

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

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**Case No. 8:20-cv-325-MSS-MRM**

**BRIAN DAVISON, et al.,**

**Defendants, and**

**128 E. DAVIS BLVD. LLC, et al.,**

**Relief Defendants.**

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**DEFENDANT DAVISON’S MEMORANDUM IN OPPOSITION TO  
RECEIVER’S VERIFIED MOTION FOR AN ORDER TO SHOW CAUSE  
WHY BRIAN DAVISON SHOULD NOT BE HELD IN CONTEMPT FOR  
FAILURE TO COMPLY WITH THE COURT’S ORDERS**

Brian Davison, pursuant to Middle District Local Rule 3.01(c), files this Memorandum in Opposition to the Receiver’s Verified Motion for an Order to Show Cause Why Brian Davison Should Not be Held in Contempt for Failure to Comply with the Court’s Orders (Doc. 587) (the “Motion”), filed June 27, 2022. The Motion should be denied because the Final Judgment has been paid in full, the Receiver cannot meet the elements of civil contempt, the performance sought by the Receiver is impossible, and the Receiver may not use a motion for contempt as a vehicle to attempt to collect a money judgment.

## I. RELEVANT BACKGROUND

The court entered a Final Judgment against Davison on August 6, 2021. (Doc. 355-1). The Final Judgment, based on a consent agreement between Davison and the SEC, found 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.**

(Doc. 355-1 at 6) (emphasis added). The Receiver's own reports indicate he has obtained proceeds of sale from assets Davidson turned over in excess of \$27,103,060;<sup>1</sup> the total amount due under the Final Judgment.<sup>2</sup>

The Receiver's Motion effectively takes the novel and unsupported approach that the Receiver is entitled to additional assets from Davison even if the full amount of the Final Judgment has been paid. The Final Judgment also requires the Receiver to turn over to Davison certain assets, including more than approximately \$825,000 in cash and interests in three breweries, which the Receiver has failed and refused to turn over to Davison.

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<sup>1</sup> See Exhibit A.

<sup>2</sup> In connection with this Motion, Davison served the Receiver with a Request for Admissions, Interrogatories and a Request for Production of Documents, copies of which are attached as Exhibits B, C and D, respectively. Davison has provided a Notice that he intends to serve Subpoenas Duces Tecum on the Gold & Diamond Source, Inc. and International Diamond Center, Inc., a copy of which is attached as Exhibit E. Once Davison receives that discovery, he likely will need to take the Receiver's deposition on the issues raised by the Motion.

Pursuant to Local Rule 3.01(g), Davison has provided drafts of a Verified Motion for an Order to Show Cause why the Receiver Should Not be Held in Contempt for Failure to Comply with the Court's Orders,<sup>3</sup> and a Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5). Those motions will be filed as soon as the Receiver and SEC take positions on the relief sought in them and they should be addressed contemporaneously with this Motion.

In his quarterly reports, the Receiver has repeatedly cautioned EquiAlt investors about third-party attempts to purchase their claims for pennies on the dollar, stating that, "[t]he assets in this Receivership are of substantial value." *See* Receiver's Fifth Quarterly Status Report (Doc. 319 at 30).<sup>4</sup> The various Receiver Quarterly Reports reflect the sale of assets and operating income bringing millions of dollars into the Receivership, despite the less than optimum values obtained for some of the assets sold.

The Receiver's Seventh Quarterly Report (Doc. 441) showed that income exceeded expenses during the third quarter of 2021 and reflected an ending fund balance of \$14,447,777.35 as of September 30, 2021. (*Id.* at p. 4). That balance does

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<sup>3</sup> The Receiver has refused to turn over to Davison over \$825,000 in cash and interests in three (3) breweries despite seeking only \$484,000 in the Motion. No basis in law exists for the Receiver's delay in turnover and he should be ordered to turn over all funds in excess of \$484,000 and the brewery interests immediately.

<sup>4</sup> The Receiver's Fifth Quarterly Report states, "In other Receiverships in which the Receiver has been involved, various entities have approached investor victims and offered to purchase an assignment of their claims for pennies on the dollar. **Any investor who is approached with such a proposal should carefully review the information provided by the Receiver as it appears unwise to accept such an offer.**" *Id.* at 30-31 (emphasis added).

not consider the assets of the Receivership. Those assets are part of the reason the Receiver represented to the Court that the Receivership should continue. “The Receiver recommends continuation of the Receivership because he still has (1) the ongoing need to manage and in part develop, the real property business of the Receivership; (2) **hundreds of properties to liquidate . . .**” (*Id.* at 25) (emphasis added).<sup>5</sup>

The Receiver’s Ninth Quarterly Status Report (Doc. 563) filed May 2, 2022, reveals that more than 2 years after being appointed,<sup>6</sup> the Receiver continues to, “manage EquiAlt operations, including maintenance and leasing of over 200 real estate properties.” (*Id.* at p.4). As of March 31, 2022, the cash balance of the Receivership accounts was \$50,422,610 (*Id.* at 5, 7), and between March 31, 2022, and the date of the Report, the following occurred:

Receiver received \$2,134,295.18 for the sale of 12315 Gulf Blvd. (“Silver Sands”), \$1,246,951.24 from the final payment from the Sotheby’s Hong Kong auction, additional clawback settlements of \$214,778.93, and \$98,571.41 from the Sight Shore House investment. Additionally, the Court has approved the sale of nine properties under contract for a gross total of \$14,699,950 which are in various stages leading to closing. (*Id.*)

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<sup>5</sup> Davison believes that even after the high costs of the Receivership, liquidation of the remaining Receivership property and claims will result in full repayment of at least all EquiAlt investor principal. The Magistrate’s Report & Recommendation on a Rybicki Motion (Doc. 577) noted, “the Receiver has sought and received, on behalf of himself and his Retained Personnel, more than \$2.7 million in disbursements (Doc. 572, Exh. 1), with requests for nearly \$750,000 in disbursements currently pending in this action.” (*Id.* at 8, n.2).

<sup>6</sup> The Court’s Sealed Order Granting Plaintiff’s Emergency Ex Parte Motion for Appointment of a Receiver was entered on February 14, 2020. (Doc. 11).



The Receiver's Ninth Status Report reveals the breadth and scope of the original business of EquiAlt and of EquiAlt's ongoing operations run by the Receiver.<sup>7</sup> "The Receiver anticipates transferring the property management activities of EquiAlt and the employees involved to an entity owned by Mr. Kelly." (*Id.* at p. 18). The report contains no information about the costs of that arrangement or how much savings, if any, will result to the Receivership.<sup>8</sup>

The Receiver appears to have set up a side business to sell assets of this and other Receiverships. The "About" page of the website states:

Receivership-Auctions.com is an auction website created by Burton W. Wiand, a Receiver appointed by the United States District Court for the Middle District of Florida in a case brought by the Securities and Exchange Commission against an alleged ponzi scheme and certain principals of the scheme. Information about the Receivership is available at [www.EquiAltReceivership.com](http://www.EquiAltReceivership.com). Mr. Wiand is using the website to liquidate assets of the receivership. Mr. Wiand is also the receiver in multiple other receiverships. The [www.Receivership-Auctions.com](http://www.Receivership-Auctions.com) will be used in the future to liquidate other personal and real assets that the receiver believes can be efficiently liquidated in the online and live-auction format provided by this website. This website may also be used by other Federal Equity Receivers to liquidate other assets of other receiverships. Questions regarding this auction should be directed to Mr. Wiand at 727-235-6769 or [Burt@BurtonWWiandPA.com](mailto:Burt@BurtonWWiandPA.com).

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<sup>7</sup> The Receiver obtained Court approval to sell certain properties via on-line auctions. The Ninth Status Report states, "Using the auction format, the Receiver was able to avoid paying commissions that are typically paid to the buyer and seller agents. He was able to do this by adding a buyer's premium of 5% of the winning bid amount. The Receiver then used that 5% to cover the costs of agents and title expenses." (*Id.* at 11). Davison is concerned that in addition to paying Tony Kelly a salary as the General Manager of EquiAlt, the Receiver may also be paying him commissions on the sales of real estate to the detriment of the Receivership estate and the Individual Investors.

<sup>8</sup> The Receiver has hired at least one of his family members and paid them as part of the Receivership.

<https://www.receivership-auctions.com/about>. The website was disclosed to the Court in the Receiver's Unopposed Motion to Approve Sale of Real Property Via Online Auction (Doc. 337, 4-5).<sup>9</sup>

As of May 2, 2022, the Receiver again recommended to the Court that the Receivership be continued because, "he still has (1) the ongoing need to manage and in part develop, the real property business of the Receivership; (2) **hundreds of properties to liquidate**; (3) personal property to liquidate, including watches and jewelry . . . ." (Id. at 23) (emphasis added). The Receiver offers no explanation why he has not disposed of the remaining real estate properties in what can only be described as a white-hot real estate market.<sup>10</sup>

The Receiver has billed the Receivership more than \$3,500,000 for himself and his Retained Personnel,<sup>11</sup> holds more than \$50,000,000 in cash and "hundreds of properties"; yet has distributed nothing to the EquiAlt Investors. If he claims not to have sold the remaining real properties due to the scope and complexity of EquiAlt's

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<sup>9</sup> Davison does not know what, if any, compensation the Receiver obtains by marketing properties of this Receivership through his website.

