

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**BRIAN DAVISON, BARRY RYBICKI,
EQUIALT et al.,**

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT
AGAINST DEFENDANT BRIAN DAVISON**

Plaintiff Securities and Exchange Commission moves for entry of a Final Judgment against Defendant Brian Davison in the form attached to this motion as Exhibit A. By the signed, sworn Consent attached as Exhibit B, Davison has consented, without admitting or denying the allegations of the Amended Complaint (except as noted within the Consent) to entry of the Final Judgment against him. The Final Judgment includes a permanent injunction against future violations of the statutes the Amended Complaint alleges that Davison violated. It also holds Davison liable for disgorgement in the amount of \$24,600,000, plus prejudgment interest thereon in the amount of \$913,060 and a civil penalty in the amount of \$1,500,000 under Section 21(d) of the Securities Act and Section 21(d)(3) of the Exchange Act and orders Davison to satisfy the Final Judgment by turning over certain assets to the Court appointed Receiver as set forth in the Final Judgment.

Entry of the attached Final Judgment will end the Commission's litigation of this matter as to Defendant Davison although the Final Judgment provides that the Court retains jurisdiction to enforce the terms of the Final Judgment as to Davison.

Respectfully submitted,

By: s/Alise Johnson
Alise Johnson
Senior Trial Counsel
Fl. Bar No. 0003270
E-mail: johnsonali@sec.gov
Lead Attorney

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1950
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, I electronically filed the foregoing Unopposed Motion for Final Judgment against Defendant Brian Davison with the Clerk of the Court using CM/ECF, which will send a notice of such filing to all counsel of record.

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, BARRY RYBICKI,
EQUIALT et al.,

Defendants.

FINAL JUDGMENT AGAINST DEFENDANT BRIAN DAVISON

The Securities and Exchange Commission having filed an Amended Complaint and Defendant Brian Davison (“Davison”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment.

I.

PERMANENT INJUNCTIVE RELIEF

A. Section 5 of the Securities Act of 1933 (“Securities Act”)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Davison is

permanently restrained and enjoined from violating Section 5 of the Securities Act (15 U.S.C. § 77e) by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act (15 U.S.C. § 77h).

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in

Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Davison's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davison or with anyone described in (a).

B. Section 17(a) of the Securities Act

IT IS FURTHER ORDERED AND ADJUDGED that Davison is permanently restrained and enjoined from violating Section 17(a) of the Securities Act (15 U.S.C. § 77q(a)) in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of material fact or any omission of a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

with respect to:

- (A) any investment strategy or investment in securities,

- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person, or
- (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Davison's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davison or with anyone described in (a).

C. Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act")

IT IS FURTHER ORDERED AND ADJUDGED that Davison is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the

light of the circumstances under which they were made, not misleading; or

- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

with respect to:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person, or
- (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Davison's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davison or with anyone described in (a).

D. Section 15(a) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Davison is permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act, [15 U.S.C. § 78o(a)], by using the mails or other means

or instrumentalities of interstate commerce, to effect transactions in, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act (15 U.S.C. § 78o(b)).

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Davison's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Davison or with anyone described in (a).

II.

DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Davison is liable to the Commission for disgorgement of \$24,600,000, representing net profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest on disgorgement of \$913,060, and a civil penalty of \$1,500,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, for a total of \$27,013,060.

IT IS FURTHER ORDERED AND ADJUDGED that any obligation of Davison to satisfy the disgorgement, prejudgment interest, and civil penalty

payments, due to the Commission as set forth above, shall be deemed satisfied by Davison if he, within 30 days of entry of this Final Judgment, disgorges the following assets to the Court-appointed Receiver (and in the case of the real property set out below in (ii), execute any necessary quitclaims as appropriate):

(i) Bank Accounts

Bank of America XX4008 - EquiAlt Secured Income Portfolio LP - \$380.20
Bank of America XX4011 - EquiAlt Secured Income Portfolio - \$380.20
Chase XX2758 - Brian Davison - \$114.23
Chase XX9319 - Brian Davison - \$194.15

(ii) Real Property

128 Biscayne Ave, Tampa, Florida (Davison family to vacate the premises by 08/31/21)
21 20th St, #5, New York, New York
2101 W. Cypress Avenue, Tampa, Florida
2112 W. Kennedy Blvd., Tampa, Florida
Ritz-Carlton Destination Club - Aspen Highlands (Member #10221246)
Club Wyndham Bonnet Creek (Member #00999151231)
5123 E. Broadway Trailer Park
5 Grindstaff Cove, Sylva, NC

(iii) Watches and Jewelry

As listed in Exhibit A hereto.

(iv) Funds Held By The Receiver In Trust

\$53,500 - Return of Stovall House Deposit
\$45,834 - return of escrow payment
\$193,911.19 - return of deposits from Miller Motorcars
\$310,000 - return of Simwest deposits
\$327,856.47 - net proceeds from sale of 2009 Ferrari 430 Scuderi M16, 2015 Ferrari F12 Berlinetta, and 2015 Ferrari 458 Speciale
\$45,994.78 - net proceeds from sale of 2020 Bentley Convertible GTC V8
\$75,551.74 - net proceeds from sale of 2019 Rolls Royce Cullinan

- (v) Interest in Breweries
Commerce Brewing
Nantahala Brewing Company, including any security interest held in NBC equipment
Bolero Snort

- (vi) Cars
2018 Pagani Huayra
1995 Land Rover Defender
2016 Mazda MX5 (Chassis #79)
1977 Ferrari 308 GTB

- (vii) Safes
Dottling "The Gallery"
Dottling "The Liberty"

- (viii) Coins
Platinum American Eagles (480)
Gold American Eagles (61)
Elizabeth II (2)
US Liberty (13)

- (ix) Investments
Sight Shore House, LLC
Merrill Lynch - Accounts ending in 1294, 1295, 9944, 9964, 9965, 9966, with the exception of \$500,000 from those accounts.

