

**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 BRIAN DAVISON’S MOTION TO QUASH RECEIVER’S  
SUBPOENAS OR, ALTERNATIVELY, MOTION FOR  
PROTECTIVE ORDER**

Despite Brian Davison satisfying the full money judgment against him, the Receiver served Rule 45 subpoenas duces tecum on Mr. Davison and his wife Nicole Davison.<sup>1</sup> The subpoena against Mr. Davison is inappropriate because the proper way to obtain documents from a party is through a Rule 34 request for production while discovery is ongoing—not through a Rule 45 subpoena long after discovery closed. Both subpoenas seek materials irrelevant to the already-satisfied money judgment

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<sup>1</sup> Copies of the subpoenas attached as Exhibit A (Mr. Davison) and Exhibit B (Mrs. Davison). The Receiver originally issued both subpoenas in September 2021. After granting an indefinite extension of time to Mr. and Mrs. Davison, the Receiver, in a letter dated August 15, 2022, demanded a response to the subpoena by August 22. The undersigned tested positive for Covid on August 15, 2022, was only able to work sporadically for two weeks and is just now back to full time.

against Mr. Davison. Therefore, Mr. Davison seeks an order quashing the Receiver's subpoenas or, alternatively, protecting Mr. and Mrs. Davison's personal financial information.

## **BACKGROUND**

The subpoena against Mr. Davison seeks the following material:

1. Produce any and all documents in your possession, custody or control regarding or relating to or reflecting any account in your name or over which you have any direct or indirect control or signature authority with any financial institution for the period of February 14, 2020, to the present.
2. Produce any and all documents in your possession, custody or control regarding any completed or proposed purchase, sale or transfer of any watch, time-piece or jewelry.
3. Produce any and all documents that related to reflect or evidence any communication with any individual or firm that transacts business in watches or time pieces.
4. Produce any and all documents that reflect, relate or refer to any transaction or proposed transaction in precious metals including gold, platinum and silver.
5. Any communications with any entity or person that deals in precious metals.
6. Any communication or documents relating to the transfer or pledge of any precious metals or other assets of any kind from February 14, 2020, to the date hereof.
7. Any and all documents relating to, regarding or evidencing and [sic] transaction or proposed transaction in any cryptocurrency.
8. Any documents that relate or reflect and [sic] communication regarding cryptocurrency or any proposed transaction, including any firm or individual that transacts business in cryptocurrency.

9. All contacts, communications with, or documents that involve, relate to, or refer to Greg Simonian, John Simonian or Westime.
10. Copies of any Passport used by Brian Davison.
11. Produce the records requested in paragraphs 2 through 9 for the period beginning January 1, 2016, to the date of production.

*See Ex. A.* The subpoena against Mrs. Davison seeks similar material. *See Ex. B.*

The Court should quash the Receiver's subpoena against Mr. Davison because the Receiver cannot use a Rule 45 subpoena to obtain materials from a party after the close of discovery and because both subpoenas seek materials irrelevant to the SEC's already-satisfied money judgment against Mr. Davison.

## **LEGAL MEMORANDUM**

### **A. The Court should quash the Receiver's subpoenas.**

Rule 45 allows a party to issue a subpoena to "command each person to whom [the subpoena] is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises." Fed. R. Civ. P. 45(a)(1)(A)(iii).

"In general, a Rule 45 subpoena is a discovery vehicle to be used against non-parties to, among other things, obtain documents relevant to a *pending lawsuit*." *Castleberry v. Camden Cnty.*, 331 F.R.D. 559, 562 (S.D. Ga. 2019) (citation omitted) (emphasis added). While discovery is ongoing, the proper means to obtain materials from a party is through a Rule 34 request for production. *See generally Hatala v. Sustainable Concepts Develop.*, No. 9:15-CV-81475-BLOOM/Reinhart, 2022 WL

2341234, at \*2 (S.D. Fla. Apr. 25, 2022) (“By the plain language of Rule 26(b)(1), the proportionality factors (which include undue burden) limit what documents a requesting party may obtain, without regard for whether the request is to another party under Rule 34 or to a non-party under Rule 45.”) (citations omitted).