<sup>10</sup> "The Tampa housing market is growing steadily, prices are still low and properties have a good chance for a strong appreciation in the coming years. Homes are selling incredibly fast in the Tampa Bay housing market with hot homes getting multiple offers. In 2022, the US housing market is anticipated to remain hot overall, with many of the same dynamics that propelled the market to record heights last year continuing into the New Year. Zillow forecasts Tampa to top the list of the hottest housing markets of 2022, followed by relatively affordable and fast-growing Sun Belt markets." <https://www.noradarealestate.com/blog/tampa-fl-real-estate-market/>, July 10, 2022.

<sup>11</sup> See n.5, *supra*.

real estate business; that contradicts his repeated assertions that EquiAlt was a Ponzi scheme.

The Final Judgment allowed Davison to satisfy the judgment by turning over certain enumerated assets to the Receiver. (Doc. 355-1, 6-8). Davison turned over to the Receiver in good faith his family home, an extensive watch collection, jewelry, and heirlooms with significant sentimental value. The Receiver's Motion seeks contempt sanctions against Davison because he turned over 58 American Eagle gold coins instead of the 61 listed in the Final Judgment and 480 silver American Eagle Coins as opposed to the 480 platinum American Eagle Coins listed in the Final Judgment. (Doc. 587). The Receiver makes no showing, much less by clear and convincing evidence, that Davison has or ever had the 3 remaining gold coins or the 480 platinum coins.

Davison believed that the 480 American Eagle Coins he had were platinum and that he had 61 gold American Eagle Coins. (Davison Decl., ¶¶ 6-8, attached as Exhibit F). One of the attorney's assisting Davison in the turnover of assets was Gerald Davis, Esq. of Trenam Law. Mr. Davis was present at the turnover of assets at Davison's home on Davis Island on August 31, 2021. (Davis Decl., ¶ 7, attached as Exh. G). Davis's Declaration states in relevant part:

There were watches and coins to be turned over and the turnover began with the coins which were placed on the granite countertop in the kitchen. I watched as a representative of the Receiver, Carlos Lopez, examined and counted the coins. When Mr. Lopez counted the American Eagle gold coins, he found only 58, rather than the 61 gold coins listed in the Assignment. When Mr. Lopez examined a wooden box that appeared designed to hold 480 coins, he stated that the coins

were silver instead of platinum. Mr. Davison appeared shocked by that statement and indicated he believed he had purchased platinum coins from the Gold & Diamond Source; which I know to be located on Ulmerton Road in Clearwater. I do not recall Mr. Davison ever saying he, “got a really good deal” on the coins or mentioning IDC Coin & Bullion; a competitor of Gold & Diamond Source. I’m familiar with IDC Coin & Bullion and know it also is located on Ulmerton Road in Clearwater.

(Id. at ¶¶ 8-14).

When he prepared his asset list, Davison inadvertently miscounted the number of gold coins he had and believed the 480 coins he had were platinum, not silver. He listed what he believed he had on the Assignment form. The Receiver has offered no proof that Davison ever had the 3 additional gold coins or 480 platinum coins he seeks to obtain by contempt; or that Davison has the coins now; and there is no record evidence to suggest he has them. Thus, the performance sought by the Motion is impossible.

The pejorative language in the Motion does not support the relief requested. The Receiver has made numerous mistakes or clerical errors in his Status Reports in this case, a sampling of which include:

1. Sale of Patek Philippe 2497 pink gold watch: The Receiver’s Seventh Quarterly Report states that the net proceeds from this sale was \$6,100,000 (Doc. 441 at 19). The Ninth Quarterly Report states that the net proceeds were \$6,177,308.43 (Doc. 563 at 16). This is a discrepancy of **\$77,308.43**.
2. Sale of Patek Philippe 5270G watch: The Seventh Quarterly Report states that the net proceeds were \$1,060,000 (Doc. 441 at 20). The Ninth Quarterly Report

states that the net proceeds were \$1,060,664.68 (Doc. 563 at 16). This is a discrepancy of **\$664.68**.

3. Net proceeds from auctions in Hong Kong, Geneva, Las Vegas: Taking the higher report numbers from the watch sales per the Seventh and Ninth Quarterly Report, the net proceeds from the auctions in Hong Kong, Las Vegas, and Geneva auctions were \$7,650,083.11 (Doc. 563 at 16). But the Eighth and Ninth Quarterly Reports state that the net proceeds from those same auctions were \$13,000,000 (Doc. 490 at 4; Doc. 563 at 2). This is a discrepancy of **\$5,349,916.89**.
4. Sale of 2009 Ferrari 430 Scuderia: The Second Quarterly Report states that the net proceeds from this sale were \$326,856.47 (Doc. 179 at 48). The Final Judgment states that the net proceeds from this sale was \$327,856.47 (Doc. 355-1 at 7). This is a discrepancy of **\$1,000**.
5. Sale of 2020 Bentley Convertible GTC V8: The Fourth Quarterly Reports lists net proceeds from this sale as \$45,896.13 (Doc. 265 at 48). But the Final Judgment lists the net proceeds as \$45,994.78. This is a discrepancy of **\$98.65**.
6. Sale of 2019 Rolls Royce Cullinan: The Fourth Quarterly Report lists the net proceeds of this sale as \$75,551.74 (Doc. 265 at 1). But that same report also lists \$31,144.38 in net proceeds (Doc. 265 at 48). This is a discrepancy of **\$44,407.36**.

7. Number of Claim Forms: The Ninth Quarterly Report lists 1900 proof of claim forms (Doc. 563 at 3), and 1800 proof of claim forms (*Id.* at 22).

The total amount of the above discrepancies of these items equal **\$5,473,396.01** and **100** proof of claim forms.

Davison prepared his list of assets at a time when his life, family and business had been turned upside down by these proceedings. (Davison Decl., ¶¶ 2-3). The Receiver asserts that listing 61 gold coins instead of 58 and mistaking silver coins for platinum reflects a depraved mind; yet the Receiver made numerous errors in his Status Reports to this Court even after spending more than \$3,500,000 in Receivership assets on behalf of himself and his Retained Personnel.<sup>12</sup> Application of the standard espoused by the Receiver would require the Court to conclude that the mistakes in the Status Reports were intentional deception.

## II. LEGAL ARGUMENTS

### A. The Motion Fails to Meet the Legal Standard for Civil Contempt

To succeed on a claim for civil contempt, the complainant must show by clear and convincing evidence that (1) the defendant violated a valid and lawful order, (2) the order was clear and unambiguous, and (3) the defendant had the ability to comply with the order. *Checkers Drive-In Rests. Inc. v. One Hundred Twenty LLC*, Case No. 8:11-CV-2462-T-35-MAP, 2012 WL 13106395, at \*1 (M.D. Fla. Jan. 4, 2012) (Scriven, J.) (quoting *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010)).

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<sup>12</sup> See n.5, *supra*.

If the complainant makes a prima-facie case for civil contempt, the burden shifts to the defendant to produce evidence explaining his noncompliance at a show-cause hearing. *Checkers Drive-In Rests. Inc.*, 2012 WL 13106395, at \*1 (citation omitted). Establishing good-faith substantial compliance with the court order can defeat a claim for civil contempt. *Id.* at \*2 (citations omitted).

This Court's decision in *Brown v. Omni Mgmt. Grp. LLC*, Case No. 8:18-CV-1772-T-35-CPT, 2020 WL 7401272, at \*2 (M.D. Fla. Nov. 12, 2020), lays out the elements and standard of proof.

In a civil contempt proceeding, the petitioning party has the burden to establish by "clear and convincing" proof that the underlying order was violated. *See Newman v. Graddick*, 740 F.2d 1513, 1525 (11th Cir. 1984). "This burden of proof is more exacting than the 'preponderance of the evidence' standard but, unlike criminal contempt, does not require proof beyond a reasonable doubt." *Jordan v. Wilson*, 851 F.2d 1290, 1292 (11th Cir. 1988) (per curiam). The clear and convincing proof must demonstrate that: "1) the allegedly violated order was valid and lawful; 2) the order was clear and unambiguous; and 3) the alleged violator had the ability to comply with the order." *See Georgia Power Co. v. N.L.R.B.*, 484 F.3d 1288, 1291 (11th Cir.2007).

In his Motion, the Receiver made no effort to prove that Davison had the ability to comply with the order or final judgment. Instead, the Receiver relies on innuendo about alleged unrelated bad acts. Nothing in the Motion comes close to meeting the Receiver's burden to prove each element of a claim of civil contempt by clear and convincing evidence. Since the Receiver has failed to carry his burden, no burden shifts to Davison.

