UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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

Defendants, and

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

Relief Defendants.
_____/

RECEIVER'S CONSOLIDATED OPPOSITION TO MOTIONS TO QUASH SUBPOENAS FILED BY DEFENDANT BRIAN DAVISON (DOC. 637) AND NONPARTY NICOLE DAVISON (DOC. 638)

Burton W. Wiand, as receiver for EquiAlt, LLC and related entities (the "**Receiver**") opposes the motions to quash two subpoenas issued to defendant Brian Davison and his wife, nonparty Nicole Davison (collectively, the "**Davisons**"). *See* Docs. 637, 638 (the "**Motions**") and 637-1 & 2 (the "**Subpoenas**"). As explained below, Mr. Davison failed to disgorge assets

worth almost $500,000 in violation of an assignment and a Court-approved settlement agreement. The Receiver believes Mrs. Davison either participated in that conduct or has relevant documents in her possession, custody, or control. The Davisons argue, however, that they are (1) entitled to keep the assets at issue (or their monetary equivalent) and (2) completely immune from any investigation by the Receiver into their misconduct through the Subpoenas or otherwise. They seek to wash their hands of the fraud underlying this case (the "**SEC Enforcement Action**"), but they have not discharged their responsibilities to the Receivership Estate and its creditors, including more than a thousand defrauded investors.

BACKGROUND

On February 14, 2020, the Court entered an order appointing Burton W. Wiand as temporary Receiver for the Receivership Entities (Doc. 11) (the "**Order Appointing Receiver**"). The Court directed him, in relevant part, to "[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants … and to administer such assets as is required in order to comply with the directions contained in this Order." *See id.* at ¶1. The Court also ordered that "[t]itle to all property, real or personal, all contracts, rights of action and all books and records of the Corporate Defendants and Relief Defendants and their principals wherever

located within or without this state, is vested by operation of law in the Receiver." Doc. 11 at 7, ¶ 19 (emphasis added); *see also* Doc. 184.

In the summer of 2021, the SEC reached a negotiated, unopposed resolution of its claims against Mr. Davison, and on August 5, 2021, this Court entered judgment against him. Docs. 355 & 355-1. The settlement and judgment referenced an assignment, in which Mr. Davison agreed to transfer all his property to the Receiver with certain limited, express exceptions:

> This General assignment serves to assign to the Receiver the Specified Assets **and all assets owned or controlled by Davison** other that those assets specifically excluded in Exhibit B.
>
> Mr. Davison represents and warrants that the assets listed on Exhibits A and B are **the only assets owned by him**, his wife or the entities he controls that exceed $5,000 in value, other than potential claims against professionals and professional services firms that might be asserted in his or his family's personal capacity, as set out in Exhibit B hereto.
>
> Mr. Davison agrees that any material misrepresentation concerning any of the matters contained herein or the affidavit executed by him in connection with this Assignment, or his failure to satisfy any of the obligations contained in this Assignment, unless such failure is occasioned by the intervening act of a governmental authority, shall constitute a material breach hereof and as such, **may entitle the Receiver to seek such remedies as may be appropriate**, including, but not limited to, entry of judgment for any unpaid sums of the amount entered in the order of disgorgement entered by the Court in Case No. 8:20-ev-325-T-35AEP, or seeking an order from the Receivership Court for the immediate turnover of any undisclosed property and, where appropriate, sanctions for Contempt.

Doc. 587, Ex. 1 ¶¶ (1), (3) & (7) (emphasis added). Despite these express agreements, representations, and warranties, Mr. Davison failed to transfer all his non-excluded property (*i.e.*, everything but items on Exhibit B).

As more fully explained in the Receiver's motion for an order to show cause and its supporting declarations (*see* Doc. 587), Mr. Davison repeatedly delivered substandard assets like 480 silver coins instead of an equal number of platinum coins – a difference in value of $478,000. Mr. Davison offered various excuses, but he could not substantiate any of them. The Receiver issued the Subpoenas to identify and recover the missing assets. As explained below, the Receiver's actions are consistent with and required by his Court-ordered mandate. The Davisons' misapplication of the Federal Rules of Civil Procedure should not shield them from disclosure.