In this case, the Receiver’s subpoena against Mr. Davison is improper because discovery is closed and Mr. Davison is a party to the case. *See* (Doc. 422) (setting a November 5, 2021 discovery deadline). The closure of discovery means the Receiver cannot issue a request for production under Rule 34. *See Castleberry*, 331 F.R.D. at 564 (“Defendant had ‘access to [the] relevant information’ during discovery through means other than a third-party subpoena and could have ‘obtained’ the information ‘from some other source’—namely, from the Plaintiff—and had ‘ample opportunity’ to do so.”) (citing Fed. R. Civ. R. 26(b)). The Receiver cannot use a Rule 45 subpoena to obtain discovery from Mr. Davison because he is a party to the case. *See Castleberry*, 331 F.R.D. at 562.

With respect to the subpoena against Mrs. Davison, Mr. Davison has standing to challenge that subpoena based on relevancy. *See Auto-Owners Ins. Co. v. Se. Floating Docks Inc.*, 231 F.R.D. 426, 429 (M.D. Fla. 2005) (“Defendants clearly have standing to move for a protective order if the subpoenas seek irrelevant information.”) (citation omitted). The subpoena to Mrs. Davison is irrelevant to the SEC’s money judgment against Mr. Davison. Mrs. Davison is not a party to this case; thus, the SEC has no judgment against her. The Receiver cannot use a Rule 45 subpoena to obtain materials not relevant to the SEC’s final judgment against Mr. Davison—especially when the

requested materials are protected under the Florida Constitution. *See* Fla. Const. art. 1, § 23 (guaranteeing right to personal privacy); *see also Winfield v. Div. of Pari-Mutuel, Dep't of Bus. Regulation*, 477 So. 2d 544, 548 (Fla. 1985) (“[W]e find that the law in the state of Florida recognizes an individual’s legitimate expectation of privacy in financial institution records.”).

Even if the Rule 45 subpoenas against Mr. and Mrs. Davison were relevant to a claim, defense, or judgment, the Court should still quash the subpoenas because the money judgment against Mr. Davison is satisfied. Under the Final Judgment, Davison owed the SEC \$27,013,060. (Doc. 355-1 at 6). The Receiver admits that “[t]he net proceeds from the sale of assets turned over to the Receiver by Davison exceed the sum of \$27,013,060.” *See* (Doc. 632-1, Req. for Admis. No. 3). In addition to those net proceeds from sale of assets turned over by Davison, the Receiver still has in his possession additional assets turned over by Davison including coins, a watch, and interests in two breweries. (Doc. 632-2, Resp. to Interrog. No. 7).

The Receiver cannot use a Rule 45 subpoena to request materials only relevant to an already-satisfied final judgment. *See generally Sequoia Fin. Solutions Inc. v. Warren*, No. 8:12-CV-2463-T-35AAS, 2017 WL 445713, at \* (M.D. Fla. Feb. 2, 2017) (Sansone, Mag. J.) (citing authority for the rule that a judgment holder is entitled to discovery “[i]n the absence of a determination by trial court that judgment has been satisfied”) (citation omitted).

Two motions present the issue of satisfaction of the monetary portion of the SEC’s Final Judgment against Mr. Davison to the Court. *See* (Doc. 587) (Receiver’s

Verified Motion for an Order to Show Cause); (Doc. 603) (Davison's Amended Memorandum in Opposition to receiver's Motion for Order to Show Cause); (Doc. 605) (Davison's Motion to Alter or Amend the Final Judgment); (Doc. 612) (The Receiver's Opposition to Davison's Motion to Alter or Amend the Final Judgment). The Court has referred those motions to Magistrate Judge McCoy "for entry of an Order or Report and Recommendation, as appropriate." (Doc. 633).

