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.
_____/

NON-PARTY NICOLE DAVISON'S REPLY IN SUPPORT OF HER MOTION TO QUASH SUBPOENAS

Non-Party Nicole Davison files this reply to the Receiver's consolidated response to her motion to quash the Receiver's subpoena and alternative motion for protective order. Mrs. Davison's reply focuses on the Receiver's arguments against her; including its unsupported argument that she is not an innocent third-party. (Doc. 669 at 16–20).[1] As set forth below, the SEC admitted to this Court it had no evidence Mrs. Davison was involved in any wrongdoing.

The Receiver first argues that his subpoena against Mrs. Davison need not comply with any Federal Rule of Civil Procedure because the Receiver is a Court-appointed officer, and the Rules don't apply to such officers. (Doc. 669 at 16–17). But the Federal Rules of Civil Procedure apply to courts just as they apply to parties and

[1] Although focusing on the Receiver's arguments specific to Mrs. Davison, she does not concede the Receiver's other arguments in his consolidated response.

non-parties. *See, e.g.*, Fed. R. Civ. P. 1 ("These rules govern the procedure in *all civil actions and proceedings* in the United States district courts."); Fed. R. Civ. P. 16(b)(1) ("[T]he district judge—or a magistrate judge when authorized by local rule—*must* issue a scheduling order."); Fed. R. Civ. P. 16(b)(2) ("The judge *must* issue the scheduling order as soon as practicable."); Fed. R. Civ. P. 55(a) (stating the instances in which "the clerk *must* enter the party's default."); Fed. R. Civ. P. 58 ("Every judgment and amended judgment *must* be set out in a separate document.") (emphases added). So just as the Federal Rules of Civil Procedure apply to the Court, so too the Rules apply to Court-appointed officers, including the Receiver. The Receiver cites no case holding otherwise. (Doc. 669 at 16–17). The Court should reject the Receiver's argument that the Federal Rules of Civil Procedure do not apply to him.

Similarly, the Receiver argues that discovery requests—and any "harsher consequences"—to nonparties need not comply with the Federal Rules of Civil Procedure. (Doc. 669 at 18–19). No case the Receiver cites holds this. *See SEC v. Wencke*, 783 F.2d 829, 836–37 (9th Cir. 1986) ("[B]ecause the parties challenging jurisdiction had notice concerning the nature of the proceedings, were permitted extensive discovery . . . and we permitted to file briefs and exhibits with the district court, and because, except for dispensing with the filing of a complaint and answer, *the district court applied the Federal Rules of Evidence and Civil Procedure*.") (footnote and citation omitted) (emphasis added); *In re San Vincente Med. Partners*, 962 F.2d 1402, 1406–08 (9th Cir. 1992) (ruling on procedural-due-process issue not involving Federal

Rules of Civil Procedure); *Warfield v. Alaniz*, 453 F. Supp. 2d 1118, 1133 (D. Ariz. 2006) (same); *SEC v. Abbondante*, No. 11-0066 (FLW), 2012 WL 2339704, at *4 (D.N.J. June 19, 2012) (applying Federal Rule of Civil Procedure 6(a)).

In contrast, Mrs. Davison provided authority discussing the higher burden a subpoenaing party must satisfy to obtain discovery from a non-party—especially when the materials requested are confidential and personal. *See* (Doc. 638 at 6–7). The Receiver made no effort to distinguish Mrs. Davison's cited authority. The Court should reject the Receiver's argument for lack of legal support. *See Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016) (Kanne, J.) ("[A]rguments that are unsupported by pertinent authority are waived.") (cleaned up).

The Receiver next argues that Mrs. Davison failed to provide any support for her argument about the undue burden of the Receiver's subpoena. (Doc. 669 at 17, 19–20). But the Receiver fails to recognize that Mrs. Davison sufficiently argued that complying with the subpoena, which requests personal financial information, would violate her constitutional right to privacy. *See* (Doc. 638 at 4). And constitutional violations to the right of privacy presumably cause irreparable harm. *See Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir. 2000) ("The only areas of constitutional jurisprudence where we have said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims.") (citations omitted). As a result, the Court should reject the Receiver's argument that Mrs. Davison has failed to establish how the subpoena would result in embarrassment or undue burden.

The Receiver also argues that Mrs. Davison is not an innocent non-party and that she "benefitted from her husband's fraud." (Doc. 669 at 17–18, 20). To begin, despite the Receiver's persistent use of words like "fraud" and "Ponzi scheme," the Court's orders include no such findings. (Doc. 355-1 at 1) ("The Securities and Exchange Commission . . . consented to entry of this Final Judgment without admitted or denying the allegations of the Amended Complaint."); (Doc. 355 at 2) ("[T]his Order is entered on the consent of Defendant Brian Davison, not based on any independent review or findings by the Court other than as to venue and jurisdiction."). Further, the Receiver's own filings detail the "substantial value" to the assets in receivership. *See* (Doc. 603 at 2–7) (discussing the Receiver's quarterly reports). Thus, the Court should reject the Receiver's attempt to color the Court's perspective by using terms like "fraud" and "Ponzi scheme."

What's more, the SEC acknowledged Mrs. Davison's lack of involvement in Mr. Davison's business at the initial hearing in this matter on February 13, 2020. In that hearing, the court asked "Are there spouses involved?" *See* Ex. A at 21, line 2. Counsel for the SEC responded "[W]e haven't seen anything that either of the spouses are involved in the business." *See* Ex. A at 21, lines 3-8. The Receiver points to no evidence in his response to dispute or disprove the SEC's finding and representation to the Court.