Civil contempt serves two purposes: (1) to coerce compliance with a court order or (2) to compensate the complainant for actual losses suffered as a result of the



defendant's contempt. *In re Chase & Sandborn Corp.*, 872 F.2d 397, 400–01 (11th Cir. 1989). To obtain compensatory damages for civil contempt, the complainant must prove damages by a preponderance of the evidence. *See id.*; *McGregor v. Chierico*, 206 F.3d 1378, 1387 (11th Cir. 2000). In this case, neither coercive nor compensatory damages are appropriate.

### **B. Coercive Civil Contempt Sanctions Require the Ability to Purge.**

To enter coercive sanctions for civil contempt, the Court must find that the defendant is continuing to violate a Court order. *See Volk Enters. Inc. v. TNI Packaging Inc.*, Case No. 1:06-CV-318-JTC, 2008 WL 11406010, at \*3 (N.D. Ga. Mar. 21, 2008) (citing *Boylan v. Detrio*, 187 F.2d 375, 378 (5th Cir. 1951)).<sup>13</sup> When entering coercive sanctions, the Court must “consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction bringing about the result desired.” *In re Chase & Sanborn Corp.*, 872 F.2d at 401 (citation omitted).

Civil-contempt sanctions are coercive if the defendant, “has the ability to control the extent of the sanction and purge himself of the sanction.” *Volk Enters. Inc.*, 2008 WL 11406010, at \*3 (citing *Jove Eng'g Inc. v. IRS*, 92 F.3d 1539, 1558–59 (11th Cir. 1996)). Sanctions for past conduct, such as a fine, have no coercive effect and do not constitute civil-contempt sanctions but sanctions for criminal contempt. *See Int'l*

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<sup>13</sup> The former Fifth Circuit's decisions are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).



*Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828–29 (1994).<sup>14</sup> A party may not use civil contempt to collect a money judgment. *In re Chase & Sanborn Corp.*, 872 F.2d at 401.

Whether a defendant has the ability to purge comes into play if the Court awards coercive sanctions—as opposed to compensatory sanctions. *See Bagwell*, 512 U.S. at 829 (“Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge.”). After a show cause hearing finding the defendant in civil contempt, the Court then decides whether to impose compensatory or coercive sanctions, or both. *See In re Chase & Sanborn Corp.*, 872 F.2d at 400–01.

If the Court decides to impose coercive sanctions—intended to vindicate the Court’s authority to enforce its orders—then the defendant must have the ability to purge the Court’s sanctions. *See Bagwell*, 512 U.S. at 826–29. Imposing civil-contempt sanctions—such as imprisonment—without the defendant having the ability to purge those sanctions converts the sanctions to criminal-contempt sanctions. *See id.* at 829. Thus, coercive civil-contempt sanctions require the ability to purge. Coercive sanctions would be inappropriate because Davison does not have the ability to purge the Receiver’s requested relief: turning over 480 platinum coins and 3 more gold coins.

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<sup>14</sup> Criminal-contempt proceedings are criminal proceedings; thus, “criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such proceedings.” *Bagwell*, 512 U.S. at 826 (citations omitted). These protections include the right to proof beyond a reasonable doubt and, for contempt involving imprisonment for more than six months, the right to a jury trial. *See id.* at 826–27 (collecting cases).

### **C. The Motion Fails to Show Davison Had the Ability to Comply**

Although the ability to purge deals with sanctions, as part of his prima-facie case for civil contempt, the Receiver must show that Davison had the ability to comply with the Court's Final Judgment. *See Checkers Drive-In Rests. Inc.*, 2012 WL 13106395, at \*1. The Receiver cannot do so here.

To help satisfy the SEC's \$27,013,060 judgment, Davison was ordered to disgorge substantial assets to the Receiver, including his family home, 480 platinum American Eagle coins and 61 gold American Eagle coins. (Doc. 355-1 at 8). Putting aside that Davison has satisfied the \$27,013,060 judgment (thus making this litigation about the platinum and gold coins moot), the Receiver cannot show that Davison had the ability to comply with the Court's final-judgment order because he never possessed 480 platinum coins and 61 gold coins. Rather, as all parties now know and do not dispute, Davison possessed 480 silver coins and 58 gold coins; all of which he turned over to the Receiver.

The Receiver's disappointment that the coins Davison believed to be platinum turned out to be silver does not mean Davison ever had the ability to turn over 480 platinum coins. Nor does the fact that Davison miscounted his gold-coin collection by 3 mean that he ever had the ability to turn over 61 gold coins. Therefore, the Receiver cannot make a prima-facie case of civil contempt because he cannot show that Davison had the ability to comply with the Court's order requiring him to disgorge 480 platinum American Eagle coins and 61 gold American Eagle coins.

Rather, the Receiver's goal in seeking to require Davison to pay the value of 480 platinum coins and 3 gold coins he never had is to satisfy the SEC's judgment. Civil contempt cannot be used to collect a money judgment. *See In re Chase & Sanborn Corp.*, 872 F.2d at 401; *See also Brown*, 2020 WL 7401272, at \*2 (denying motion for contempt and sanctions). As a result, the Receiver cannot make a prima-facie case for civil contempt against Davison.

**D. Davison's Good Faith Compliance is a Defense to Civil Contempt.**

Intent is not relevant to the prima-facie elements of civil contempt; all that matters is whether the defendant's conduct complied with the court order. *Newman v. Graddick*, 740 F.2d 1513, 1524 (11th Cir. 1984). That said, "inability to comply is a complete defense to a contempt citation." *Id.* at 1525. "[A] person who attempts with reasonable diligence to comply with a court order should not be held in contempt." *Id.* (citation omitted); *see also Matthews Int'l Corp. v. Lombardi*, Case No. 2:20-CV-89-NR, 2021 WL 1929266, at \*2 n.1 (W.D. Pa. May 13, 2021) ("[A] 'good faith mistake' or 'excusable oversight' is relevant to the substantial compliance defense.").

To succeed on an inability-to-comply defense, the defendant must show that he has made "in good faith all reasonable efforts" to meet the terms of the court order. *CFTC v. Wellington Precious Metals Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992); *see also FTC v. Lane Labs-USA, Inc.*, 624 F.3d 575, 591 (3d Cir. 2010) ("In order to avail oneself of the [substantial-compliance] defense, a party must show that it (1) has taken all

reasonable steps to comply with the valid court order, and (2) has violated the order in a manner that is merely ‘technical’ or ‘inadvertent’”).

The defendant “must go beyond a mere assertion of inability and satisfy his burden of production on the point by introducing evidence in support of his claim.” *In re Chase & Sanborn Corp.*, 872 F.2d at 400. After the defendant establishes his inability-to-comply defense, the burden shifts back to the complainant to prove the defendant’s ability to comply. *See Wellington Precious Metals*, 950 F.2d at 1529.

In this case, Davison made all reasonable efforts to comply with the Court’s order requiring him to disgorge 480 platinum coins and 61 gold coins. During the scheduled turnover of his assets, Davison gave the Receiver the 480 coins he believed were platinum. Davison also turned over all of his gold coins to the Receiver. (Davison Decl., ¶¶ 9-14). Thus, Davison turned over all property he had and believed complied with the Court’s order. Davison’s mistake about whether his 480 coins were platinum or silver and how many gold coins he had does not suggest, much less prove, that he did not make all good faith reasonable efforts to comply with the Court’s order.

Davison’s good-faith substantial compliance with the Court’s order defeats the Receiver’s claim for civil contempt. The burden then shifts to the Receiver to prove that Mr. Davison had the ability to comply with the Court’s order, which the Receiver cannot do. The Receiver cannot prove Davison now has or ever had 480 platinum coins and 3 more gold coins that he refused to turn over. Davison’s good-faith efforts to comply with the Court’s order defeat the Receiver’s motion for civil contempt.

**E. Damages for Civil Contempt are Limited to Actual Damages.**

The second purpose of civil contempt is to compensate the complainant for damages sustained as a result of the defendant's contempt. *See In re Chase & Sandborn Corp.*, 872 F.2d at 400–01. The complainant is limited to actual damages. *See Chierico*, 206 F.3d at 1387. An award for damages requires “proof of both the fact of injury to the aggrieved party and the amount of damages the aggrieved party has suffered.” *Id.* (citation omitted). To recover damages for civil contempt, the complainant must prove damages by a preponderance of the evidence. *Id.*

If the Receiver can prove civil contempt by clear and convincing evidence, he can seek to recover actual damages as a result of the alleged contempt. The Receiver will not succeed because he cannot prove actual damages suffered because Davison has fully satisfied the SEC's \$27,013,060 judgment. The Receiver's Motion recognizes that the purpose of the final judgment ordering Davison to disgorge 480 platinum coins and 61 gold coins is to satisfy the \$27,013,060 judgment. *See* (Doc. 587 at 4) (“In order to satisfy this [\$27,013,060 judgment] obligation[,] Davison was directed to deliver specified assets to the Receiver, including the Platinum Coins.”).

Because Davison satisfied the \$27,013,060 judgment, the Receiver cannot show any actual damages suffered. The spreadsheet attached as Exhibit A is based on the Receiver's filings and shows that the proceeds of sale of the assets Davison turned over exceed the amount of the Final Judgment even without the 3 gold or 480 platinum coins. Because the full amount of the Final Judgment has been recovered, the Receiver

cannot prove that he has suffered actual damages by Davison's failure to turn over coins he never possessed.