If the Magistrate Judge or the Court determine that all financial aspects of the Final Judgment against Mr. Davison have been satisfied, the Receiver's subpoenas to Mr. and Mrs. Davison are entirely irrelevant. At a minimum, the Court should issue a protective order against the Subpoenas to Mr. and Mrs. Davison pending the Magistrate Judge's recommendation or the Court's ruling on the motions.

Finally, any attempt by the Receiver to use Federal Rule of Civil Procedure 69 to justify the subpoenas against Mr. and Mrs. Davison fails because Rule 69 applies only to money judgments and, according to the Receiver, Mr. Davison's judgment is not a money judgment. *Compare* Fed. R. Civ. P. 69(a)(1) ("Money Judgment; Applicable Procedure.") *with* (Doc. 612 at 9) ("[T]his was not a money judgment.")<sup>2</sup>

Similarly, any attempt by the Receiver to pivot to Rule 70 for justification fails because that rule, which provides recourse for enforcing a judgment for a specific act, provides no mechanism for obtaining discovery in aid of judgment. *See* Fed. R. Civ. P. 70; *see also* *Quantum Commc'ns Corp. v. Star Broad. Inc.*, No. 05-21772-CIV-

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<sup>2</sup> The Davisons do not concede the Receiver's argument that the final judgment against Mr. Davison is not a money judgment.

MARTINEZ-BANDSTRA, 2007 WL 9700755, at \*4 (S.D. Fla. Nov. 14, 2007) (“[Rule 70] does not contain any references to procedures ‘in aid of judgment or execution’ as Rule 69 does.”). Considering the Receiver’s failures, the Court should quash the subpoenas against Mr. and Mrs. Davison.

Under Rule 45, a court must quash or modify a subpoena that subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A). And the Court may quash or modify a subpoena that discloses a trade secret or other confidential research, development, or commercial information. Fed. R. Civ. P. 45(d)(3)(B)(i).

The subpoena against Mr. Davison will result in undue burden because he will have to expend extensive hours collecting the documentation and materials the Receiver requests. Although this production process might not constitute an undue burden during normal litigation, discovery in this matter is closed, and Mr. Davison has fully satisfied the money judgment against him. Requiring him to undergo extensive document production when the judgment is fully satisfied would constitute an undue burden.

Further, without an unsatisfied money judgment against Mr. Davison, the Receiver’s discovery requests will violate Mr. Davison’s constitutional right to privacy in his personal financial information. *See Winfield*, 477 So. 2d at 548. In addition, the subpoena against Mrs. Davison seeks information not relevant to the SEC’s final judgment against Mr. Davison because she is not a judgment debtor and the Receiver’s subpoena seeks her personal financial information unrelated to any interest of Mr. Davison. *See Zukoski v. Phila. Elec. Co.*, No. CIV. A. 93-4780, 1994 WL 637345, at \*3

(E.D. Penn. Nov. 14, 1994) (“It is a generally accepted rule that standards for non-party discovery require a stronger showing of relevance than for party discovery.”); *see also Castleberry*, 331 F.R.D. at 563 (citing *Zukoski*). As a result, the Court should quash the Receiver’s Rule 45 subpoenas against Mr. and Mrs. Davison.

**B. Alternatively, the Court should enter a protective order.**

A court must limit discovery if the discovery sought is “unreasonably cumulative or duplicative or can be obtained from some other source that is more convenient, less burdensome, or less expensive”; “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action”; or “the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C). A court may enter a protective order to protect a person from “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1).

Here, the Court should enter protective order because the Receiver had ample opportunity to obtain the materials from Mr. Davison when discovery was open. Even accounting for the Receiver originally sending the subpoenas in September 2021,<sup>3</sup> the Receiver did not reinitiate the issue until almost a year later and almost ten months after the close of discovery. *See* Ex. A at 2; Ex. B at 2; *see also* (Doc. 423). Further, the subpoena against Mr. Davison will result in undue burden and expense because he will have to expend resources collecting the materials even though the money judgment against him is fully satisfied.