Instead, the Receiver resorts to conclusory allegations unsupported by any evidence of Mrs. Davison's involvement with her husband's business. The Court should reject these unsupported arguments, especially considering that Mrs. Davison's

constitutional right to privacy is at risk. The Receiver puts forth nothing but unsubstantiated arguments to justify his intrusive and unjustified subpoena against Mrs. Davison.

The Court should reject the Receiver's arguments and grant the relief requested in Mrs. Davison's motion (Doc. 638 at 8) and quash the Subpoenas, or alternatively, delay any decision on the subpoenas until after a decision on Davison's Motion to Alter or Amend the Final Judgment Pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 605), and further protect Mrs. Davison's personal financial information.

Respectfully submitted,

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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 October 24, 2022.

/s/ Stanley T. Padgett

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
vs.	**Case No. 8:20-CV-00325-MSS-AEP**
BRIAN DAVISON, et al.,	
Defendants.	

MOTION HEARING
BEFORE THE HONORABLE MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

FEBRUARY 13, 2020
10:31 A.M.
TAMPA, FLORIDA

Proceedings recorded by mechanical stenography, transcript produced using computer-aided transcription.

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VIA TELEPHONE:
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P R O C E E D I N G S

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THE COURT: Good morning. Call the case.

COURTROOM DEPUTY: The Court calls Case Number 8:20-CV-00325-MSS-AEP, Securities and Exchange Commission versus Brian Davison, et al.

Parties, please state your name for the record.

MS. JOHNSON: Good morning. Alise Johnson from the Securities and Exchange Commission.

THE COURT: Good morning.

MS. ROWE: Good morning, Your Honor. Chanel Rowe from the U.S. Securities and Exchange Commission.

THE COURT: Good morning.

MR. WIAND: Good morning, Judge. I'm Burt Wiand, and I'm appearing for, I guess, the receiver, and my co-counsel is --

MS. DONLON: Katherine Donlon with Wiand Guerra King, co-counsel for the receiver.

THE COURT: Good morning.

And who do we have on the phone?

MR. DEE: Mark Dee, accountant for the Securities and Exchange Commission.

THE COURT: Good morning.

MR. DEE: Good morning, Your Honor.

THE COURT: I'm sorry for the late notice. We had

prepared an order setting this hearing on yesterday, and because it was a sealed order, the Clerk's Office did not mail it out or e-mail it out and my office neglected to contact the parties, so we are here now.

I received the emergency motion, and I have read the materials submitted in connection with it and I have several concerns about it.

First, the parties apparently contacted the Marshal's Office to start giving the Marshal's Office direction about where to be and when to be there and to be on standby at like three or four o'clock in the afternoon in anticipation of an order, and that's not how we do things. The Court directs the Marshal's Office in connection with an order after consideration of a motion. The parties don't direct the Marshal's Office. So I told the Marshal's Office not to go and gather up all their resources and be on standby at the direction of the parties, to wait for some direction from the Court.

The Marshal's Office is very busy with a lot of other very important things, like securing the Court and securing the Judges, and they do this work, it's important work, but they have to do it in an orderly fashion, so in the future if you need the Court to direct the Marshals, wait until the Court directs the Marshals, but it really is an undertaking for the Marshal's Office to start gathering

its resources to respond to requests of parties.

Secondly, I can't tell how long this matter has been with the attention of the SEC. It would appear at least since November, my guess is probably August or so, which means it's not that much of an emergency that the Court needs to stop everything it's doing to respond on a turn of a dime. This is, you know, multiple documents and substantial filings, and it takes some time for the Court to review this material in order to act appropriately.

All those things being said, if I take you at your word about the investigative work that has been done in the case through the declaration of Mr. Davison -- I'm sorry, the testimony of Mr. Davison and the declaration of Mr. Dee, I have some concerns about the nature of this undertaking that's being challenged in this motion. The question is how to deal with it. There is this sort of knee-jerk response to phalanx the case with receivers and lawyers and accountants and people in far-flung corners of the world to start gathering all these resources to make ready to disburse to victims of this fraud. That's important work, but in my experience the expenditures associated with this important work can eclipse the value received for those expenditures, and there are, I think, some other ways that we might ensure that the expenditures are not unnecessary. because once the money is spent, it's owed, and there's

nothing the Court really can do about it, and so this broad power appointment to me probably should be dialed back a little bit until we determine a little bit more about what is necessary.

I know Mr. Wiand has proposed himself to be the receiver on, I assume, a request of the SEC to make a proposal to participate. His rate is lower than the other parties' proposed rates, but his actual rate based upon prior similar cases is potentially higher than the proposed rate, because I presume as a partner in the firm he recovers some portion of the proceeds that the firm obtains as a result of the firm's work as counsel in the case. You can tell me in a moment if that's an incorrect assessment, but I think that's probably accurate.

I know that the receiver needs to have some leeway to do this work, and I am prepared to allow some substantial leeway to do this work. My question is to the SEC whether we might be able to do this in stages rather than all-out assault, and these stages that I think might work -- and I'm sure the reason to have Mr. Wiand come is because he's experienced in receiverships and might suggest a different way of looking at it, but my proposal is that we seize the low-hanging fruit assets, those liquid assets that we know to exist, and in this case some of the illiquid assets, which would include real estate, property that you all

already know exists, and once those properties are secured and the cash is secured, we can see what recovery exists, at least in a value sense. Then if any litigation needs to ensue to get additional assets, or if investigations need to be undertaken to locate additional assets, and accountants and investigators and others need to be secured, or if litigation needs to be undertaken, then the receiver can come back to the Court, make a report on what has been recovered to this point, assess what next should be done and then assess what likely value would be obtained and then disclose what likely costs would be incurred and then the Court can make a value decision about whether that additional cost is warranted, given the time value of money and the perceived likelihood of success on the merits of any such subsequent undertaking.