ARGUMENT

The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *See, e.g., S.E.C. v. Vescor Capital Corp.,* 599 F.3d 1189, 1194 (10th Cir. 2010); *S.E.C. v. Elliott,* 953 F .2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. First City Fin. Corp.,* 890 F.2d 1215, 1230 (D.C. Cir. 1989); *S.E.C. v. Hardy,* 803 F.2d 1034, 1037 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *See Vescor Capital Corp.,* 599 F.3d at 1193-94. The purpose of establishing a receivership is "to protect the estate property and ultimately return that property to the proper parties in interest," and a receiver is vested with the duty and authority to marshal and preserve assets to effectuate an orderly, efficient, and equitable

administration of the receivership estate. *Credit Bancorp, Ltd.,* 93 F. Supp. 2d at 476-77 (emphasis added); *Vescor Capital Corp.,* 599 F.3d at 1197 (observing "in a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership *res,* but also protection of defrauded investors and considerations of judicial economy").

I. FEDERAL RULES OF CIVIL PROCEDURE GOVERNING PARTY AND NONPARTY DISCOVERY ARE NOT DISPOSITIVE WHEN A RECEIVER ACTS AS AN ARM OF THE COURT

The Motions rely almost exclusively on Rules 34 and 45 of the Federal Rules of Civil Procedure, but as explained below, those rules are not dispositive when a receiver acts as an arm of the Court. For example, Mr. Davison claims he is not required to disclose relevant documents to the Receiver under Federal Rule of Civil Procedure 45 because he is a party to the SEC Enforcement Action (specifically, a defendant), and that rule only governs nonparty discovery. *See* Doc. 637 at 3-4. He further claims he is not required to produce relevant documents to the Receiver under Federal Rule of Civil Procedure 34, which governs party discovery, because under the Court's scheduling order, the pertinent deadline has passed. *Id*. Considered in combination, Mr. Davison essentially argues that his bait-and-switch tactics regarding the settlement agreement and assignment are procedurally immune from punishment and even discovery. Mrs. Davison makes substantively identical arguments. *See*

Doc. 638 at 3-5. The Davisons' arguments are without merit for at least four independent reasons.

First and most importantly, the Motions rely almost exclusively on a fundamental misunderstanding of the Receiver's mandate and his role in this litigation. Specifically, the Receiver is **not a party** to the SEC Enforcement Action. "It is well recognized that a receiver is the agent only of the court appointing him; he represents the court rather than the parties." *Ledbetter v. Farmers Bank & Tr. Co.*, 142 F.2d 147,150 (4th Cir. 1944); *United States v. Smallwood*, 443 F.2d 535, 539 (8th Cir. 1971) ("A receiver is an officer of the court. He is not an agent or employee of either party to the litigation in which he was appointed.") (citation omitted); *S.E.C. v. Loving Spirit Found. Inc.*, 392 F.3d 486, 490 (D.C. Cir. 2004) ("Neither a plaintiff nor a defendant, the receiver functions as an arm of the court appointed to ensure that prevailing parties can and will obtain the relief it orders.") (citation omitted); *S.E.C. v. N. Am. Clearing, Inc.*, 2015 WL 13389926, at *3 (M.D. Fla. Jan. 12, 2015) (describing receiver as an officer of the court), *aff'd* 656 F. App'x 969 (11th Cir. 2016); *S.E.C. v. Nadel*, 2010 WL 146832, at *1 (M.D. Fla. Jan. 11, 2010) (same). Federal Rules of Civil Procedure governing party and nonparty discovery are inapposite to the question before the Court.

Second, the dispute between the Receiver and the Davisons illustrates the importance of the principles discussed in the above-cited cases.

