges the Defendants with violations of various federal securities laws and regulations for orchestrating a real estate Ponzi scheme that raised more than \$170 million from approximately 1,100 victim investors (the "Scheme"). The SEC alleges that the Defendants misrepresented the use of the proceeds of the investments and that Davison and Rybicki, who controlled the operations of the Receivership Entities prior to the appointment of the Receiver, misappropriated monies from the investors. The Amended Complaint and The Receiver's First Quarterly Status Report (Doc. 84) contain a more detailed description of the Scheme.

The Receiver is to "administer and manage the business affairs, funds, assets, choses in action and any other property of the Corporate Defendants and Relief Defendants; marshal and safeguard all of the assets of the Corporate Defendants and Relief Defendants and take whatever actions are necessary for the protection of investors". Doc. 11 at 2. The orders appointing the Receiver specifically direct the Receiver to "[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located . . . and to

administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court”. Doc. 11 at p. 2-3 ¶ 1. And to “[i]nitially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate.” Doc. 11 at p. 3 ¶ 3.

The Receiver has identified several high-end, luxury vehicles that Davison and Rybicki purchased with investor funds, as outlined in greater detail in the Receiver’s First Quarterly Status Report (Doc. 84 at 42-46) and Order (Doc. 184 at 3). Some vehicles have already been sold for a substantial net recovery to the Receivership Estate. See Docs. 109, 156, 208, 246, and 265 at p. 1-2. In addition, the Receiver is possession of the Pagani. Putnam Leasing is the titled owner of the Pagani.

On or about April 9, 2019, EquiAlt entered into an Agreement with Putnam Leasing regarding the Pagani (“Agreement”). Davison personally guaranteed the terms of the Agreement. On or about April 9, 2019, EquiAlt made an up-front payment to Putnam in the amount of \$2,223,943.70 under the terms of the Agreement. The balance due and owing under the terms of the Agreement was to be paid through sixty (60) consecutive monthly payments commencing on May 15, 2019 in the amount of \$15,510.08 totaling \$1,050,000.00. Pursuant to the terms of the Agreement, EquiAlt paid the

monthly payments until this case was filed for a total of \$139,590.72. The funds for the up-front payment under the terms of the Agreement all came directly or indirectly from investor funds. EquiAlt was scheduled to make monthly payments of \$15,510.08, with a balloon payment purchase option of \$500,000 due at the of end of the term of the Agreement.

Since the appointment of the Receiver, the monthly payments have not been made until the Receiver made the April 2021 payment. The current base buyout price for the Pagani is \$1,186,160. In addition to this amount, Putnam Leasing informed the Receiver that late charges, legal fees and default interest in the amount of \$278,645.50 were due under the terms of the Agreement for a total due of \$1,463,590.42. The Receiver has negotiated a total buyout of the Agreement in the amount of \$1,250,000.

The Receiver has expended substantial effort to market the sale of the Pagani and currently has several interested purchasers. It would be in the Receivership's Estate's best interest to hold title to the vehicle, free and clear of any encumbrance, to more efficiently and quickly sell and transfer title on the vehicle.

## ARGUMENT

### **I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SETTLEMENT OF THE PUTNAM AGREEMENT IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch*

*Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver’s appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

Given these principles, the Court should approve the Receiver’s settlement with Putnam Leasing so as to provide the Receiver clean title to the Pagani. Further, the settlement will provide certainty as to the final amount of interest and other charges due under the Agreement while stemming any further charges.

### **CONCLUSION**

Based on the foregoing, the Receiver moves the Court for entry of an order approving the Receiver’s settlement of any claims related to EquiAlt’s Agreement with Putnam Leasing regarding the Pagani in the amount of \$1,250,000.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and Counsel for Defendants Brian Davison and Barry Rybicki and they do not

object to the relief sought. Further, counsel for Putnam Leasing has reviewed this motion and does not object to the relief sought.

Respectfully submitted,

**/s/ Katherine C. Donlon**

Katherine C. Donlon, FBN 0066941

[kdonlon@jclaw.com](mailto:kdonlon@jclaw.com)

JOHNSON, CASSIDY, NEWLON &  
DeCORT P.A.

2802 N. Howard Avenue

Tampa, FL 33607

Tel: (813) 291-3300

Fax: (813) 324-4629

and

Jared J. Perez, FBN 0085192

[jperez@guerraking.com](mailto:jperez@guerraking.com)

R. Max McKinley, FBN 119556

[mmckinley@guerraking.com](mailto:mmckinley@guerraking.com)

GUERRA KING P.A.

5505 West Gray Street

Tampa, FL 33609

Tel: (813) 347-5100

Fax: (813) 347-5198

Attorneys for Burton W. Wiand Receiver



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 11, 2021, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

**/s/ Katherine C. Donlon**\_\_\_\_\_