#### **F. Civil Contempt Cannot be Used to Collect Damages.**

The Receiver cannot recover actual damages because his request for relief is really an attempt to collect on the final judgment. The Receiver asks the Court to direct, "\$484,000 of the funds held in frozen accounts that were to be retained by Davison be transferred to the Receiver." (Doc. 587 at 7). The Receiver fails to point to any actual damages he suffered as a result of Davison's mistakes with respect to his coin collections.

Instead, the Receiver seeks to recover the difference between the value of 480 platinum coins (and 61 gold coins) and 480 silver coins (and 58 gold coins) in order to satisfy the SEC's (already satisfied) \$27,013,060 judgment. When a party fails to satisfy a court-imposed money judgment, the appropriate remedy is a writ of execution—not civil contempt. *See Brown*, 2020 WL 7401272, at \*2.

The *Brown* decision demonstrates the distinction between contempt damages and collection of a money judgment. In that case, the parties entered into a settlement agreement for claims under the Fair Labor Standards Act (FLSA). *Id.* at \*1. The Court approved the settlement, entered partial judgments on the FLSA claims and awarded the plaintiffs attorney's fees and costs that the Court would later determine. *Id.* Shortly after, the Court entered an order awarding the plaintiffs \$68,204.50 in attorney's fees and \$560 in costs. *Id.* But the order did not specify when the fees and costs were due;

nor did the order amend the partial judgments to reflect the attorney's fees and costs award. *Id.*

After defendants failed to pay the plaintiffs' attorney's fees and costs, the plaintiffs moved for an order finding the defendants in contempt. *Id.* at \*2. The Court denied the plaintiffs' motion because the order awarding attorney's fees did not specify when the defendants had to pay the awards. *Id.* The Court also concluded that, to the extent the plaintiffs sought to collect a final money judgment for attorney's fees, civil contempt was the wrong avenue for seeking such relief. *Id.*

The Court noted that under Eleventh Circuit precedent, a writ of execution—not civil contempt—was the proper remedy for collecting a money judgment. *Id.* Just as plaintiffs sought to collect on a money judgment for attorney's fees through contempt proceedings in *Brown*, the Receiver seeks to collect on the \$27,013,060 judgment in this case through contempt proceedings; despite Davison having satisfied the \$27,013,060 judgment.

### III. CONCLUSION

Davison requests that the Court deny the Receiver's Verified Motion for An Order to Show Cause Why Brian Davison Should Not be Held in Contempt for Failure to Comply with the Court's Orders (Doc. 587). Alternatively, if the Court intends to set a hearing on an Order to Show Cause, it should be set at least 45 to 60 days out to allow Davison to receive the Receiver's discovery responses related to the Motion and adequately prepare for the evidentiary hearing, and should be set concurrently with a hearing on Davison's Verified Motion for An Order to Show with

the Court's Orders, and Davison's Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this 18<sup>th</sup> day of July 2022.

**/s/ Stanley T. Padgett**

Stanley T. Padgett, Esquire

Florida Bar No. 348686

PADGETT LAW, P.A.

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Co-Counsel for Defendant,

Brian Davison



Asset	Net Proceeds	Source
Bank of America xx4008	\$380.20	Final Judgment (Doc. 355-1 at 7); Ninth Quarterly Report (Doc. 563 at 8)
Bank of America xx4011	\$380.20	Final Judgment (Doc. 355-1 at 7); Ninth Quarterly Report (Doc. 563 at 8)
Chase xx2758	\$114.23	Final Judgment (Doc. 355-1 at 7); Ninth Quarterly Report (Doc. 563 at 8)
Chase xx9319	\$194.15	Final Judgment (Doc. 355-1 at 7); Ninth Quarterly Report (Doc. 563 at 9)
128 Biscayne	\$1,981,351.12	Eighth Quarterly Report (Doc. 490 at 7)
305 Bosphorus Ave	\$1,389,357.59	Eighth Quarterly Report (Doc. 490 at 7)
21 20th St, #5, NY	\$2,176,630.58	Eighth Quarterly Report (Doc. 490 at 7)
2101 W Cypress Ave	\$0.00	
2112 W Kennedy Blvd	\$1,634,350	Eighth Quarterly Report (Doc. 490 at 7)
Ritz-Carlton Destination Club	\$0.00	
Club Wyndham Bonnett Creek	\$0.00	
5123 E Broadway	\$3,520,000	Ninth Quarterly Report (Doc. 563 at 3)
5 Grindstaff Cove	\$0.00	
Stovall House Deposit	\$53,500	Final Judgment (Doc. 355-1 at 7)
Escrow Payment	\$45,834	Final Judgment (Doc. 355-1 at 7)
Miller Motorcars Deposits	\$193,911.19	Final Judgment (Doc. 355-1 at 7)
Simwest deposits	\$310,000	Final Judgment (Doc. 355-1 at 7)
2009 Ferrari 430 Scuderia M16	\$200,000.00	Receiver's Second Quarterly Report (Doc. 179 at 48)
2015 Ferrari F12 Berlinetta	\$37,252.58	Receiver's Second Quarterly Report (Doc. 179 at 48)
2015 Ferrari 458 Speciale	\$89,603.89	Receiver's Second Quarterly Report (Doc. 179 at 48)
2020 Bentley Convertible GTC V8	\$45,994.78	Final Judgment (Doc. 355-1 at 7)
2019 Rolls Royce Cullinan	\$75,551.74	Final Judgment (Doc. 355-1 at 7)
Commerce Brewing	\$0.00	
Nantahala Brewing	\$0.00	
Bolero Snort	\$0.00	
2018 Pagani Huayra	\$2,037,098	Receiver's Fourth Quarterly Report (Doc. 265 at 65 n.5)
1995 Land Rover Defender	\$205,000.00	Ninth Quarterly Report (Doc. 563 at 17)
2016 Mazda MX5	\$0.00	
1977 Ferrari 308 GTB	\$70,000	
Dotting "The Gallery"	\$0.00	
Dotting "The Liberty"	\$0.00	
Silver American Eagles (480)	\$11,000.00	Receiver Motion for Order to Show Cause (Doc. 587 at 2)
Gold American Eagles (58)	\$116,000.00	Receiver Motion for Order to Show Cause (Doc. 587 at 6)
Elizabeth II (2)	\$0.00	
US Liberty (13)	\$0.00	
Sight Shore House	\$98,571	Ninth Quarterly Report (Doc. 563 at 8)
Merrill Lynch 1294	\$0.00	
Merrill Lynch 1295	\$0.00	
Merrill Lynch 9944	\$1,717,210.29	Eighth Quarterly Report (Doc. 490 at 12); Ninth Quarterly Report (Doc. 563 at 10)
Merrill Lynch 9964	\$1,100,000.00	alternative investments per Eighth Quarterly Report (Doc. 490 at 12); Ninth Quarterly Report (Doc. 563 at 10)
Merrill Lynch 9965	\$0.00	
Merrill Lynch 9966	\$0.00	
Proceeds from watches and jewelry sale	\$13,000,000	Eighth Quarterly Report (Doc. 490 at 4); Ninth Quarterly Report (Doc. 563 at 2)
<b>Total Net Proceeds</b>	<b>\$30,109,286.00</b>	
<b>Final Judgment Amount</b>	<b>\$27,013,060.00</b>	
<b>Net Proceeds Amount Exceeding Final Judgment</b>	<b>\$3,096,226.00</b>	

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

CASE NO: 8:20-CV-325-MSS-MRM

BRIAN DAVISON, et al.,

Defendants,

and,

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

---

**DAVISON'S REQUEST FOR ADMISSIONS TO THE RECEIVER**

Defendant, Brian Davison, pursuant to Fed. R. Civ. P. 36, files this Request Admissions to the Receiver in connection with the Receiver's Verified Motion for An Order to Show Cause Why Brian Davison Should Not Be Held In Contempt For Failure To Comply With The Court's Orders (Doc. 587) (the "Motion"), filed June 27, 2022. Please admit that each of the following statements are true:

1. The gross proceeds from the sale of assets turned over to the Receiver by Davison exceed the sum of \$27,013,060.
2. In addition to the current gross proceeds from the sale of assets turned over to the Receiver by Davison, the Receiver has possession, custody or control of additional assets turned over by Davison such that the Receiver reasonably expects that after sale of those remaining assets, the total gross proceeds from sale of the assets turned over by Davison will exceed the sum of \$27,013,060.

3. The net proceeds from the sale of assets turned over to the Receiver by Davison exceed the sum of \$27,013,060.
4. In addition to the current net proceeds from the sale of assets turned over to the Receiver by Davison, the Receiver has possession, custody or control of additional assets turned over by Davison such that the Receiver reasonably expects that after sale of those remaining assets, the total net proceeds from sale of the assets turned over by Davison will exceed the sum of \$27,013,060.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served to all counsel via email and by U.S. Mail, as listed on the attached service list, on this 15th day of July 2022.