Then there is the question of what assets to leave in the possession of the defendants such that they can have a reasonable and fair opportunity to defend themselves, because in the past with a full-on seizure I've had people coming back asking the Court to open some of the assets just to pay for school tuition and food and such and attorney's fees to defend, and we know those are things that are likely to be required. I don't know what we know about the defendants' living situation. I don't know if they're married, single, kids, no kids, here, there, I just don't

know anything about these people to know, but maybe we can do this in advance and we don't have to spend money litigating the question of what they get back.

There is even in the proposed order some suggestion that vendors, such as electric companies and trash collectors and such, aren't going to be necessarily paid but are going to be directed by the Court to continue to provide services anyway, which I'm not inclined to require since there is money to pay these people.

Then there is this proposal that the receiver be allowed to waive the attorney-client privilege for the corporate defendants, but then there's a proposal that the mail that is received could be viewed by the receiver but not those things that are facially protected by the attorney-client privilege, and in that regard there's some sort of at least potential conflict in those two issues and I don't know whether attorney-client privilege is only as to the corporate defendants in their individual capacity or corporate defendants qua corporate defendants, and so we need to address those things as well.

The fact that the receiver appoints his own law firm to represent him is a source of some of the concern. I know that it is routinely done, I think it can be ethically done, I just think it takes a lot of self-restraint in the context of a receivership to make sure

that the firm's interests in litigating is not allowed to trump the receiver's obligation to preserve assets from unnecessary expenditure, and so those are the concerns that I have, and you can take them in any order.

The proposal ultimately would probably be for someone to submit a modified TRO and a modified appointment order for the Court's consideration once we complete this hearing, and then the Court can get it out forthwith and we can move to secure what assets are available to be secured against this alleged fraud.

So who wants to speak? Ms. Johnson?

MS. JOHNSON: I'll start. Do you prefer at the podium or --

THE COURT: Whichever is more comfortable for you is fine.

MS. JOHNSON: First, my apologies on the Marshal's Office confusion. I think we got ahead of our skis there. It was not a call to -- it was just a call to see if they would even be available whenever and if an order came in, and I think there was some confusion there.

THE COURT: All right.

MS. JOHNSON: They took that -- as you want your Marshals to do -- to be ready at the call, so I apologize for that. It was not our intent to get ahead of our skis there.

THE COURT: Okay.

MS. JOHNSON: And as to the emergency nature of the motion, yes, we have been investigating this for several months.

THE COURT: How long?

MS. JOHNSON: The initial investigation started in June, but we didn't get the financial records until November, and once we got the financial we were investigating it just to see if it was a registration fraud, and then once we got -- if they were selling these without being registered. Once we got the financial records, it became clear to us that the company was not making money, they had never made a profit, and not only was it just a bad business, you know -- where does it cross over from being a failed business that just should go into bankruptcy into a fraud.

As Mr. Dee testified in his declaration, and as you can ask him, we saw transactions where they were paying new investors -- using new investor money to pay old investors, they hadn't made a profit, they continued to bring in two to three million dollars a month of investors, and yet the principals continued to spend money in reckless disregard of the investors' money.

THE COURT: Now, the cross-payments from the various entities were made to pay new -- I mean, pay old

investors or was it pretty much cabined entity by entity?

MS. JOHNSON: Both. We have the -- as you'll have read, Fund 3, when they closed -- they decided -- we don't know why they decided to close Fund 3, but to close it and pay back the investors, they took the money from Fund 1 and Fund 2, that was clear as day, and then when we see --

THE COURT: These are new moneys, the Fund 1 and Fund 2, new relative to Fund 3?

MS. JOHNSON: They were taking it from other money. That was just the commingling. When we saw the new monies, they would owe, you know, $11 million a year in interest payments to the investors, but they were only making $3 million in revenue, so it begs the question where is that money coming from that you're paying the other 11 million from. It had to be from new monies, because they had no other revenues.

THE COURT: The proof of that though is through Mr. Dee's forensic review, or is that still sort of an assumptive proposition?

MS. JOHNSON: Mr. Dee could talk about that, but it's basically assumptive because there was no other money. They don't have, you know, another account where this money is coming from. We asked him in testimony and he wouldn't give a direct answer.

THE COURT: Mr. Dee, the money -- this additional,

just as an example, $8 million that might have been paid to cover interest, your forensic review has or has not recovered the precise source of that money?

MR. DEE: The $8 million that was paid under the forensic review would only indicate that the only source of funds was from the new investor money. If the new investor money had stopped, there was no other way to pay those interest fees back to the investors on their notes.

THE COURT: But my question is if I were to have you sit in a chair and produce the account intake and the account outpay or inflow/outflow, would you be able to trace it precisely to these new accounts at this stage, or is that going to take additional investigative review?

MR. DEE: If I understand your question, Your Honor, I had done what I will loosely call a Ponzi analysis of the funds involved, and it shows that the revenues coming in are insufficient to pay what they call the monthly distributions, which are the investor interest payments, highly -- the revenues just are woefully insufficient to pay that, and because the money itself -- the investor fund itself is kept in the account, that's how the investors are paid their notes each month or their interest each month. That's what my forensic review would show.

THE COURT: When you say investor funds, you mean

the principal?

MR. DEE: Yes, ma'am. Yeah. The principal is deposited in the same account that the interest payments are made out of.