Mr. Davison (*i.e.*, a party-defendant) negotiated a settlement agreement with the SEC (*i.e.*, the party-plaintiff), which included the assignment of specific assets and all non-excluded property (*i.e.*, Exhibit B of the assignment) from Mr. Davison to the Receiver for the ultimate benefit of creditors, including defrauded investors. The terms of the settlement agreement and the assignment were incorporated into the Court's final judgment. Docs. 355, 355-1. By delivering substitute and substandard assets, Mr. Davison indisputably failed to comply with his obligations under the pertinent agreements and the Court's order. As explained in other motions (*see*, *e.g.*, Doc. 587), Mr. Davison perpetrated a fraud on the Court and its agent – the Receiver. Because (1) "the [R]eceiver functions as an arm of the [C]ourt appointed to ensure that prevailing parties can and will obtain the relief it orders" (*Loving Spirit*, 392 F.3d at 490), and (2) the Receiver's Subpoenas are narrowly tailored to that exact purpose, the Court should deny the Motions.

Third, for similar reasons, the Order Appointing Receiver also requires denial of the Motions because no developments in the SEC Enforcement Action have discharged or even limited the Receiver's mandate or Mr. Davison's obligations under that order. *See, e.g.*, Doc. 11 ¶ 3 (directing Receiver to "control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds"); *see also* ¶¶ 11, 14 (requiring disclosure and cooperation from defendants). Again,

by seeking documents from Mr. Davison regarding his noncompliance with the settlement agreement and assignment, the Receiver is only fulfilling his Court-appointed mandate under the express terms of the Order Appointing Receiver and the equitable principles governing federal receiverships. To deny the Receiver the ability to obtain documents under the circumstances presented here would eviscerate the Receiver's ability to protect the estate and its creditors, including defrauded investors. *Cf., Vescor Capital Corp.,* 599 F.3d at 1193-94 ("[I]n a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership *res,* but also protection of defrauded investors and considerations of judicial economy.")

Fourth, even setting aside the Receiver's mandate, the Order Appointing Receiver, and the equitable principles governing receiverships, "federal courts have always had jurisdiction to enforce their judgments." *Sequoia Fin., Inc. v. Warren*, 2017 WL 445713, at *2 (M.D. Fla. Feb. 2, 2017); *Cordius Tr. v. Kummerfeld Assocs., Inc.*, 658 F. Supp. 2d 512, 524 (S.D.N.Y. 2009) ("Federal courts have broad discretion to fashion remedies as equity requires to ensure compliance with their orders."); *Damus v. Nielsen*, 328 F.R.D. 1, 3 (D.D.C. 2018) ("The Court has the relevant authority as part of its inherent power to enforce its judgments, and it is clear that appropriate discovery should be granted where significant questions regarding noncompliance with a court order have been raised."). Here, the Court entered a judgment against

Mr. Davison, which included disgorgement and turnover, and he agreed to assign and transfer numerous, specific assets to satisfy that judgment. Whether deliberately or negligently, he failed to honor his obligations. The Receiver, as an arm of the Court, is entitled to enforce the Court's judgment by, at minimum, seeking documents about Mr. Davison's noncompliance. *See, e.g., Palmer v. Rice,* 231 F.R.D. 21, 25 (D.D.C. 2005) (permitting "post-judgment discovery" where the "plaintiffs will not be able to determine whether the [defendant] has complied with the court's injunctions"); *see generally Campaign for S. Equal. v. Bryant*, 197 F. Supp. 3d 905, 914 (S.D. Miss. 2016) (stating that "plaintiffs are entitled to reasonable discovery to enforce an injunction against the parties bound by that injunction").

Put simply, Mr. Davison perpetrated a massive fraud against more than a thousand investors across the nation. The Court should not allow him and his wife to perpetuate that fraud by engaging in bait-and-switch tactics under the guise of inapplicable procedural rules.