**/s/ Stanley T. Padgett**  
Stanley T. Padgett, Esquire  
Florida Bar No. 348686  
PADGETT LAW, P.A.  
201 E. Kennedy Blvd., Suite 600  
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Email: [spadgett@padgettlawpa.com](mailto:spadgett@padgettlawpa.com)  
Co-Counsel for Defendant,  
Brian Davison

**CERTIFICATE OF SERVICE**

Securities and Exchange Commission v. Brian Davison, et al.  
and 128 E. Davis Blvd., LLC, et al.  
Case No. 8:20-CV-325-MSS-MRM

**For Service by E-Mail:**

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**For Service by U.S. Mail:**

<p>Donald J. Magilligan, Esq.  Cotchett Pitre &amp; McCarthy, LLP  San Francisco Airport Office Center  840 Malcolm Rd.  Burlingame, CA 94010  Phone: 650-697-6000  <i>Attorney for Objector, Robert G. Mar</i></p>	<p>Mark C. Molumphy, Esq.  Cotchett Pitre &amp; McCarthy, LLP  San Francisco Airport Office Center  840 Malcolm Rd.  Burlingame, CA 94010  Phone: 650-697-6000  <i>Attorney for Objector, Robert G. Mar</i></p>
<p>Tamarah P. Prevost, Esq.  Cotchett Pitre &amp; McCarthy, LLP  San Francisco Airport Office Center  840 Malcolm Rd.  Burlingame, CA 94010  Phone: 650-697-6000  <i>Attorney for Objector, Robert G. Mar</i></p>	

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

CASE NO: 8:20-CV-325-MSS-MRM

BRIAN DAVISON, et al.,

Defendants,

and,

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**DAVISON'S FIRST INTERROGATORIES TO THE RECEIVER**

Defendant, Brian Davison, pursuant to Fed. R. Civ. P. 33, provides the following Interrogatories to be answered under oath within 30 days from this date in connection with the Receiver's Verified Motion for An Order to Show Cause Why Brian Davison Should Not Be Held In Contempt For Failure To Comply With The Court's Orders (Doc. 587) (the "Motion"), filed June 27, 2022.

**DEFINITIONS**

The following definitions shall apply to all of the interrogatories stated below:

- a) The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- b) The word "document" shall mean any written or graphic matter and other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original

by reason of any notation made on such copy or otherwise, including, but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, meetings or other communications, inter-office and intra-office telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, canceled checks, statements, transcripts, statistics, surveys, magazines or newspaper articles, releases (and any and all drafts, alterations or modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation, photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation, e-mail, tapes, cassettes, discs and records).

c) The term “all documents” means every document or group of documents as above defined that are known to you or that can be located or discovered by reasonably diligent efforts.

d) The phrase “social media” means forums for electronic communication (such as websites for social networking and microblogging) through which users create online accounts and communities to share information, ideas, personal messages, and other content; examples of social media forums include, but is not limited to, Facebook, Twitter, and LinkedIn.

e) The phrase “text message” refers to the exchange of communications in the form of written messages between wireless mobile phones (a/k/a cellular devices (“cell phones”)), and tablets (such as iPads). The phrase includes but is not limited to all forms of text messaging, including messages sent using the Short Message Service (SMS), as well as messages sent using the Multimedia Messaging Service (MMS), containing image, video and sound content.



f) The phrase “screen shot” means a digital image taken by the host operating system (such as a cell phone, tablet, or computer/laptop), to record the visible items or words displayed on the cell phone screen, tablet screen, computer/laptop display, or other visual output device.

g) The term “communication(s)” means every manner or means of disclosure, transfer or exchange of information, whether in person, by telephone, mail, personal delivery or otherwise.

h) The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

i) When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

j) When referring to documents “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

k) The terms “Plaintiff(s)” and “Defendant(s)” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

l) The term “person” means any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, group of natural persons, or other entity.

m) The term “Receiver” refers to the Court-Appointed Receiver Burt Wiand, and any person, entity, attorney, or authorized agent acting on his behalf.

n) The terms “third party” or third parties” refer to individuals or entities that are not a party to this action.

o) The terms “all” and “each” shall be construed as “all” and “each.”

p) The connective “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

q) The singular shall include the plural and vice versa; the terms “and” and “or” shall be both conjunctive and disjunctive to bring within the scope of these requests any documents which might otherwise be construed to be outside their scope; and the term “including” shall mean “including without limitation.”

### **INTERROGATORIES**

**Interrogatory No. 1.** State the total gross proceeds of the sale of **all** assets turned over by Davison.

**Answer:**

**Interrogatory No. 2.** State the total gross proceeds of the sale of **each** asset turned over by Davison.

**Answer:**

**Interrogatory No. 3.** State the total net proceeds of the sale of **all** assets turned over by Davison.

**Answer:**

**Interrogatory No. 4.** State the total net proceeds of **each** asset turned over by Davison.

**Answer:**

**Interrogatory No. 5.** State the total costs of sale of **all** assets turned over by Davison.

**Answer:**

**Interrogatory No. 6.** State the total costs of sale of **each** asset turned over by Davison.

**Answer:**

**Interrogatory No. 7.** Describe in detail any assets turned over by Davison that are still in the Receiver's possession, custody or control.

**Answer:**

**Interrogatory No. 8.** State the Receiver's opinion based on information currently available to him of the total gross proceeds to be obtained from the sale of **all** remaining assets turned over by Davison.

**Answer:**

**Interrogatory No. 9.** State the Receiver's opinion based on information currently available to him of the gross proceeds to be obtained from the sale of **each** of the remaining assets turned over by Davison.

**Answer:**

**Interrogatory No. 10.** State the Receiver's opinion based on information currently available to him of the total net proceeds to be obtained from the sale of **all** remaining assets turned over by Davison.

**Answer:**

**Interrogatory No. 11.** State the Receiver's opinion based on information currently available to him of the net proceeds to be obtained from the sale of **each** of the remaining assets turned over by Davison.

**Answer:**

By: \_\_\_\_\_  
Burton W. Wiand, Receiver

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_ 2022, personally appeared Burton W. Wiand who is Personally Known to me \_\_\_\_ or has Produced as Identification \_\_\_\_\_, and after being duly sworn, states that he is the person authorized to sign these Interrogatory Answers on behalf of the Receiver, and that the answers provided therein are true and correct.

**Notary Seal**

\_\_\_\_\_  
**Notary Public - State of Florida**

\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

CASE NO: 8:20-CV-325-MSS-MRM

BRIAN DAVISON, et al.,

Defendants,

and,

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**DAVISON'S REQUEST FOR PRODUCTION OF DOCUMENTS TO THE RECEIVER**

Defendant, Brian Davison, pursuant to Fed. R. Civ. P. 34, files this request for Production of Documents to the Receiver in connection with the Receiver's Verified Motion for An Order to Show Cause why Brian Davison Should Not be Held in Contempt for Failure to Comply with the Court's Orders (Doc. 587) (the "Motion"), filed June 27, 2022.

**DEFINITIONS**

The following definitions shall apply to all of the requests for production stated below:

- a) The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- b) The word "document" shall mean any written or graphic matter and other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original



by reason of any notation made on such copy or otherwise, including, but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, meetings or other communications, inter-office and intra-office telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, canceled checks, statements, transcripts, statistics, surveys, magazines or newspaper articles, releases (and any and all drafts, alterations or modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation, photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation, e-mail, tapes, cassettes, discs and records).

c) The term “all documents” means every document or group of documents as above defined that are known to you or that can be located or discovered by reasonably diligent efforts.

d) The phrase “social media” means forums for electronic communication (such as websites for social networking and microblogging) through which users create online accounts and communities to share information, ideas, personal messages, and other content; examples of social media forums include, but is not limited to, Facebook, Twitter, and LinkedIn.

e) The phrase “text message” refers to the exchange of communications in the form of written messages between wireless mobile phones (a/k/a cellular devices (“cell phones”)), and tablets (such as iPads). The phrase includes but is not limited to all forms of text messaging, including messages sent using the Short Message Service (SMS), as well as messages sent using the Multimedia Messaging Service (MMS), containing image, video and sound content.

f) The phrase “screen shot” means a digital image taken by the host operating system (such as a cell phone, tablet, or computer/laptop), to record the visible items or words displayed on the cell phone screen, tablet screen, computer/laptop display, or other visual output device.

g) The term “communication(s)” means every manner or means of disclosure, transfer or exchange of information, whether in person, by telephone, mail, personal delivery or otherwise.

h) The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

i) When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

j) When referring to documents “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

k) The terms “Plaintiff(s)” and “Defendant(s)” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

l) The term “person” means any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, group of natural persons, or other entity.

- m) The term “Receiver” refers to the Court-Appointed Receiver Burt Wiand, and any person, entity, attorney, or authorized agent acting on his behalf.
- n) The terms “third party” or third parties” refer to individuals or entities that are not a party to this action.
- o) The terms “all” and “each” shall be construed as “all” and “each.”
- p) The connective “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
- q) The singular shall include the plural and vice versa; the terms “and” and “or” shall be both conjunctive and disjunctive to bring within the scope of these requests any documents which might otherwise be construed to be outside their scope; and the term “including” shall mean “including without limitation.”