THE COURT: All right. Thank you, Counsel. You may continue.

MS. JOHNSON: So that is why we requested emergency relief. When you bring an emergency, you can wait two days, you can wait three days, but we just wanted the money secured and to stop -- we didn't want to go from having 1,000 defrauded investors to 2,000. So, yes, there is some give and take in that --

THE COURT: It's not a matter of three days or two days, it's a matter of months.

MS. JOHNSON: Right. We realized that.

THE COURT: All right.

MS. JOHNSON: At some point you got to bring the motion to stop the activity. And that gets us to your proposal and the receiver.

The SEC is very sensitive to the cost issue. Everyone we propose we think would be a good receiver, but the bottom line is when we all sit together and say who are we going to recommend, the cost is a big factor in that, so we were sensitive to that, and that's one of the reasons Mr. Wiand is here, plus he's got a lot of experience and he

was located in Tampa, which we think is important because most of the real estate is here.

We'll let him talk about how he wants to do his fees, but you'll see in our motion we have -- any receiver that you appoint, we want them to have quarterly updates, and we can play with that if you want more updates, so that we know where we're going cost-wise and legal fees-wise, as we want the money -- all the money we can to go back to investors.

THE COURT: Well, when you say that the costs are -- you know, his costs are low, I just pulled a couple of cases on which he was previously a receiver, and I don't purport to know anything about what was happening in those cases except in a summary determination of the total outlay, I think his receiver fees were about $154,000 on this one case and the total recovery to the firms, his first firm, I guess, Fowler White, and his second firm, the Wiand firm, was close to $4 million, like 3.5 or 3.7. So his receiver fees are substantially low, but his overall fee is substantial, and I assume, because he's a partner in both of the firms, that his actual fee, overall take, is exponentially higher than his hourly rate proposed. I don't know, but he's going to tell me, and I don't know that we can do anything about it because firms -- you have to have a law firm. Why you have to have the receiver's firm is a

different question because of the concern I raise, and how you deal with it if you're going to do that is a concern that I have.

MS. JOHNSON: I understand. And as you know, it's relative and he is doing it at a reduced rate, and the partners at his firm and the associates are doing it at a reduced rate, and I'm sure he'll stand up and tell you I'll use the lowest paid person and accountants and whomever, but these are -- you know, that's a lot of work, these receiverships, they're taking over a multimillion dollar company, and so -- and trying to retain assets and clawbacks, which we'll get to next, so it is a lot of work. You do have oversight, he does have to submit all of his fees to the Court, and I've had instances when investors come and object to lawyers' fees.

THE COURT: But that also costs money, and so let's figure out a way that we don't have to have this dispute within a dispute.

But let me hear about the clawbacks, the pieces and the sort of graduated approach.

MS. JOHNSON: You had suggested a gradual approach, and of course we're willing to explore what we can do. Of course we want the low-hanging fruit, and I'll let Mr. Wiand speak about the clawbacks and whether we can -- I think we can wait on that until we know what we're dealing

with. The problem is what's in the middle of that, how do we deal with the gray areas, which we can discuss. I'd like to hear Mr. Wiand's -- what he thinks we should do, but of course we can modify any order so it's simplified and easier, maybe do a carve-out for attorney's fees for the plaintiffs -- I mean, for the defendants. They do have families, but they also -- they've each got 53 million -- they've gotten 53 million between them, so they have some assets.

THE COURT: But you're going to freeze them.

MS. JOHNSON: Yes, but we'll see what they have. Usually they call us and say we want a carve-out for attorney's fees, and the SEC in my past experience is always willing to explore that.

THE COURT: How does that -- what do you mean by "explore that"? Agree to it, or explore it and litigate over it and then have a motion filed, which is fees against fees?

MS. JOHNSON: No, we usually agree to it. We just want to know what asset they want the money from, and we usually ask how much are you going to take. If they want $1 million for attorney's fees, we say, let's take it in stages, let's see where we go. They are represented by very expensive law firms, DLA Piper and Sidley Austin, so I expect that we'll be getting a call once we move -- once

we notify them.

THE COURT: Have they been told in any of this investigative period not to dissipate any assets, or have you just --

MS. JOHNSON: No, we don't have the power to do that. Only Your Honor does.

THE COURT: All right.

MS. JOHNSON: But they are aware they're being investigated. They don't have -- I don't think they're aware that we have filed for this relief yet.

THE COURT: All right.

MS. JOHNSON: They're slow boating us on the discovery.

THE COURT: All right. And the financial discovery that you did get back in November was based on an SEC subpoena?

MS. JOHNSON: Yes. We subpoenaed their bank accounts, so we have all their bank records other than their personal records, we have Equialt and all the funds' records. We have -- they did provide their Quickbooks, their internal Quickbooks, and some other internal records.

THE COURT: And has Mr. Wiand been involved in any of that review before now?

MS. JOHNSON: No, the first we contacted Mr. Wiand was last week to see if he would --

THE COURT: So this has all been done by Mr. Dee and his office and your office primarily?

MS. JOHNSON: Yes. That's correct.

So we're willing to talk about doing it in stages. We just don't -- the problem is once you just do a little bit, there's always the temptation of them -- people dissipating assets before we can get to it.

THE COURT: Well, what do you consider the low-hanging fruit, so to speak?

MS. JOHNSON: The bank accounts, the money that's in the current bank accounts, the real estate. I mean, that's not liquid anyway, so it would be hard for them to run off with it. They spent --

THE COURT: How many properties?