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<sup>3</sup> *See supra* at 1 n.1



Finally, the subpoena against Mrs. Davison seeks material not relevant to any issue because she is not a party to this case, the money judgment against Mr. Davison is satisfied, and the subpoena seeks her personal financial information unrelated to any interest of Mr. Davison. Therefore, the Court should enter an order protecting Mr. and Mrs. Davison's personal financial information from discovery by the Receiver. *See Fox v. Lake Erie College of Osteopathic Med. Inc.*, No. 8:19-CV-2795-T-60AAS, 2020 WL 7054554, at \*2–3 (M.D. Fla. Dec. 2, 2020) (Sansone, Mag. J) (entering protective order against Rule-45 subpoena).

### **CONCLUSION**

The Receiver seeks to impose undue burdens and expenses on Mr. and Mrs. Davison through Rule 45-subpoenas. The subpoenas are improper because Mr. Davison is a party to this case, discovery is closed, the money judgment against Mr. Davison is satisfied, and the materials sought from Mrs. Davison are irrelevant to these proceedings.

As a result, Mr. Davison respectfully asks that the Court enter an order quashing the Rule 45 subpoenas against Mr. and Mrs. Davison. Alternatively, Mr. Davison asks the Court to enter an order (1) staying the subpoenas until the Court or the Magistrate Judge rules on whether the financial aspects of the Final Judgment have been satisfied and (2) further protecting Mr. and Mrs. Davison's personal financial information.

**CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Counsel for Davison has conferred with counsel for the SEC and for the Receiver and represents to the Court that the Receiver objects to the relief sought and the SEC takes no position.

**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 8th day of September 2022.

**/s/ Stanley T. Padgett**  
Stanley T. Padgett, Esquire  
Florida Bar No. 348686  
PADGETT LAW, P.A.  
201 E. Kennedy Blvd., Suite 600  
Tampa, FL 33602  
(813) 230-9098  
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Co-Counsel for Defendant,  
Brian Davison

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

BRIAN DAVISON,  
BARRY M. RYBICKI,  
EQUIALT LLC,  
EQUIALT FUND, LLC  
EQUIALT FUND II, LLC,  
EQUIALT FUND III, LLC,  
EA SIP, LLC,

Defendants,

and

128 E. DAVIS BLVD., LLC;  
310 78TH AVE, LLC;  
551 3D AVE S, LLC;  
604 WEST AZEELE, LLC;  
2101 W. CYPRESS, LLC;  
2112 W. KENNEDY BLVD, LLC;  
5123 E. BROADWAY AVE, LLC;  
BLUE WATERS TI, LLC; BNAZ, LLC;  
BR SUPPORT SERVICES, LLC;  
BUNGALOWS TI, LLC;  
CAPRI HAVEN, LLC; EA NY, LLC;  
EQUIALT 519 3RD AVE S., LLC;  
MCDONALD REVOCABLE LIVING TRUST;  
SILVER SANDS TI, LLC;  
TB OLDEST HOUSE EST. 1842, LLC.

Relief Defendants.

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TO: Brian Davison

YOU ARE COMMANDED to appear in the United States District Court, Middle District of Florida, Tampa Division, at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM _____
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Attachment A**

PLACE: JOHNSON, CASSIDY, NEWLON & DeCORT P.A. 2802 N. Howard Avenue Tampa, FL 33607	DATE AND TIME October 4, 2021
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, Rule 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  <i>/s/ Katherine C. Donlon, Attorney for the Receiver, Burton W. Wiand</i>	DATE <b>September 17, 2021</b>
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Katherine C. Donlon, FBN 0066941 <a href="mailto:kdonlon@jclaw.com">kdonlon@jclaw.com</a> JOHNSON, CASSIDY, NEWLON & DeCORT P.A. 2802 N. Howard Avenue Tampa, FL 33607 Tel: (813) 291-3300 Fax: (813) 324-4629 <i>Attorney for the Receiver Burton W. Wiand</i>	

**PROOF OF SERVICE**

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of Server  
 \_\_\_\_\_  
 Address of Server

\_\_\_\_\_  
 Federal Rule of Civil Procedure 45(d), (e), (f), and (g), as amended on December 1, 2013

(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.