II. MR. DAVISON'S ARGUMENTS ARE INSUFFICIENT TO QUASH THE SUBPOENAS OR OBTAIN A PROTECTIVE ORDER

Even under the Federal Rules of Civil Procedure, Mr. Davison is not entitled to quash the Subpoenas or obtain a protective order.

A. Rules 69 and 70 Authorize The Subpoenas

The Davisons argue that the Subpoenas are not proper under Rules 69 or 70 because Rule 69 only applies to money judgments, and the judgment at issue here is not a money judgment. The Davisons acknowledge that nonmonetary judgments are governed by Rule 70 but argue that Rule 70 does not expressly provide for discovery in aid of execution. These arguments, however, lack merit for at least three independent reasons.

First, courts disagree with the Davison's narrow interpretation of Rule 69. "Under Federal Rules of Civil Procedure 65 and 69, plaintiffs are entitled to reasonable discovery to enforce an injunction against the parties bound by that injunction." *Campaign for S. Equal. v. Bryant*, 197 F. Supp. 3d 905, 914 (S.D. Miss. 2016) (citing *Cooper v. Dallas Police Ass'n*, 584 Fed. Appx. 208 (5th Cir. 2014)). The Court's order directing disgorgement and turnover of Mr. Davison's assets is an injunction, and the Receiver, especially as an officer of the Court, is entitled to discovery regarding his noncompliance.

Second, Rule 70 provides that "a court may also hold [a] disobedient party in contempt," and courts routinely authorize discovery in connection with contempt hearings. *See, e.g., Tracfone Wireless, Inc. v. Technopark Co.*, 313 F.R.D. 680, 687 (S.D. Fla. 2016) (authorizing party to "conduct discovery to determine the extent of the damage caused by" defendant's violation of

permanent injunction). Here, the Receiver has filed an order to show cause against Mr. Davison, and the Receiver is entitled to relevant discovery.

Third, the Davisons ignore the interplay between Rule 69 and Rule 70. Specifically, Rule 70 provides that "[o]n application by a party who obtains a judgment or order for possession [like the Court's order approving the assignment and the resultant judgment], the clerk must issue a writ of execution or assistance." Fed. R. Civ. P. 70(d).[1] Rule 69 provides that "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record [like the Receiver pursuant to his Court-ordered mandate] may obtain discovery from **any person**—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(2).

Put simply, the nature of the judgment against Mr. Davison is irrelevant to the Subpoenas. If the Court considers the Subpoenas in connection with the pending order to show cause against Mr. Davison and the Court's inherent powers to enforce its orders (*see* Doc. 587), the Motions should be denied. If the Court considers the Subpoenas in connection with Rule 69, which expressly allows discovery from "any person," the Motions should be denied. If the Court

[1] The Davisons rely on *Quantum Comm's Corp. v. Star Broad, Inc.*, 2007 WL 9700755, at *4 (S.D. Fla. Nov. 14, 2007), but that case concerns a traditional business dispute and ignores the impacts of Rule 70(d) and (e).

considers the Subpoenas in connection with Rule 70, which both incorporates the Court's contempt powers and allows writs of execution, which in turn allow discovery under Rule 69, the Motions should be denied. As explained throughout this opposition, the Davisons repeatedly ask the Court to create "heads-I-win; tails-you-lose" scenarios for the Receiver and the Receivership Estate – *i.e.*, the Receiver can only proceed under Rules 34 or 45, but neither apply; the Receiver can only proceed under Rules 69 or 70, but neither apply. The Court should reject that sort of gamesmanship.

B. Rule 34 Does Not Apply To The Subpoenas

Mr. Davison argues that "the proper means to obtain materials from a party is through a Rule 34 request for production," but "[t]he closure of discovery means the Receiver cannot issue a request for production under Rule 34." Doc. 637 at 3-4. As explained above, however, the Receiver is not a party to the SEC Enforcement Action, and as such, he could not have issued document requests pursuant to Rule 34, even before the closure of discovery. Pursuant to his Court-ordered mandate, the Receiver has filed litigation against "clawback" defendants and individuals or entities who aided and abetted Mr. Davison's Ponzi scheme. In those circumstances, the Receiver generally acts as a traditional litigant subject to the Federal Rules of Civil Procedure, including Rule 34, but this is not one of those circumstances.