MS. JOHNSON: They're counted by doors. If it's an apartment building with four apartments, it's four doors, even though it's one property address. I think it was 249 doors right now. That's entities that are in Equialt's name or one of the funds' names or one of -- they set up -- as you'll see, the relief defendants are single purpose entities that might just hold one property or ten doors.

We also have evidence that Mr. Rybicki has a lot of properties in Phoenix. I think that's probably what he was spending -- I don't know if it's a side gig, but we don't know of any other money that he was receiving other

than for his work for Equialt, so that might be the next step is getting those properties.

THE COURT: Let me stop you right there before we go back to the rest of the properties.

You are satisfied the Court has personal jurisdiction over Mr. Rybicki as a securities fraud claim with general nationwide jurisdiction?

MS. JOHNSON: Yes.

THE COURT: All right. What other properties?

MS. JOHNSON: So it's the properties -- I'll call them the toys or the things that they spent.

Equialt -- you'll see Equialt would -- the company owned by Mr. Davison, it would get, you know, 800,000, he'd send 800,000 from one of the funds, he might call it a management fee, he might call it a discount fee, it looks like he just made up a name for it and sent it over, and then within days he would spend it on a car, or two days later he'd pay millions of dollars in taxes, in back taxes. He wasn't that clever about it. So you can see -- it's not directly from the fund, but it's just -- I just put it in this one pocket and put it in the other pocket.

THE COURT: Well, the second pocket is a personal pocket or another Equialt pocket?

MS. JOHNSON: No, it's the Equialt account. He would send a check to Prestige Motors for $1.7 million,

which is an automobile company.

THE COURT: All right.

MS. JOHNSON: Or a check to a watch company for a couple hundred. It's that direct. It's from Equialt.

THE COURT: All right.

MS. JOHNSON: Now, if he was clever, he would put it in his personal account and then we wouldn't know about it, but no, he was spending funds directly from Equialt, which I think he considered --

THE COURT: And so you believe you can trace some of his personal, so to speak, assets like cars, watches, other large items --

MS. JOHNSON: Yes.

THE COURT: -- to the Equialt accounts?

MS. JOHNSON: Yes. We can show you the checks that say, you know, from Equialt's accounts to Prestige Motors, to Rolls Royce, to Swisstek Watches. That's pretty direct. Now, I'm sure there's a lot we don't know about, but we do know both the principals own several Ferraris and a Rolls-Royce. We have that thing with the watches. There's a lot of just cash distributions or just going to the ATM, so we can't track that, but they don't have any another -- Mr. Davison may have a few side gigs, but they don't have any other source of money than these two companies, so that's where the middle ground may be of

things that we may miss out on.

THE COURT: Are there spouses involved?

MS. JOHNSON: No. Well, Mr. Rybicki's company -- he transferred BR Services into a trust, it's managed by a trust in the name of him and his wife, it's called like BarryMary or something, BarryMarie Trust, and his wife's name is Marie, but we don't have -- we haven't seen anything that either of the spouses are involved in the business.

THE COURT: And where do they live? Where did Mr. Davison live, for example, here, and is the house unencumbered, or do you know?

MS. JOHNSON: He lives on Davis Island. I don't think he has a mortgage on it. It was property that was originally bought by one of the funds and then there were some transfers and it looks like he paid the fund for it and tore down the house and rebuilt another one, but the property records are a little funky, but he does live on Davis Island, and I don't think he has a mortgage on the property.

Mr. Rybicki lives in Phoenix, and I don't know about whether he has a mortgage on the property or not that he's in.

THE COURT: And when you purport to seize assets of the corporate defendants, what do you mean? The individuals as individuals or individuals corporate only?

Because they are, it appears, listed as individuals and then you have the relief defendants, which are the properties. What is that -- what do you intend by that?

MS. JOHNSON: Okay. For the corporate defendants, Equialt and the funds, we would take their bank accounts and their properties that they own. Now, they manage most of the relief defendants, Equialt is the manager of most of those, so we included those just so that the receiver would not have to come back and go through -- I need to name all these entities so that I can work with the properties and collect rents and things like that.

And then we want to freeze the assets of Mr. Davison and Mr. Rybicki until --

THE COURT: Personal assets?

MS. JOHNSON: Yeah, personal assets, at least until they get a chance to come to the permanent injunction, so it would be 14 days, assuming that you set it within that time period. And then all of the relief defendants except for, I think, two are the single person property -- I think most of the relief defendants, they own one property, it's like 128 Davis Boulevard, LLC that owns that property, they set it up that way, he says for liability reasons if somebody slips and falls or somebody sues, that it would insulate the rest of the funds.

THE COURT: Are there any officers of those relief

defendants or are they just property entities?

MS. JOHNSON: It's either Mr. Davison or one of the funds are the manager. Most of them are set up that Equialt or one of the funds and/or Mr. Davison is the manager.

THE COURT: All right. And other than the -- so there's a New York property and then there are the local properties and then there's Phoenix property. Is there property anywhere else?

MS. JOHNSON: There is a property -- one or two properties in Tennessee, and there may be one in -- I think there's one in North Carolina, a brewery is there, it's not a single family.

THE COURT: It's a brewery?

MS. JOHNSON: I think it's a brew pub.

THE COURT: All right. And the New York is a condo, a single door, so to speak?

MS. JOHNSON: Yes. The testimony we had on that, they bought it for 2 -- I think it was 2.7 million, it's the most expensive property they have, and they spent some money fixing it up, but they've had it for three years and they haven't rented it or sold it, and Mr. Davison testified that he has stayed there with his family on more than one occasion when they go to New York.