(f) TRANSFERRING A SUBPOENA-RELATED MOTION. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.

(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.

**ATTACHMENT A**

**DEFINITIONS**

1. The terms “**you**” and “**your**” are used in the broadest and most comprehensive sense and refer to the target of this subpoena; any former or present parent, subsidiary, predecessor, successor, joint venture, partner, affiliate, or otherwise related entity, and any of their or the target’s incorporators, principals, members, managers, directors, officers, employees, agents, brokers, or contractors, or anyone else associated with them; and any person or entity controlled by the target of this subpoena, including the target’s lawyers and accountants.

2. Defendants and Relief Defendants includes Brian Davison; Barry Rybicki; Equialt, LLC; Equialt Fund, LLC; Equialt Fund II, LLC; Equialt Fund III, LLC; EA SIP, LLC; 128 E. Davis Blvd, LLC; 310 78th Ave, LLC; 551 3rd Ave S, LLC; 604 West Azeele, LLC; 2101 W. Cypress, LLC; 2112 W. Kennedy Blvd, LLC; 5123 E. Broadway Ave, LLC; Blue Waters TI, LLC; BNAZ, LLC; BR Support Services, LLC; Bungalows TI, LLC; Capri Haven, LLC; EA NY, LLC; Equialt 519 3rd Ave S., LLC; McDonald Revocable Living Trust; Silver Sands TI, LLC; TB Oldest House Est. 1842, LLC. The Receivership has been expanded to include additional entities as follows: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. All entities and individuals referenced in this paragraph are collectively referred to as “**Receivership Defendants**”.

3. The term “**document**” or “**documents**” means any written, graphic, electronic, or aural representation of any kind whether produced, reproduced, or stored on paper, cards, tapes, discs, belts, charts, films, computer storage devices or other electronic device, or any other medium including, without limitation, matter in the form of photographs, charts, graphs, plans, drawings, emails, microfiches, microfilms, videotapes, recordings, motion pictures, books, reports, studies,

statements, speeches, notebooks, checks, stubs, forms, applications, tickets, ticket stubs, receipts, agreements, appointment calendars, working papers, graphs, manuals, brochures, contracts, memoranda, notes, records, correspondence, diaries, bookkeeping entries, published materials, invoices, letters, messages, telegrams, drafts, studies, analyses, summaries, magazines, booklets, expense records, appraisals, valuations, estimates, opinions, financial statements, accounting records, income statements, premium notices, forecasts, illustrations, and any nonidentical drafts and copies of the foregoing.

4. **“Relating to,” “reflecting,” or “evidencing”** means relating to, regarding, indicating, evidencing, constituting, bearing upon, concerning, addressing, discussing, mentioning, describing, reflecting, responding to, identifying, pertaining to, having to do with, criticizing, contradicting, evaluating, analyzing, setting forth, underlying, commenting on, forming the basis for, or otherwise being in any way relevant or having any relationship whatsoever to the subject matter of the request.

5. **“Correspondence”** means any letter, telegram, telex, notice, message, memorandum, email, or other written communication or transcription or notes of a communication.

6. **“Communication”** means any written or oral transmission of fact, information, or opinion, including any utterance, notation, or statement of any nature whatsoever, including, but not limited to, documents and correspondence as defined herein.

### **INSTRUCTIONS**

1. You are requested to produce documents that are in your possession, custody, or control as they are kept in the usual course of business (such as hard copies or electronically stored information). In addition, documents are to be produced in full and unexpurgated form. This



request is ongoing in nature. Documents created after the date of production may be requested at a later date.