### **INSTRUCTIONS**

1. In producing documents and other things, you are requested to furnish all documents or things in your possession, custody or control, regardless of whether such documents or things are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys or accountants.
2. Documents are to be produced in full; redacted documents will not constitute compliance with this request. If any requested document or thing cannot be produced in full, you are requested to produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason that document is being withheld.
3. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document

cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.

4. All ESI to be produced, including email, shall be produced in its native format, including metadata, provided that the applications used to access, search, organize, and review such ESI are commercially available at a reasonable cost (such as through Microsoft Office), as opposed to proprietary, specially-developed, or cost-prohibitive applications.

5. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

6. Documents shall be produced in such fashion as to identify that department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

7. Documents attached to each other should not be separated.

8. If any documents or files requested herein have been lost, discarded, destroyed or are otherwise no longer in your possession, custody or control, they shall be identified as completely as possible including, without limitations, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

9. If you withhold documents by claiming that they are privileged or subject to the work-product protection, you shall comply with Fed. R. Civ. P. 26(b)(5)(A) by making the claim expressly and describing the nature of the documents, communications, or things not produced in a manner that allows an assessment of the privilege or protection. To aid in the assessment, you shall disclose at the very least the following information as to each and every document, communication, or thing not produced or disclosed:

- A. Date the document was prepared
- B. The author(s)
- C. Recipient(s)
- D. All persons to whom distributed
- E. Purpose for which the document was prepared
- F. The factual basis of the asserted privilege or protection

10. Documents shall be produced in such fashion as to identify to which request(s) they are responsive.

### **Instructions for Production of ESI**

With respect to electronically stored information (“ESI”) being produced:

- (a) All electronic mail, instant messages, text messages and spreadsheets responsive to these requests that are maintained in the usual course of business in electronic format shall be produced in their native format along with the software necessary to interpret such files if such software is not readily available.
- (b) Responsive ESI and imaged hard copy shall be produced in the format outlined below. All ESI, except for spreadsheets and presentation files (e.g. Excel, PowerPoint) and those forms listed below, shall be rendered to TIFF image format, and accompanied by a Relativity Load file. All applicable metadata/database fields (see section below) shall be extracted and provided in Relativity load file format.
- (c) Image File Format: All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files. Documents shall be uniquely and sequentially Bates-numbered with an endorsement on the bottom right-hand corner of each image. All TIFF file names

shall include the unique Bates number burned into the image. All documents shall be produced in black and white unless color is necessary to understand the meaning.

(d) Opticon (.OPT) Image Cross-Reference file: Images should be accompanied by a Opticon image cross-reference file that associates each Bates number with its corresponding single-page TIFF image file. The Opticon file should also contain the image file path for each Bates numbered page.

(e) Relativity Load File: All productions should be accompanied by a Relativity DAT load file containing all requested metadata in a standard delimited text format. The first line of the file should contain the metadata field names listed in the "Data Delivery Standards - Metadata Fields" section below. Additional fields such as Extracted Text and Native Path should also be provided in the DAT file.

(f) Extracted Text/OCR: The extracted/OCR text for each document should be provided as a separate single text (.TXT) file. The file name should match the BEGIN BATES production number of each document for that specific record and be accompanied by the .txt extension. The file path location of the Extract Text shall be referenced in the DAT file.

(g) Common files to be produced in Native Format. All spreadsheets, database, presentation files, CAD or other drawing files, audio/visual files and any other file that cannot be imaged shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e., in native format). Any other documents, including but not limited to MS Word files that contain hidden data shall be produced in native. The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata. No alteration shall be made to file names or extensions for responsive native electronic files. All file produced in native format should also

be produced with a Bates-numbered slip-sheet. All native files should be produced with their corresponding metadata and extracted text.

(h) All Documents responsive to these requests shall be produced with the metadata normally contained within such documents. If such metadata is not available, each document shall be accompanied by a listing of all file properties concerning such document, including, but not limited to, all information concerning the date(s) the document was last accessed, created, modified or distributed, and the author(s) and recipient(s) of the document.

(i) Family groups should be preserved so that attachments are paired with the parent document.

(j) To the extent that specific documents require redaction, in lieu of the extracted text metadata field, you may produce redacted OCR as text for such documents.

(k) If any ESI is produced in a form that is not reasonably useable, we reserve the right to request that specific and individual documents be delivered in a different form, including native form. The native files should be preserved.

Under no circumstances should ESI be converted from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome to use the ESI. ESI should not be produced in a form that removes or significantly degrades the ability to search the ESI by electronic means where the ESI is ordinarily maintained in a way that makes it searchable by electronic means. Databases or underlying data should not be produced without first discussing production format issues with the undersigned counsel. If you decline to search or produce ESI on the ground that such ESI is not reasonably accessible because of undue burden or cost, identify such information by category or source and provide detailed information regarding the burden or cost you claim is associated with the search or production of such ESI.

Data Delivery Standards - Metadata Fields

BegBates: Beginning Bates Number

EndBates: Ending Bates Number

BatesBegAttach: Beginning Bates number of the first document in an attachment range

BatesEndAttach: Ending Bates number of the last document in attachment range

Custodian: Name of the Custodian of the File(s) Produced – Last Name, First Name

FileName: Filename of the original digital file name

NativeLink: Path and filename to produced Native file

EmailSubject: Subject line extracted from an email message

Title: Title field extracted from the metadata of a non-email document

Author: Author field extracted from the metadata of a non-email document

From: From field extracted from an email message

To: To or Recipient field extracted from an email message

Cc: CC or Carbon Copy field extracted from an email message

BCC: BCC or Blind Carbon Copy field extracted from an email message

DateRcvd: Received date of an email message (mm/dd/yyyy format)

DateSent: Sent date of an email message (mm/dd/yyyy format)

DateCreated: Date that a file was created (mm/dd/yyyy format)

DateModified: Modification date(s) of a non-email document

Fingerprint: MD5 or SHA-1 has value generated by creating a binary stream of the file

ExtractedText: File path to Extracted Text/OCR File



**DOCUMENTS OR ITEMS TO BE PRODUCED**

1. All documents showing the Receiver's efforts to sell the assets turned over by Davison.
2. All documents reflecting communications related to the sale or attempted sale of each asset turned over by Davison.
3. All documents showing compensation paid to any person or entity in connection with the sale of any asset turned over by Davison.
4. All documents showing the net proceeds of the sale of **each** asset turned over by Davison.
5. All documents showing the total net proceeds of the sale of **all** assets turned over by Davison.
6. All documents showing all assets turned over by Davison that are still in the Receiver's possession, custody or control.
7. All documents showing any pending sale of any asset turned over by Davison.
8. Documents showing the total costs of sale of each asset turned over by Davison and the person or entity to whom such payments were made.
9. All documents showing the total gross proceeds from the sale of each asset turned over by Davison.
10. All documents obtained from the Gold & Diamond Source, Inc.
11. All documents obtained from the International Diamond Source, Inc.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served to all counsel via email and by U.S. Mail, as listed on the attached service list, on this 15 day of July 2022.

**/s/ Stanley T. Padgett**  
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**CERTIFICATE OF SERVICE**

Securities and Exchange Commission v. Brian Davison, et al.  
and 128 E. Davis Blvd., LLC, et al.  
Case No. 8:20-CV-325-MSS-MRM

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

CASE NO: 8:20-CV-325-MSS-MRM

BRIAN DAVISON, et al.,

Defendants,

and,

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**DAVISON'S NOTICE OF SERVICE OF SUBPOENAS DUCES TECUM**

Defendant, Brian Davison, pursuant to Fed. R. Civ. P. 45(a)(4) hereby gives notice that he will serve the attached Subpoenas Duces Tecum on Gold & Diamond Source, Inc. and International Diamond Center, Inc.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served to all counsel via email and by U.S. Mail, as listed on the attached service list, on this 15th day of July 2022.