THE COURT: All right. Are the children in

private school?

MS. JOHNSON: I don't know.

THE COURT: How many children are there, do you know?

MS. JOHNSON: I believe Mr. Davison has two little girls and Mr. Rybicki has three sons. I don't know -- he's remarried and one of the sons is his -- is a stepson, or maybe two.

THE COURT: Are they minors?

MS. JOHNSON: I believe the little girls -- Mr. Davison's little girls are. Mr. Davison -- I mean, Mr. Rybicki, I don't know their ages. I think they're teenagers.

THE COURT: All right. Do they have vehicles, the teenagers?

MS. JOHNSON: Yes, they do.

THE COURT: Are they part of the seizure order?

MS. JOHNSON: I think they should be, because they came from Mr. Rybicki. Mr. Rybicki bought his son -- I think one of his sons has a Toyota, and the only reason I would know that is from looking at the bank account records, so --

THE COURT: Well, they have to go to school, they have to go do what they have to do, and I'm just trying to deal with that up front instead of having to deal with a

motion related to it.

MS. JOHNSON: I think -- we can ask Mr. Wiand what he intends to do. I think we could craft an order so they have use of their vehicles as long as they don't get rid of them. Burt is shaking his head.

THE COURT: Shaking his head yes or no? I didn't notice.

MR. WIAND: Judge, you know, if they need transportation, I think that's fine, but if we've traced money out of the investor victims to buy Ferraris and Rolls-Royces and things of that nature, I have concern about leaving those in the hands of the people who are the defendants.

THE COURT: I don't have any concerns about high-end vehicles, I'm talking about kids' vehicles, and I know some of them give their kids high-end vehicles, but if they're driving a Toyota to school or a Honda or even a small BMW -- but if it's a Ferrari, a Maserati and a Rolls and this and that, high-end cars, I don't have a concern about those and not leaving them in the hands of people who can crash them or dispose of them, but I'm just trying to not have to deal with this on the back end but deal with it instead on the front end. So I understand, I agree with you with respect to high-end vehicles and the principals.

MS. JOHNSON: And Mr. Davison has multiple cars,

and the company -- he bought cars for the company. There are company cars. I know Mr. Rybicki has a Ferrari, and I did see in the registration for his -- one of his sons that he had -- I think it was a Toyota, but I don't know the full situation there.

THE COURT: All right. And then are there boats and planes and stuff? I think they were privating on charters. Are there boats and planes involved?

MS. JOHNSON: We don't know of any boats or planes that were bought with that. They didn't show up on Lexis and I didn't see any money he --

THE COURT: Are the properties unencumbered or are they encumbered?

MS. JOHNSON: They are unencumbered. That was the one truthful thing in their -- one of the truthful things in their marketing materials. They did use the cash to buy properties, they just weren't buying as many properties as they said. They only spent, I think, less than 50 million on buying properties and rehabbing them, out of the 171 million, so that caused them not to have the revenues that they either anticipated or were saying that they were getting.

THE COURT: The more complicated assets would be what? If we have all of those assets unencumbered in the corpus, all of the cars that are so-called toys, watches and

such, and then the actual cash in the hands of the corporate entities and frozen as to the personal entities except for carve-outs for sustenance and legal fees, then what do you anticipate are the more complicated assets that we would have to have some litigation or some substantial legal involvement over?

MS. JOHNSON: The clawbacks, the investors who were getting their money back, to the expense of other investors. Whenever you have a Ponzi, the newer people lose out to the older investors.

One of the relief defendants is a trust, and Mr. Davison -- the McDonald Trust, and Mr. Davison said that that is his grandfather, that his grandfather had given him seed money, so Equialt -- he was paying him back. The trust got over $1 million. Then when we look at the records, Mr. Davison was sign -- endorsed at least one of the checks that they got on the back, so he has some power over those accounts.

THE COURT: One of the checks that they got --

MS. JOHNSON: There's checks going to the McDonald Trust, there's like five, I believe, for 125 -- 250,000 each, and the one that's endorsed is by Brian Davison. When he put the check in the bank, he's signing the back, so that led us to believe that either he's in control of the trust or somehow -- why does he have signature power over --

THE COURT: So Equialt sent a check to this trust that's supposed to be his -- is it father's trust or Rybicki's father's trust?

MS. JOHNSON: It's Davison's -- he said it's his grandfather's trust.

THE COURT: And so somehow he has the ability to endorse checks into the trust, and so you have some concerns about whether it really is a freestanding legitimate trust?

MS. JOHNSON: Exactly. And plus we didn't see any money come from -- going in. We couldn't see the principal that Mr. Davison said he had paid into it. Certainly not $1.2 million.

THE COURT: I'm sorry. The principal that the grandfather paid into it or that Mr. Davison paid into it?

MS. JOHNSON: Either, frankly. He's paying the trust $1.2 million supposedly because his grandfather gave them seed money to start the company, and we didn't see anything at all, nothing like close to $1.2 million.

THE COURT: So how much were the checks that you did see?

MS. JOHNSON: I have it in there. I think it was a total of about $1.2 million, and they were done in -- let me be precise, if I can find it.

I believe we attached it as an exhibit.

Let me ask Mr. Dee.

Mark, do you recall the exact amount the McDonald Trust got, or can you direct us to that?

MR. DEE: I believe it -- yes. I'm sorry. I didn't mean to talk over you, Alise.

I believe it was $1.3 million, and there is a note receivable that Fund 1 holds that apparently they loaned over $2 million to the McDonald Trust, that's also a factor in there.

