

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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**DEFENDANT BARRY RYBICKI'S RENEWED  
MOTION TO MODIFY ASSET FREEZE**

Defendant Barry Rybicki, by and through the undersigned counsel, moves pursuant to Magistrate Judge Anthony Porcelli's October 29, 2021 Order [D.E. 430] for this Court's renewed consideration of his April 5, 2021 Motion to Modify Asset Freeze to Permit Access to Funds for Legal Defense Costs ("Motion to Modify") [D.E. 287], and states as follows:

1. Rybicki's April 5, 2021 Motion to Modify laid out the procedural history of this case as it relates to the Orders issued by this Court permitting a carve-out for reasonable attorneys' fees. In the Motion, the undersigned requested an Order carving out \$140,789.00 in attorneys' fees to compensate the undersigned and his law firm for work performed through the date of the Motion.

2. On June 6, 2021, this Court referred Rybicki's Motion to Modify to the Honorable Magistrate Judge Anthony Porcelli [D.E. 329]. On October 29, 2021, Magistrate Judge Porcelli issued an Order Denying the Motion to Modify Without Prejudice "given the ongoing negotiations with Defendant Barry Rybicki," while permitting Rybicki to renew the motion, "following the conclusion of settlement discussions" [D.E. 430]. On November 15, 2021, the SEC reported in a Motion to Stay that it and Rybicki had reached a settlement that "will resolve the case in its entirety" as to Rybicki [D.E. 440], prompting this Court to stay this matter pending Commission approval of the settlement [D.E. 445].

3. On March 1, 2022, the SEC moved unopposed for approval of a Consent Judgment and the entry of a Final Judgment against Barry Rybicki [D.E. 526], which this Court granted on March 4, 2022 [D.E. 526]. The Final Judgment contains an assignment of real and personal property by Mr. Rybicki to the Receiver ("the "Assignment"). The undersigned negotiated the terms of the Consent and Final Judgment with the SEC and the terms of the Assignment with the

Receiver and is still working with the Receiver to coordinate the turnover of property pursuant to the agreed-upon Assignment.

4. The undersigned has incurred an additional \$67,507.07 in legal fees in the eleven months since filing its April 5, 2021 Motion to Modify and has separately submitted a budget for *in camera* review following the conclusion of settlement discussions in accordance with Magistrate Judge Porcelli's Order.

5. In addition to the services described in the budget submitted to Magistrate Porcelli, the undersigned has dedicated several unbilled hours to assist in the resolution of the Assignment and turnover of property, among other unbilled services.

6. The undersigned now seeks an Order carving out \$208,296.07 in attorneys' fees to compensate the undersigned and his law firm for twenty-one months of work performed through the conclusion of settlement discussions. Even though additional work will likely be required of the undersigned to continue the timely turn-over of property to the Receiver for the benefit of investors, the undersigned will not seek additional fees after this Renewed Motion.

7. The undersigned has conferred with Counsel for the Receiver and the SEC regarding the relief requested herein. Both are considering the request and expect to respond this week. The undersigned is filing this motion today to bring this matter before the Court as quickly as possible given the entry of Final Judgment against Mr. Rybicki.

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

Submitted: March 7, 2022

Respectfully submitted,

/s/ Alejandro O. Soto  
ALEJANDRO O. SOTO  
Florida Bar No. 0172847  
FRIDMAN FELS & SOTO, PLLC  
2525 Ponce De Leon Blvd., Ste. 750  
Coral Gables, FL 33134  
Tel: (305) 569-7701  
[asoto@ffslawfirm.com](mailto:asoto@ffslawfirm.com)

/s/ Adam S. Fels  
ADAM S. FELS  
Florida Bar No. 0114917  
FRIDMAN FELS & SOTO, PLLC  
2525 Ponce De Leon Blvd., Ste. 750  
Coral Gables, FL 33134  
Tel: (305) 569-7701  
[afels@ffslawfirm.com](mailto:afels@ffslawfirm.com)

*Attorneys for Defendant Barry Rybicki*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this Renewed Motion to Modify Asset Freeze has been filed via the Court's CM/ECF system, which will send an electronic copy to all counsel of record, on this 7<sup>th</sup> day of March, 2022.

/s/ Alejandro O. Soto  
Alejandro O. Soto, Esq.  
Florida Bar No. 0172847

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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

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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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**ORDER MODIFYING ASSET FREEZE**

This cause comes before the Court upon the Motion by Plaintiff Barry Rybicki. The Court having originally imposed a Temporary Restraining Order, Asset Freeze and Other Injunctive

Relief on February 14, 2020, and having extended that Order, and imposed a Preliminary Injunction, is duly informed in the premises of the Motion, the Court therefore orders as follows:

**I.  
MODIFICATION OF ORDER FREEZING ASSETS**

IT IS ORDERED that, for the period from the date of this Order through the Court's disposition of the Preliminary Injunction:

A. Defendants and the Relief Defendants and their respective directors, officers, agents, servants, employees, attorneys, depositions, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, email, facsimile transmission or otherwise, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly and wherever located:

1. BRIAN DAVISON,
2. BARRY M. RYBICKI,
3. EQUIALT LLC,
4. EQUIALT FUND, LLC,
5. EQUIALT FUND II, LLC,
6. EQUIALT FUND III, LLC,
7. EA SIP, LLC,
8. 128 E. DAVIS BLVD, LLC,
9. 310 78TH AVE, LLC,

10. 551 3D AVE S, LLC,
11. 604 WEST AZEELE, LLC
12. 2101 W. CYPRESS, LLC,
13. 2112 W. KENNEDY BLVD, LLC
14. 5123 E. BROADWAY AVE, LLC
15. BLUE WATERS TI, LLC
16. BNAZ, LLC,
17. BR SUPPORT SERVICES, LLC
18. BUNGALOWS TI LLC
19. CAPRI HAVEN, LLC,
20. EA NY, LLC,
21. EQUIALT 519 3RD AVE S., LLC,
22. MCDONALD REVOCABLE LIVING TRUST,
23. SILVER SANDS TI, LLC,
24. TB OLDEST HOUSE EST. 1842, LLC,
25. TB OLDEST HOUSE EST. 1842, LLC,

B. Notwithstanding the foregoing:

1. Of the amounts held in the accounts listed below, \$208,296.07 shall not be frozen and may be applied as attorneys' fees incurred on behalf of Barry Rybicki:

- a. E\*TRADE Account Number XXXX6205
- b. BR Support Services, LLC XXXX9906
- c. JP Morgan Chase, Barry Rybicki XXXX8993
- d. Comerica Bank, Barry Rybicki XXXX7306
- e. Comerica Bank, Barry Rybicki XXXX7314



2. The actions described in paragraph 1 above shall not be deemed a violation of this Order.

3. Upon request of the Commission, the parties shall within seven days produce to the Commission bank records relating to how the funds were expended pursuant to paragraph 1, herein.

**II.**  
**RETENTION OF JURISDICTION**

**IT IS HEREBY FURTHER ORDERED** that this Court shall retain jurisdiction over this matter, the Defendants, and the Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court and will order other relief that this Court deems appropriate under the circumstances.

**DONE** and **ORDERED** in Chambers this \_\_\_\_\_ day of March 2022.

\_\_\_\_\_  
**MARY S. SCRIVEN**  
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:  
Counsel of Record