**/s/ Stanley T. Padgett**

Stanley T. Padgett, Esquire

Florida Bar No. 348686

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Co-Counsel for Defendant,

Brian Davison



**CERTIFICATE OF SERVICE**

Securities and Exchange Commission v. Brian Davison, et al.  
and 128 E. Davis Blvd., LLC, et al.  
Case No. 8:20-CV-325-MSS-MRM

**For Service By E-Mail:**

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Gregory J. Fleesler, Esq. Moses & Singer LLP 405 Lexington Avenue New York, NY 10174 Phone: 212-554-7700 Email: <a href="mailto:gfleesler@mosessinger.com">gfleesler@mosessinger.com</a> <a href="mailto:frescigno@mosessinger.com">frescigno@mosessinger.com</a> <a href="mailto:kkolbig@mosessinger.com">kkolbig@mosessinger.com</a> Attorney for Defendant, Brian Davison	Howard Andrew Fischer, Esq. Moses & Singer LLP 405 Lexington Avenue New York, NY 10174 Phone: 212-554-7700 <a href="mailto:HFischer@mosessinger.com">HFischer@mosessinger.com</a> Attorney for Defendant, Brian Davison
Gerald D. Davis, Esq. Trenam Law 200 Central Ave, Suite 1600 St. Petersburg, FL 33701-3960 Email: <a href="mailto:gdd@trenam.com">gdd@trenam.com</a> <a href="mailto:bshepard@trenam.com">bshepard@trenam.com</a> <a href="mailto:ohoeppner@trenam.com">ohoeppner@trenam.com</a> Attorney for Defendant, Brian Davison	Adam Seth Fels, Esq. Fridman Fels & Soto, PLLC 2525 Ponce de Leon Blvd., Suite 750 Coral Gables, FL 33134 Phone: 305-569-7746 Email: <a href="mailto:afels@ffslawfirm.com">afels@ffslawfirm.com</a> <a href="mailto:vpantin@ffslawfirm.com">vpantin@ffslawfirm.com</a> Attorney for Defendant, Barry M. Rybicki

<p>Alejandro O. Soto, Esq.  Fridman Fels &amp; Soto, PLLC  2525 Ponce de Leon Blvd., Suite 750  Coral Gables, FL 33134  Phone: 305-569-7707  Email: <a href="mailto:asoto@ffslawfirm.com">asoto@ffslawfirm.com</a>  <a href="mailto:vpantin@ffslawfirm.com">vpantin@ffslawfirm.com</a>  Attorney for Defendant, Barry M. Rybicki</p>	<p>Jared J. Perez, Esq.  Jared J. Perez, PA  301 Druid Road West  Clearwater, FL 33607  Phone: 727-641-6562  Email: <a href="mailto:jperez@guerraking.com">jperez@guerraking.com</a>  <a href="mailto:awilson@guerraking.com">awilson@guerraking.com</a>  <a href="mailto:burt@burtonwwiandpa.com">burt@burtonwwiandpa.com</a>  <a href="mailto:jrizzo@guerraking.com">jrizzo@guerraking.com</a>  Attorney for Receiver, Burton W. Wiand</p>
<p>Katherine C. Donlon, Esq.  Johnson, Cassidy, Newlon &amp; DeCort  2802 N. Howard Avenue  Tampa, FL 33607  Phone: 813-291-3300  Email: <a href="mailto:kdonlon@jclaw.com">kdonlon@jclaw.com</a>  <a href="mailto:mhill@jclaw.com">mhill@jclaw.com</a>  <a href="mailto:mmadison@jclaw.com">mmadison@jclaw.com</a>  Attorney for Receiver, Burton W. Wiand</p>	<p>Robert Max McKinley, Esq.  Guerra King P.A.  The Towers at Westshore  1408 N. Westshore Blvd., Suite 1010  Tampa, FL 33607  Phone: 813-347-5112  Email: <a href="mailto:mmckinley@guerraking.com">mmckinley@guerraking.com</a>  Attorney for Receiver, Burton W. Wiand</p>
<p>Robert A. Stines, Esq.  Freeborn &amp; Peters, LLP  201 N. Franklin St., Suite 3550  Tampa, FL 33602-5182  Phone: 813-488-2920  Email: <a href="mailto:rstines@freeborn.com">rstines@freeborn.com</a>  <a href="mailto:pgeer@freeborn.com">pgeer@freeborn.com</a>  Attorney for Receiver, Burton W. Wiand</p>	<p>Jaimee L. Braverman, Esq.  Liebler, Gonzalez &amp; Portuondo, PA  44 W. Flagler St., Suite 2500  Miami, FL 33130-1808  Phone: 305-379-0400  Email: <a href="mailto:jlb@lgplaw.com">jlb@lgplaw.com</a>  <a href="mailto:mc@lgplaw.com">mc@lgplaw.com</a>  <a href="mailto:service@lgplaw.com">service@lgplaw.com</a>  Attorney for Movant, Bank of America, N.A.</p>
<p>Miguel Mario Cordano, Esq.  Liebler, Gonzalez &amp; Portuondo, PA  44 W. Flagler St., Suite 2500  Miami, FL 33130-1808  Phone: 305-379-0400  Email: <a href="mailto:mc@lgplaw.com">mc@lgplaw.com</a>  <a href="mailto:service@lgplaw.com">service@lgplaw.com</a>  Attorney for Movant, Bank of America, N.A.</p>	<p>Adam M. Moskowitz, Esq.  Moskowitz Law Firm, PLLC  2 Alhambra Plaza, Suite 601  Coral Gables, FL 33134  Phone: 305-740-1423  Email: <a href="mailto:adam@moskowitz-law.com">adam@moskowitz-law.com</a>  <a href="mailto:dione@moskowitz-law.com">dione@moskowitz-law.com</a>  <a href="mailto:joseph@moskowitz-law.com">joseph@moskowitz-law.com</a>  <a href="mailto:rejane@moskowitz-law.com">rejane@moskowitz-law.com</a>  <a href="mailto:service@moskowitz-law.com">service@moskowitz-law.com</a>  Attorney for Movant, Investor Plaintiffs</p>



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<p>Jeffrey Roger Sonn, Esq. Sonn Law Group PA 19495 Biscayne Blvd., Suite 607 Aventura, FL 33180-2320 Phone: 305-912-3000 Email: <a href="mailto:jsonn@sonnlaw.com">jsonn@sonnlaw.com</a> <a href="mailto:aanzola@sonnlaw.com">aanzola@sonnlaw.com</a> <a href="mailto:service@sonnlaw.com">service@sonnlaw.com</a> <i>Attorney for Movant, Investor Plaintiffs</i></p>	<p>Simon Alexander Gaugush, Esq. Carlton Fields, P.A. 4221 W. Boy Scout Blvd., Suite 1000 Tampa, FL 33607 Phone: 813-229-4227 Email: <a href="mailto:sgaugush@carltonfields.com">sgaugush@carltonfields.com</a> <a href="mailto:amaranto@carltonfields.com">amaranto@carltonfields.com</a> <i>Attorney for Movant, Paul Wassgren</i></p>
<p>William J. Schifino, Jr., Esq. Gunster 401 E. Jackson St., Suite 2500 Tampa, FL 33602-5226 Phone: 813-228-9080 Email: <a href="mailto:bschifino@gunster.com">bschifino@gunster.com</a> <a href="mailto:kkovach@gunster.com">kkovach@gunster.com</a> <i>Attorney for Movant, Fox Rothschild LLP</i></p>	<p>Arthur Lee Bentley, III, Esq. Bradley Arant Boult Cummings LLP 100 N. Tampa St., Suite 2200 Tampa, FL 33602-5809 Phone: 813-559-5500 Email: <a href="mailto:lbentley@bradley.com">lbentley@bradley.com</a> <a href="mailto:dmills@bradley.com">dmills@bradley.com</a> <a href="mailto:ggiarratana@bradley.com">ggiarratana@bradley.com</a> <a href="mailto:jmehta@bradley.com">jmehta@bradley.com</a> <a href="mailto:lee-bentley-1971@ecf.pacerpro.com">lee-bentley-1971@ecf.pacerpro.com</a> <i>Attorney for Movant, DLA Piper LLP</i></p>

**For Service by U.S. Mail:**

<p>Donald J. Magilligan, Esq. Cotchett Pitre &amp; McCarthy, LLP San Francisco Airport Office Center 840 Malcolm Rd. Burlingame, CA 94010 Phone: 650-697-6000 <i>Attorney for Objector, Robert G. Mar</i></p>	<p>Mark C. Molumphy, Esq. Cotchett Pitre &amp; McCarthy, LLP San Francisco Airport Office Center 840 Malcolm Rd. Burlingame, CA 94010 Phone: 650-697-6000 <i>Attorney for Objector, Robert G. Mar</i></p>
<p>Tamarah P. Prevost, Esq. Cotchett Pitre &amp; McCarthy, LLP San Francisco Airport Office Center 840 Malcolm Rd. Burlingame, CA 94010 Phone: 650-697-6000 <i>Attorney for Objector, Robert G. Mar</i></p>	

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Securities and Exchange Commission

*Plaintiff*

v.

Brian Davison, et al.

*Defendant*

Civil Action No. 8:20-cv-325-MSS-MRM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Steven Weintraub, Registered Agent for Gold &amp; Diamond Source, Inc.

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Place: Padgett Law, P.A.  
201 E Kennedy Blvd, #600  
Tampa, FL 33602

Date and Time:

07/29/2022 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk\_\_\_\_\_  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Brian Davison, who issues or requests this subpoena, are:

Stanley Padgett, 201 E Kennedy Blvd, #600, Tampa, FL 33602, spadgett@padgettlawpa.com, (813) 230-9098

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 8:20-cv-325-MSS-MRM

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## **EXHIBIT A**

Please provide copies of any and all documents and receipts related to all purchases by Brian Davison of gold, silver, and platinum coins.