C. Mr. Davison Has Not Carried His Burden Under Rule 45

First, Mr. Davison argues that the Court should "quash the subpoenas because the money judgment against Mr. Davison is satisfied," or at minimum, issue a protective order until the Court determines the money judgment has been satisfied. Doc. 637 at 5-6. Again, this is not relevant to the Subpoenas because, in paragraph 7 of the assignment, Mr. Davison expressly agreed that the Receiver may pursue any appropriate remedies should he fail to deliver all non-excluded assets. Targeted document discovery is indisputably within the scope of appropriate remedies.

Second, Mr. Davison argues that enforcement of the subpoenas "will result in undue burden because he will have to expend extensive hours collecting the documents and materials the Receiver requests" (Doc. 637 at 7), but he makes no attempt to provide evidentiary support for that conclusory objection. Courts evaluating an undue burden challenge require an evidentiary basis to limit a subpoena. Typically, the objector presents evidence in the form of a sworn declaration, which provides details as to why compliance would be burdensome or expensive. The declaration must be served either with the objections or with the first filing in the court where compliance is required. *See, e.g., Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 686 (S.D. Fla. 2010) ("[T]o even merit consideration, an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting

evidence or offering evidence which reveals the nature of the burden."). The Court should deny the Motions because Mr. Davison (and Mrs. Davison) failed to provide any evidentiary support for their boilerplate objections.

Third, Mr. Davison's purported right to financial privacy does not immunize him from discovery regarding his fraud on the Court and its agent, the Receiver. *See* Doc. 637 at 7-8. He has not been discharged from his obligations under the Order Appointing Receiver, and in the assignment, he expressly authorized the Receiver to pursue appropriate remedies, which necessarily involves inquiry into his assets.

D. Mr. Davison Is Not Entitled To A Protective Order

Mr. Davison argues that "the Court should enter a protective order because the Receiver had ample opportunity to obtain the materials from Mr. Davison when discovery was open." Doc. 637 at 8. That argument is both wrong and egregiously inequitable for at least two independent reasons. First, as explained above, the Receiver is not a party to the SEC Enforcement Action, and the discovery deadline has no relation whatsoever to the Subpoenas, the Receiver's Court-ordered mandate, or Mr. Davison's misconduct. With respect to the instant dispute, "the [R]eceiver functions as an arm of the [C]ourt appointed to ensure that prevailing parties can and will obtain the relief it orders." *Loving Spirit*, 392 F.3d at 490. Mr. Davison entered into a settlement agreement that called for the assignment of specific assets (indeed, all non-

excluded assets). The Receiver relied on Mr. Davison's sworn affirmation that all his assets were disclosed and would be delivered – an assertion now known to have been false. The Court expressly approved that settlement agreement, but contrary to the Court's order, Mr. Davison delivered substitute and substandard assets and failed to deliver other assets. As such, the SEC did not obtain the relief the Court ordered. The Receiver's actions in seeking documents from Mr. Davison regarding his misconduct constitute a prototypical example of the Receiver's exercise of his mandate. There is no need to "protect" Mr. Davison from the consequences of his own actions.