2. If any documents requested were, but are no longer, in your possession, subject to your control, or in existence, and therefore cannot be produced by you, please state whether any such document (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to others; or (d) is otherwise disposed of, and, in each instance, please explain the circumstances surrounding any such disposition of the document and state the date or approximate date thereof.

3. If any portion of any document responsive to this request is withheld by reason of any assertion of privilege or other protection from discovery, redact and identify such portion and produce the document. As to each document or portion thereof that is withheld, provide the following information: (a) type of document (e.g., letter, memorandum, telegram, chart, photograph, tape cassette, etc.); (b) date of document; (c) name(s) of its author(s) or preparer(s) and an identification by employment and title of each such person; (d) name of each person who was sent, shown, blind copied, or carbon copied the document, or who has had access to or custody of the document, together with an identification of each such person by employment and title; (e) number of pages, attachments, and appendices; (f) present custodian; (g) subject matter of the document; (h) nature of the privilege or other protection asserted and a statement of the basis for the claim of privilege or other protection; and (i) paragraph(s) of this subpoena to which the document is responsive.

4. In producing documents, all documents which are physically attached to each other when located for production shall be left so attached. Documents which are segregated or separated from other documents, whether by inclusion in binders, files, subfiles, or by use of dividers, tabs,

or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained, in the file where found, and you shall identify from whose files the document originated. **Unless otherwise specified, this request calls for all documents generated, prepared, or received from the beginning of time through the date of production, or which refer to matters occurring through such date.**

**SPECIFIC REQUEST FOR INFORMATION AND DOCUMENTS**

1. Produce any and all documents in your possession, custody or control regarding or relating to or reflecting any account in your name or over which you have any direct or indirect control or signature authority with any financial institution for the period of February 14, 2020 to the present. This should include any firm that does business in securities, precious metals, currencies, cryptocurrencies, commodities, mortgages, options, or futures.

2. Produce any and all documents in your possession, custody or control regarding any completed or proposed purchase, sale or transfer of any watch, time-piece or jewelry.

3. Produce any and all documents that relate to reflect or evidence any communication with any individual or firm that transacts business in watches or time pieces.

4. Produce any and all documents that reflect, relate or refer to any transaction or proposed transaction in precious metals including gold, platinum and silver.

5. Any communications with any entity or person that deals in precious metals.

6. Any communication or documents relating to the transfer or pledge of any precious metals or other assets of any kind from February 14, 2020 to the date hereof.

7. Any and all documents relating to, regarding or evidencing and transaction or proposed transaction in any cryptocurrency.

8. Any documents that relate or reflect and communication regarding cryptocurrency or any proposed transaction, including any firm or individual that transacts business in cryptocurrency.

9. All contacts, communications with, or documents that involve, relate to, or refer to Greg Simonian, John Simonian or Westime.

10. Copies of any Passport used by Brian Davison.

11. Produce the records requested in paragraphs 2 through 9 for the period beginning January 1, 2016 to the date of production.

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

BRIAN DAVISON,  
BARRY M. RYBICKI,  
EQUIALT LLC,  
EQUIALT FUND, LLC  
EQUIALT FUND II, LLC,  
EQUIALT FUND III, LLC,  
EA SIP, LLC,

Defendants,

and

128 E. DAVIS BLVD., LLC;  
310 78TH AVE, LLC;  
551 3D AVE S, LLC;  
604 WEST AZEELE, LLC;  
2101 W. CYPRESS, LLC;  
2112 W. KENNEDY BLVD, LLC;  
5123 E. BROADWAY AVE, LLC;  
BLUE WATERS TI, LLC; BNAZ, LLC;  
BR SUPPORT SERVICES, LLC;  
BUNGALOWS TI, LLC;  
CAPRI HAVEN, LLC; EA NY, LLC;  
EQUIALT 519 3RD AVE S., LLC;  
MCDONALD REVOCABLE LIVING TRUST;  
SILVER SANDS TI, LLC;  
TB OLDEST HOUSE EST. 1842, LLC.