As part of his disgorgement obligation Davison shall execute a general assignment of assets to be provided to the Receiver warranting that he has disclosed all owned assets valued at more than \$5,000 to the Receiver and assigned all owned assets except those excluded in the assignment. The Assignment shall be signed and notarized and contain a statement by Davison under oath that all of the information contained therein is true and correct.

Davison shall in good faith and expeditiously execute all documents and

take any other necessary steps to effectuate the turnover of the aforementioned real property and other assets. Davison agrees that once he turns over the aforementioned property and assets, he relinquishes all legal and equitable right, title and interest in the property and assets (“Funds”), and no part of the Funds shall be returned to him. Should Davison discover or uncover assets that have not been disclosed or delivered to the Receiver he shall promptly advise the Receiver and forthwith deliver and or transfer such assets to the Receiver.

The Commission may enforce the Court’s judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission along with the Receiver may propose a plan to distribute the Funds, subject to the Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Funds and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts

ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Davison shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Davison's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Davison's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Davison shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Davison by or on behalf of one or more investors based on substantially the same facts as alleged in the Amended Complaint in this action.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent is

incorporated herein with the same force and effect as if fully set forth herein, and Davison shall comply with all of the undertakings and agreements set forth therein.

IV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

V.

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, upon receipt of confirmation from the Commission and the Receiver that Davison has satisfied his obligations under Section II of this Final Judgment, the Asset Freeze this Court previously entered against Davison shall be lifted and extinguished in its entirety.

VI.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Amended Complaint are true and admitted by Davison, and further, any debt for disgorgement, prejudgment interest, or civil penalty or other amounts due by Davison under this Final Judgment or any other

judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Davison of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VII.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

DONE AND ORDERED this ____ day of _____ 2021, at Tampa, Florida.

MARY SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies to all parties and counsel of record

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, BARRY RYBICKI,
EQUIALT et al.,

Defendants.

CONSENT OF DEFENDANT BRIAN DAVISON TO FINAL JUDGMENT

1. Defendant Brian Davison acknowledges having been served with the Amended Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the Amended Complaint (except as provided herein in Paragraph 12 and except as to personal and subject matter jurisdiction, which he admits), Davison hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which Judgment, among other things:

(a) permanently restrains and enjoins Davison from violation of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5;

(b) orders Davison to pay disgorgement in the amount of \$24,600,000, plus prejudgment interest thereon in the amount of \$913,060;

(c) orders Davidson to pay a civil penalty in the amount of \$1,500,000 under Section 21(d) of the Securities Act and Section 21(d)(3) of the Exchange Act; and

(d) orders Davison to satisfy the Final Judgment by turning over certain assets to the Court appointed Receiver as set forth in the Final Judgment (the "Assets").

3. Davison acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Davison agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Davison's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Davison's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Davison agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private

damages action brought against Davison by or on behalf of one or more investors based on substantially the same facts as alleged in the Amended Complaint in this action.

4. Davison agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts he may be required to pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Davison further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Davison pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Davison waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Davison waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Davison enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce him to enter into this Consent.

8. Davison agrees this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Davison will not oppose enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Davison waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Davison in this civil proceeding. Davison acknowledges no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Davison waives any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein. Davison further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are

separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Davison understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Davison understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Davison's agreement to comply with the terms of Section 202.5(e), he: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Amended Complaint or creating the impression that the Amended Complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that he does not admit the allegations of the Amended Complaint, or that this Consent contains no admission of the allegations, without also stating he does not deny the allegations; and (iii) upon filing of this Consent, Davison hereby withdraws any papers filed in this action to the extent they deny any allegation in the Amended Complaint; and (iv) stipulates solely for purposes of the exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Davison under the Final Judgment or any other

judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Davison of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Davison breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Davison's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Davison hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorneys' fees or other fees, expenses, or costs expended by Davison to defend against this action. For these purposes, Davison agrees he is not the prevailing party in this action, since the parties have reached a good faith settlement.

14. Davison agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

16. Davison agrees that he shall in good faith and expeditiously execute all documents and take any other reasonably necessary steps to effectuate the turnover of the Assets. Absent the Judgment against Davison being vacated, Davison further agrees

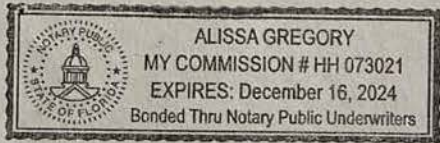
that once he turns over the Assets he relinquishes all legal and equitable right, title and interest in the Assets and no part of the Assets shall be returned to him.

May 19, 2021

By: [Signature]
Brian Davison FDL: D125 004713810

STATE OF FLORIDA)
)
COUNTY OF Hillsborough)

On this 19 day of May 2021, before me personally appeared Brian Davison, who _____ is personally known to me or X produced a driver's license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.



[Signature]
Notary Public

Approved as to Form:

By: [Signature]
Howard A. Fischer, Esq.
Moses & Singer LLP
Counsel to Brian Davison