Second, Mr. Davison and his counsel attempt to hide behind a professional courtesy afforded by the Receiver and his counsel. Even setting aside the irrelevance of the discovery deadline in the SEC Enforcement Action, Mr. Davison admits the Receiver served the subpoenas before the close of discovery. *See, e.g.*, Doc. 637 at fn. 1 & p. 8. The subpoenas were not issued as part of discovery in the SEC Enforcement Action but as part of the Receiver's efforts to enforce the obligations of the judgment against Mr. Davison, which he violated. As such, the Receiver and his counsel afforded Mr. Davison an indefinite extension because they believed Mr. Davison's egregious breach of the Court-approved settlement agreement and assignment could be resolved without judicial intervention. Mr. Davison now seeks to take advantage of that belief, which is contrary to all principles governing disclosure in the Middle

District of Florida.[2] Put simply, even if the Motions presented a traditional discovery dispute, the requested relief would nevertheless be inappropriate.

III. MRS. DAVISON'S ARGUMENTS ARE INSUFFICIENT TO QUASH THE SUBPOENAS OR OBTAIN A PROTECTIVE ORDER

Mrs. Davison's arguments are largely identical to those made by Mr. Davison and fail for the same reasons. First, Rule 34 is irrelevant because neither the Receiver nor Mrs. Davison are parties to the SEC Enforcement Action, and that rule only governs party discovery.

Second, Mrs. Davison argues that Rule 45 is also "unavailable to the receiver" because "discovery in this case is closed" (Doc. 638 at 5), but again, the Receiver's actions as an arm of the Court to ensure compliance with the Court's judgment are not subject to the discovery deadline in the SEC Enforcement Action. Receiverships often extend years beyond their underlying civil actions. The Davisons' interpretation of the Receiver's mandate would render large portions of the Order Appointing Receiver moot and cause severe

[2] *Cf., e.g.*, Middle District Discovery (2021) at §§ I.A.1. ("Discovery in this district should be practiced with a spirit of cooperation and civility."); I.C.4. ("A party responding to a discovery request should make diligent effort to provide a response that … fairly meets and complies with the discovery request…."); I.E.1. ("Counsel in this district typically accommodate reasonable requests for additional time…."); III.B.1. ("The Court expects attorneys to reach agreements regarding the production of documents based upon considerations of reasonableness, convenience, and common sense."); V.A.I. ("A subpoena is necessary in discovery to obtain deposition testimony or other information, including documents, from a non-party.").

harm to the Receivership Estate and its creditors, including thousands of defrauded investors.

Third, Mrs. Davison makes no attempt to support her boilerplate objection regarding the purported undue burden of complying with the subpoenas with declarations or any other form of evidence. Remarkably, Mrs. Davison claims that many of her friends no longer wish to associate with her and compliance with the subpoenas would cause "further damage to Mrs. Davison's personal and financial life." Doc. 638 at 5. She cites no cases, however, establishing that alleged but unsupported social ostracization is sufficient to quash a narrowly tailored subpoena under Rule 45. If certain of Mrs. Davison's friends no longer wish to associate with her, she should direct her objections to Mr. Davison – not the Receiver or this Court.

Fourth, Mrs. Davison is not an innocent nonparty ensnared in tangential litigation. She lived a lavish lifestyle funded by scheme proceeds for many years. Rule 45's caution against unduly burdening a nonparty does not apply when the nonparty is not truly disinterested. "An interested non-party is an entity that does not have an actionable right at issue in the litigation, but has a significant, underlying connection to the case and, typically, some sort of financial or reputational stake in the litigation's outcome." *See, e.g., Ala. Aircraft Ind., Inc. v. Boeing Co.*, 2016 WL 9781825, *5 (N.D. Ala. Feb. 25, 2016). Rule 45 "is aimed at protecting persons who are disinterested and thus have

little to gain from their outlays in compliance cost…." *Cornell v. Columbus McKinnon Corp.*, 2015 WL 4747260, at *5 (N.D. Cal. Aug. 11, 2015) (citing Fed. R. Civ. P. 45, Advisory Committee Notes). "The Rule was meant to protect those who are powerless to control the scope of litigation and discovery and should [therefore] not be forced to subsidize an unreasonable share of the costs of a litigation that does not concern them." *Id.* (citation and internal quotation marks omitted). The Rule "was not intended as a mechanism for entities which stand to benefit from certain litigation outcomes to evade discovery costs arising from their involvement in the underlying acts that gave rise to the lawsuit." *Id.* (citing *Tutor–Saliba Corp. v. United States*, 32 Fed. Cl. 609, 610 n. 5 (1995). Mrs. Davison benefitted from her husband's fraud for many years by, among other things, literally adorning herself with the fruits of the scheme. She is indisputably an interested nonparty, and the Court need not show her any special deference under Rule 45.