THE COURT: So Mr. Davison through one of the Equialt companies has put 1.3 million into the trust, and supposedly the first fund claims to have loaned the trust $2 million?

MR. DEE: Correct, Your Honor.

THE COURT: And no payment pre-existed or no funds pre-existed in the trust, or did funds pre-exist in the trust?

MS. JOHNSON: We were not able to find --

MR. DEE: I don't know about --

MS. JOHNSON: Go ahead, Mark.

MR. DEE: I'm sorry. I don't know about the trust itself. I have not seen the financial records of the trust, but I think if your question is have we -- have we seen any money submitted from the trust, I would have to say no, we haven't seen any evidence that the trust submitted any money.

THE COURT: That would be the source of the $2 million loan.

MR. DEE: Yes.

MS. JOHNSON: I have only seen it going out, nothing coming from the trust to any of the companies.

THE COURT: All right. So you think that some litigation would ensue over the clawbacks and over that relief defendant as easy to anticipate. Anything else? What about this other trust with the Rybicki Marie trust?

MS. JOHNSON: I think they transferred it last year, ownership over that, and we haven't seen any checks going to anybody other than BR Support Services. I think that just -- because they transferred it to the trust, it's going to be insufficient to protect or hide or however you want to call what they were trying to do by putting it into a trust. And there may be --

THE COURT: But they're not going to turn it over, you don't think, without a fight, because of their description of it as a trust? You don't know.

MS. JOHNSON: I think they're probably going to fight it. There's too much money at stake. And I think the spouses may have a say over their personal homes and properties. I would expect that they may come in and --

THE COURT: Now, the identified relief defendants list does not include the personal properties, or does it

also include this Davis Island property and Rybicki's personal home?

MS. JOHNSON: No, it does not -- the relief -- none of the relief defendants included their personal homes.

THE COURT: And Rybicki has at least one home?

MS. JOHNSON: Yes, he does.

THE COURT: Do you know where it is?

MS. JOHNSON: Yes. It's in Phoenix.

THE COURT: Do you know if it's been traced to any funds other than in the normal course?

MS. JOHNSON: Yeah. We don't have any -- we don't have BR Support's account records, so we can't say whether it came out of that.

THE COURT: All right.

MS. JOHNSON: But it did not come from any Equialt account.

THE COURT: All right. And anything else to my initial questions, or are you going to let Mr. --

MS. JOHNSON: I think that's it. We'll let Mr. Wiand talk about the areas that you had some concerns with. Of course we're happy to do a modified TRO and maybe a modified order to take it a little slower or to anticipate any of these issues, if we want to do a carve-out for attorney's fees or make that application simpler, we would do that.

THE COURT: All right. Thank you.

MR. WIAND: Good morning, Your Honor.

THE COURT: Good morning.

MR. WIAND: I tried to make a list of the concerns you had so I could go through them and try to deal with all of them.

The first one, I think, is my position and relationship to the law firm.

Several years ago I withdrew as a shareholder from Wiand Garrett King. I am now counsel to the firm. I have a contractual relationship to the firm with respect to some legal work that I do that I am compensated on a percentage of that and with respect to other legal work that I bring to the firm, I receive some compensation for that. I do not receive any compensation of any kind from the firm with respect to the receivership work that they do. The fees that -- my fees separately as receiver are billed -- are billed and presented to the Court for payment. I receive all of that money as the receiver except for 5 percent of it that the firm receives for maintaining my billing and books and records on that. That is the relationship, but I am not a shareholder of Wiand Garrett King and have not been for some time.

THE COURT: And so you don't consider your having served as a receiver and retained the firm as work you bring

to the firm?

MR. WIAND: I don't get -- no, ma'am, that's not the case. I'm not an owner of the firm, I don't participate in the profits of the firm, and I don't get any overrides on this business or anything of that nature.

THE COURT: Well, you said you get a percentage of work you bring to the firm. This is excluding receivership work?

MR. WIAND: Yes, ma'am. Absolutely.

THE COURT: So when I look at your bills and it's 154,000 as your receivership fees, that's it, and the 3 million the firm gets is the firm's money?

MR. WIAND: Yes. Since the period of time that I am no longer a partner -- a shareholder in the firm, that's absolutely correct.

THE COURT: Since what time has that been?

MR. WIAND: Maybe four years ago.

THE COURT: All right.

MR. WIAND: Now -- and also, Judge, with respect to the fees that we -- that we do charge, those fees -- you know, the firm does whatever it does, I review those things, they go to the Commission, the Commission reviews them, and before anything is paid it comes to the Court and the Court authorizes that with respect to everything that's billed, so there is a good bit of oversight over that, as to

what actually we're doing.

You mentioned something about a $100,000 and $4 million, and I'm not sure what case that was on. I got the idea you said we made a $100,000 recovery and we charged $4 million.

THE COURT: No. No. No.

MR. WIAND: That wasn't me.

THE COURT: No, I said you made 154 as your receiver fee and the firm made close to three and a half, I think, not -- I didn't speak to how much the recovery was.

MR. WIAND: I mean, if that was like the Nadel case or something like that that went on for a long time, at the time that I began that, I was a shareholder in the firm and did participate in financial results of the firm, but that then ended.

THE COURT: All right.

MR. WIAND: At that time I changed -- I guess I'm older now, so I'm doing some different things, but -- and with respect to the second matter, with respect to low-hanging fruit, our initial idea would be to go in and, you know, the bank accounts and the cash and things of that nature, to secure that, and with respect to the real estate, I would anticipate we would probably do some work and put lis pendens on all of those so that they would be protected for the receivership estate, and that would be the

low-hanging fruit.