Relief Defendants.

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TO: Nicole Davison

YOU ARE COMMANDED to appear in the United States District Court, Middle District of Florida, Tampa Division, at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM _____
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Attachment A**

PLACE: JOHNSON, CASSIDY, NEWLON & DeCORT P.A. 2802 N. Howard Avenue Tampa, FL 33607	DATE AND TIME October 4, 2021
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, Rule 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  <i>/s/ Katherine C. Donlon, Attorney for the Receiver Burton W. Wiand</i>	DATE <b>September 17, 2021</b>
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Katherine C. Donlon, FBN 0066941 <a href="mailto:kdonlon@jclaw.com">kdonlon@jclaw.com</a> JOHNSON, CASSIDY, NEWLON & DeCORT P.A. 2802 N. Howard Avenue Tampa, FL 33607 Tel: (813) 291-3300 Fax: (813) 324-4629 <i>Attorney for the Receiver Burton W. Wiand</i>	

**PROOF OF SERVICE**

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of Server  
 \_\_\_\_\_  
 Address of Server

\_\_\_\_\_  
 Federal Rule of Civil Procedure 45(d), (e), (f), and (g), as amended on December 1, 2013

(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.

(f) TRANSFERRING A SUBPOENA-RELATED MOTION. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.

(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.

**ATTACHMENT A**

**DEFINITIONS**

1. The terms “**you**” and “**your**” are used in the broadest and most comprehensive sense and refer to the target of this subpoena; any former or present parent, subsidiary, predecessor, successor, joint venture, partner, affiliate, or otherwise related entity, and any of their or the target’s incorporators, principals, members, managers, directors, officers, employees, agents, brokers, or contractors, or anyone else associated with them; and any person or entity controlled by the target of this subpoena, including the target’s lawyers and accountants.

2. Defendants and Relief Defendants includes Brian Davison; Barry Rybicki; Equialt, LLC; Equialt Fund, LLC; Equialt Fund II, LLC; Equialt Fund III, LLC; EA SIP, LLC; 128 E. Davis Blvd, LLC; 310 78th Ave, LLC; 551 3rd Ave S, LLC; 604 West Azeele, LLC; 2101 W. Cypress, LLC; 2112 W. Kennedy Blvd, LLC; 5123 E. Broadway Ave, LLC; Blue Waters TI, LLC; BNAZ, LLC; BR Support Services, LLC; Bungalows TI, LLC; Capri Haven, LLC; EA NY, LLC; Equialt 519 3rd Ave S., LLC; McDonald Revocable Living Trust; Silver Sands TI, LLC; TB Oldest House Est. 1842, LLC. The Receivership has been expanded to include additional entities as follows: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. All entities and individuals referenced in this paragraph are collectively referred to as “**Receivership Defendants**”.

3. The term “**document**” or “**documents**” means any written, graphic, electronic, or aural representation of any kind whether produced, reproduced, or stored on paper, cards, tapes, discs, belts, charts, films, computer storage devices or other electronic device, or any other medium including, without limitation, matter in the form of photographs, charts, graphs, plans, drawings, emails, microfiches, microfilms, videotapes, recordings, motion pictures, books, reports, studies,



statements, speeches, notebooks, checks, stubs, forms, applications, tickets, ticket stubs, receipts, agreements, appointment calendars, working papers, graphs, manuals, brochures, contracts, memoranda, notes, records, correspondence, diaries, bookkeeping entries, published materials, invoices, letters, messages, telegrams, drafts, studies, analyses, summaries, magazines, booklets, expense records, appraisals, valuations, estimates, opinions, financial statements, accounting records, income statements, premium notices, forecasts, illustrations, and any nonidentical drafts and copies of the foregoing.