**YOU MAY COMPLY WITH THIS SUBPOENA BY PROVIDING ELECTRONIC COPIES OF THE DOCUMENTS BY THE DATE SET FORTH ON THE SUBPOENA AND PROVIDING A FULLY EXECUTED BUSINESS RECORDS CERTIFICATION IN THE FORM ATTACHED AS EXHIBIT B.**

# **EXHIBIT B**



**BUSINESS RECORDS  
CERTIFICATE OF AUTHENTICITY**

I, \_\_\_\_\_, am employed by

\_\_\_\_\_  
(Name, address, phone number and email address of the business entity)

My official title is \_\_\_\_\_.

I am familiar with the type of documents and records received, created, and  
relied upon by \_\_\_\_\_  
(name of business entity)

in the ordinary course of its business.

*List Documents*

I further certify that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if such record is not an original, such record is a duplicate of the original.

I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Securities and Exchange Commission

*Plaintiff*

v.

Brian Davison, et al.

*Defendant*

Civil Action No. 8:20-cv-325-MSS-MRM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Bruce Marger, Registered Agent for International Diamond Center, Inc.

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Place: Padgett Law, P.A.  
201 E Kennedy Blvd, #600  
Tampa, FL 33602

Date and Time:

07/29/2022 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk\_\_\_\_\_  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Brian Davison, who issues or requests this subpoena, are:

Stanley Padgett, 201 E Kennedy Blvd, #600, Tampa, FL 33602, spadgett@padgettlawpa.com, (813) 230-9098

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



Civil Action No. 8:20-cv-325-MSS-MRM

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## **EXHIBIT A**

Please provide copies of any and all documents and receipts related to all purchases by Brian Davison of gold, silver, and platinum coins.

**YOU MAY COMPLY WITH THIS SUBPOENA BY PROVIDING ELECTRONIC COPIES OF THE DOCUMENTS BY THE DATE SET FORTH ON THE SUBPOENA AND PROVIDING A FULLY EXECUTED BUSINESS RECORDS CERTIFICATION IN THE FORM ATTACHED AS EXHIBIT B.**



# **EXHIBIT B**

**BUSINESS RECORDS  
CERTIFICATE OF AUTHENTICITY**

I, \_\_\_\_\_, am employed by

\_\_\_\_\_  
(Name, address, phone number and email address of the business entity)

My official title is \_\_\_\_\_.

I am familiar with the type of documents and records received, created, and  
relied upon by \_\_\_\_\_  
(name of business entity)

in the ordinary course of its business.

*List Documents*

I further certify that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if such record is not an original, such record is a duplicate of the original.

I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## **DECLARATION OF BRIAN DAVISON**

I, Brian Davison, declare that the following information is true and correct and that I make this Declaration under penalty of perjury.

1. I am over the age of 18 and have personal knowledge of the facts stated in this Declaration.
2. I am one of the named defendants in the case styled SEC v. Brian Davison et al., Case No. 8:20-CV-325-T-35AEP.
3. When I learned about the case, it turned my world upside down. Throughout its existence, EquiAlt regularly obtained legal advice from top-notch law firms and I believed EquiAlt operated lawfully and fully compliant.
4. It was a shock to me when I was locked out of my office, my business, my home had been searched, and my personal computer was taken from me.
5. During the case, I attempted to create a complete list of all of my assets, even though I did not have access to any of the records kept in EquiAlt's offices.
6. I did the best I could to create a complete list of assets, including my coin and watch collection.
7. When I counted the gold American Eagle coins, I came up with 61. After I learned of this case I did not sell, transfer, conceal, or give away any gold coins.

8. When I looked at the 480 boxed coins to put them on the asset list, I believed they were platinum, not silver. I have never owned any other boxed set of coins or any other set of 480 coins. After I learned of this case I did not sell, transfer, conceal, or give away any platinum coins.
9. Many of my assets were turned over to the Receiver on August 31, 2021, at my home located at 128 Biscayne Avenue, Tampa, Florida 33606.
10. The turnover began with my placing the coin collection, including the gold coins and the 480 boxed coins, on the granite countertop in the kitchen.
11. I watched as a representative of the Receiver, Carlos Lopez, examined and counted the coins.
12. When Mr. Lopez counted the American Eagle gold coins, he found only 58, rather than the 61 gold coins listed in the Assignment.
13. I was shocked when Mr. Lopez examined the wooden box holding 480 coins and stated that the coins were silver instead of platinum.
14. I had made purchases of coins through International Diamond Center, Inc. (IDC) located on Ulmerton Road in Clearwater and thought I may have bought the set of 480 coins from IDC.
15. After the turnover meeting, I contacted representatives of IDC to ask for records of my coin purchases but due to the Receivership they declined to provide me with any information.

16.I have not been able to locate any records of my purchase of the 480 American Eagle coins, so I do not know where or when I bought them or at what price.

17.My Assignment of Assets is attached to the Receiver's Verified Motion for an Order to Show Cause as Exhibit 1.

18.Exhibit B to Exhibit 1 is the List of Assets to be retained by me.

19.The Receiver has not turned over to me the cash in any of the following bank accounts listed in paragraph (1) of Exhibit B with the possible exception of the Chase XXX3995 account:

- a. Bank of America XXX8041 – The Brian D. Davison Revocable Trust  
- \$322,480.06;
- b. Chase XXS5756 – Davison Capital - \$24,639.50; and
- c. Chase XXX3995 – Brian and Nicole Davison - \$169,642.20.

20.I am sure whether we received some or all of the proceeds of the Chase XXX3995 account as I did not keep paper statements and no longer have on-line access to the Chase accounts.

21.The Receiver has not turned over to me any of the brewery interests listed in paragraph (iv) of Exhibit B.

22.The Receiver has not turned over to me \$500,000 from positions to be liquidated in my Merrill Lynch accounts listed in paragraph (vii) of Exhibit B.



**I DECLARE** under penalty of perjury that the foregoing is true and correct  
7/18/2022

and is executed on July \_\_, 2022.

DocuSigned by:

*Brian Davison*

E4B15D9844F0  
Brian Davison

**DECLARATION OF GERALD D. DAVIS, ESQ.**

I, Gerald D. Davis, declare that the following information is true and correct and that I make this Declaration under penalty of perjury.

1. I am over the age of 18 and have personal knowledge of the facts stated in this Declaration.
2. I graduated from the University of Florida Frederick G. Levin College of Law in 1988 and was admitted to the Florida Bar on September 22, 1988; Florida Bar No. 764698.
3. I have been a member in good standing of the Florida Bar since September 22, 1988 and currently am AV rated by Martindale Hubbell.
4. I am a partner at Trenam Law and along with co-counsel have represented Brian Davison in connection with the proceedings in the case styled SEC v. Brian Davison et al., Case No. 8:20-CV-325-T-35AEP.
5. My representation included assisting Mr. Davis in the turnover and receipt of assets pursuant to the Final Judgment in that case.
6. I worked with counsel for the Receiver, Kacy Donlon on those issues. After entry of the Final Judgment, Mr. Davison and I pushed the Receiver to establish an asset turnover date.

7. On August 31, 2021, I was present at Mr. Davison's home located at 128 Biscayne Avenue, Tampa, Florida 33606 for the turnover of assets, along with counsel for the Receiver and the Receiver, Burt Wiand.
8. There were watches and coins to be turned over and the turnover began with the coins which were placed on the granite countertop in the kitchen.
9. I watched as a representative of the Receiver, Carlos Lopez, examined and counted the coins.
10. When Mr. Lopez counted the American Eagle gold coins, he found only 58, rather than the 61 gold coins listed in the Assignment.
11. When Mr. Lopez examined a box that appeared designed to hold 480 coins, he stated that the coins were silver instead of platinum.
12. Mr. Davison appeared shocked by that statement and indicated he believed he had purchased platinum coins from the Gold & Diamond Source; which I know to be located on Ulmerton Road in Clearwater.
13. I do not recall Mr. Davison ever saying he, "got a really good deal" on the coins or mentioning IDC Coin & Bullion; a competitor of Gold & Diamond Source.
14. I'm familiar with IDC Coin & Bullion and know it also is located on Ulmerton Road in Clearwater.

15. During the asset turnover meeting on August 31, 2021, I asked Mr. Wiand and/or his counsel/agents about turning over to Mr. Davison the assets he was entitled to retain under the Final Judgment.
16. They demanded that Mr. Davison's counsel prepare the deed to turn over his home located 128 Biscayne Avenue, Tampa, Florida 33606 to the Receiver which I did and the executed original deed was provided to the Receiver at the asset turnover meeting on August 31, 2021.
17. The Receiver's counsel agreed to prepare the documents necessary for the Receiver to turn over to Mr. Davison the assets he was entitled to retain.
18. Despite that agreement, they failed to provide any such documents and since that time have demanded that Mr. Davison's counsel prepare those documents; a requirement absent from the Final Judgment.
19. My law firm Trenam Law ended up drafting the transfer documents on the brewery interests Mr. Davison was entitled to retain under the Final Judgment at considerable expense to Mr. Davison.

**I DECLARE** under penalty of perjury that the foregoing is true and correct and is executed on July 5, 2022.

  
\_\_\_\_\_  
Gerald D. Davis