Fifth, the Receiver is only seeking discovery from Mrs. Davison, but under principles of equity, nonparties can be subject to much harsher consequences through summary proceedings that need not comply with the Federal Rules of Civil Procedure.[3] Again, at this stage, the Receiver is only

[3] *See, e.g., S.E.C. v. Wencke*, 783 F.2d 829, 835-36 (9th Cir. 1986) (affirming use of summary procedures and rejecting argument Receiver was required to file "a formal complaint" and serve "summonses"); *In re San Vicente Medical Partners Ltd.*, 962 F.2d 1402, 1408 (9th Cir. 1992) ("In sum, a district court has the power to include the property of a non-party … in an

seeking discovery from Mrs. Davison, but receivership caselaw demonstrates that she is not entitled to hide behind her status as a nonparty and her misapplication of the Federal Rules of Civil Procedure.

Sixth, Mrs. Davison's purported right to "financial privacy" does not justify the relief sought in the Motions because the requested documents relate specifically to precious metals, watches, cryptocurrency, and other personal property the Receiver believes Mr. Davison failed to turnover in accordance with the settlement agreement and assignment. These documents are relevant to the Receiver's Court-ordered mandate, and as explained above, Mrs. Davison is not entitled to the protections typically afforded disinterested nonparties. Indeed, fraudsters often transfer scheme proceeds to family members and other insiders to conceal their misconduct. The Florida Supreme Court, the Eleventh Circuit Court of Appeals, and judges in this district have repeatedly held that fraud trumps otherwise applicable constitutional provisions like Florida's homestead protection. *C.f.*, *e.g., Lee v. Wiand,* 603 B.R. 161, 169 (M.D. Fla. 2018) ("Based on the Florida Supreme Court's precedent,

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SEC receivership order as long as the non-party … receives actual notice and an opportunity for a hearing."); *Warfield v. Alaniz*, 453 F. Supp. 2d 1118, 1133 (D. Ariz. 2006) ("A receiver in a S.E.C. action may petition the court for an order to show cause against a possessor of money belonging to the receivership who is not a party to the original S.E.C. action. This sort of summary proceeding satisfies the requirements of procedural due process so long as the non-party is provided with adequate notice and opportunity to be heard." (citation omitted)); *S.E.C. v. Abbondante*, 2012 WL 2339704, *2 (D.N.J. 2012) ("Summary proceedings may be conducted without formal pleadings, on short notice, without summons and complaints, generally on affidavits, and sometimes even ex parte.").

the Eleventh Circuit has upheld an equitable lien against a homesteaded property on the basis of unjust enrichment, even where the party claiming benefit from the homestead exemption committed no wrongdoing.").

Seventh and finally, Mrs. Davison is also not entitled to a protective order. She makes no attempt to carry her burden aside from vague and unsupported references to her "embarrassment" and "business relationships with private lenders." Doc. 638 at 7-8. She does not identify those lenders or explain why documents pertaining to precious metals, cryptocurrencies, and watches have anything to do with her business relationships. In deciding whether to issue a protective order, the Court must balance several competing factors, and given the massive fraud underlying the Receiver's appointment and Mrs. Davison's enjoyment of the fruits of that fraud for many years, it is difficult to imagine a factor less compelling that her purported "embarrassment."

CONCLUSION

For the foregoing reasons, the Court should deny the Motions. The Receiver is acting in furtherance of his Court-ordered mandate for the protection of the Receivership Estate and its creditors, including defrauded investors.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 6, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

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