4. **“Relating to,” “reflecting,” or “evidencing”** means relating to, regarding, indicating, evidencing, constituting, bearing upon, concerning, addressing, discussing, mentioning, describing, reflecting, responding to, identifying, pertaining to, having to do with, criticizing, contradicting, evaluating, analyzing, setting forth, underlying, commenting on, forming the basis for, or otherwise being in any way relevant or having any relationship whatsoever to the subject matter of the request.

5. **“Correspondence”** means any letter, telegram, telex, notice, message, memorandum, email, or other written communication or transcription or notes of a communication.

6. **“Communication”** means any written or oral transmission of fact, information, or opinion, including any utterance, notation, or statement of any nature whatsoever, including, but not limited to, documents and correspondence as defined herein.

### **INSTRUCTIONS**

1. You are requested to produce documents that are in your possession, custody, or control as they are kept in the usual course of business (such as hard copies or electronically stored information). In addition, documents are to be produced in full and unexpurgated form. This

request is ongoing in nature. Documents created after the date of production may be requested at a later date.

2. If any documents requested were, but are no longer, in your possession, subject to your control, or in existence, and therefore cannot be produced by you, please state whether any such document (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to others; or (d) is otherwise disposed of, and, in each instance, please explain the circumstances surrounding any such disposition of the document and state the date or approximate date thereof.

3. If any portion of any document responsive to this request is withheld by reason of any assertion of privilege or other protection from discovery, redact and identify such portion and produce the document. As to each document or portion thereof that is withheld, provide the following information: (a) type of document (e.g., letter, memorandum, telegram, chart, photograph, tape cassette, etc.); (b) date of document; (c) name(s) of its author(s) or preparer(s) and an identification by employment and title of each such person; (d) name of each person who was sent, shown, blind copied, or carbon copied the document, or who has had access to or custody of the document, together with an identification of each such person by employment and title; (e) number of pages, attachments, and appendices; (f) present custodian; (g) subject matter of the document; (h) nature of the privilege or other protection asserted and a statement of the basis for the claim of privilege or other protection; and (i) paragraph(s) of this subpoena to which the document is responsive.

4. In producing documents, all documents which are physically attached to each other when located for production shall be left so attached. Documents which are segregated or separated from other documents, whether by inclusion in binders, files, subfiles, or by use of dividers, tabs,

or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained, in the file where found, and you shall identify from whose files the document originated. **Unless otherwise specified, this request calls for all documents generated, prepared, or received from the beginning of time through the date of production, or which refer to matters occurring through such date.**

**SPECIFIC REQUEST FOR INFORMATION AND DOCUMENTS**

1. Produce any and all documents in your possession, custody or control regarding or relating to or reflecting any account in your name or over which you have any direct or indirect control or signature authority with any financial institution for the period of February 14, 2020 to the present. This should include any firm that does business in securities, precious metals, currencies, cryptocurrencies, commodities, mortgages, options, or futures.
2. Produce any and all documents in your possession, custody or control regarding any completed or proposed purchase, sale or transfer of any watch, time-piece or jewelry.
3. Produce any and all documents that relate to reflect or evidence any communication with any individual or firm that transacts business in watches or time pieces.
4. Produce any and all documents that reflect, relate or refer to any transaction or proposed transaction in precious metals including gold, platinum and silver.
5. Any communications with any entity or person that deals in precious metals.
6. Any communication or documents relating to the transfer or pledge of any precious metals or other assets of any kind from February 14, 2020 to the date hereof.
7. Any and all documents relating to, regarding or evidencing and transaction or proposed transaction in any cryptocurrency.

8. Any documents that relate or reflect and communication regarding cryptocurrency or any proposed transaction, including any firm or individual that transacts business in cryptocurrency.

9. All contacts, communications with, or documents that involve, relate to, or refer to Greg Simonian, John Simonian or Westime.

10. Copies of any Passport used by Nicole Davison.

11. Produce the records requested in paragraphs 2 through 9 for the period beginning January 1, 2016 to the date of production.