With respect to any further litigation, it has been my practice, and sometimes orders require it and sometimes they don't, but it's generally my practice for any kind of litigation that's going to be significant, Your Honor will decide whether or not I go forward with that, and I will present it to you with respect to how I go forward with it and with respect to whether or not I should do it.

Now, most of the time -- I mean, it depends on the nature of the case on how I go about this, because I am very chary about risking assets of the estate in later litigation, and many times where there is potential large litigation against financial institution vendor, something of that nature, it has been my preference in those situations to utilize firms other than Wiand Guerra King, generally on an approved contingency basis by the Court, in order that I don't -- I don't risk dollars of the estate in order to pursue that litigation. Of course, any time you have a contingency it reduces your recovery, but my belief is that's the prudent way to go about this.

As I said before, with respect to any significant litigation, I would come back to the Court and advise you with what I was intending before I went forward. That would include clawbacks, and I know that's always a subject that's

difficult in these cases because all of these people who invested have essentially been deceived in these cases, but clawbacks come in where there is a situation that an individual has received more money than they put in. We've always determined that -- called that in our pleadings false profits, but -- and if there is a significant amount of false profits, we will go back and ask an investor to return that.

My practice in that regard is to initially send a letter to the investors who received false profits and ask them to return a significant percentage of that so I don't have to litigate them. That is sufficient and it works well. If that doesn't work then I would come back to the Court and advise you what the dollar amount limitations was that I would think about going forward.

However, in this case, unless people have withdrawn their money, it doesn't look to me like there's going to be much false profits, and that's from a very high level view, because I'm not into the weeds on this yet, but it doesn't seem like there's going to be a lot of investor false profits. That happens where a person withdraws their investment and they have received interest over a period of time, then they have a false profit.

THE COURT: With respect to the financial institution litigation, what type of litigation is that?

MR. WIAND: It could depend, Judge, but there are circumstances where financial institutions participate as cash management and things of that nature with an entity such as this where the institution should have knowledge with respect to what was transpiring, and claims are made either on a breach of duty or in an aiding and abetting basis against those institutions for failing to comply with the obligations and duties that they have. Those are difficult cases and we look at them very hard before we go for them, go forward with it, and those are one of the reasons that I use -- I like to use contingency fee basis on those cases, so I'm not risking assets of the estate.

THE COURT: All right.

MR. WIAND: You mentioned that we should maybe hold off with respect to bringing in professionals and things of that nature. I think that's fine except with respect to the accountants. Very early on it's going to be my job to come back to you and advise you what I have learned and whether or not this thing is a viable vehicle, whether it's a -- whether it's a fraud, whether it's a Ponzi scheme, whatever, and in order to do that I need to have forensic accountants go through the records. They will utilize the records that the SEC has already got, but they will also go to the company and get other records and analyze what the revenues of the entity were, what its

obligations were and things of that nature.

If I read the Commission's information correctly, it seems to me that what we have here is $170 million coming in, $50 million went in real estate, $50 million went out to the individuals, and the rest of the money maybe was paid back in interest, but if that is indeed the picture and I come back and tell the Court that's the picture, then I think, you know, it's going to be a clear result that we should go and try to liquidate and monetize as much of the assets as we can to distribute it to the victims. I don't know that yet, but that's something I'm going to need to have a forensic accountant do, do that for me.

The forensic accountant that I will suggest to the Court that we use is a company called Yip & Associates, it's a woman named Marie Yip and her accounting firm, and she is regularly involved in these kind of cases. She's appointed as a bankruptcy trustee, she's also a liquidating trustee, she's been a receiver for the Commission herself, and I have used --

THE COURT: Is she local?

MR. WIAND: Pardon?

THE COURT: Is she local?

MR. WIAND: No, she is not. She is in -- on that other coast. I can't tell you --

THE COURT: Like California?

MR. WIAND: No. No. She's over in Miami, I think.

THE COURT: Oh, local to the state, not far-flung.

MR. WIAND: No, she's definitely local to the state. In fact, she's in a -- she's in a hearing, I think, in Federal Court in Orlando today, and she's -- but she and her team are very good and I've used them on two prior occasions with excellent results.

The payment of the utilities, Judge, I don't think that's -- I think that's a -- that's in there so we don't get cutoffs, but my practice with the utilities, as soon as we get in I switch the utilities over to being paid by the -- paid by the receivership estate, and it's generally my practice to pay the utilities and keep them going, but I think that the point of that is to make sure that there's not cutoffs with respect to the properties.

With respect to -- you mentioned attorney-client privilege. With respect to the corporations, I believe the law is fairly clear that a receiver is appointed over an entity, that the attorney-client privilege is one that can be exercised and controlled by the receiver, and that has been something that I have regularly done. We would then be reaching out to law firms and others who provided and prepared the offering documentation and that information to see how that occurred.

The --

THE COURT: With respect to that, these are firms you think that are different than the DLA and Sydney & Austin that have come in on behalf of the individuals, or do you think these are the same firms?

MR. WIAND: No, Judge, there was -- and my information is very preliminary on this and I'm just going to talk about a law firm and a lawyer. There was -- my information is that there was a lawyer who was with substantial firms who was involved in the preparation of the offering documentation and indeed reviewed some of the offering documents that were submitted by -- submitted by the investors. We want to see how the information was gained for those, where it came from, why it's inaccurate and learn that kind of information about these offering documents and the role this law firm played in --

THE COURT: What firm was it?

MR. WIAND: Duane Morris, Fox Rothschild and DLA. The lawyer moved from firm to firm to firm.

THE COURT: Who is the lawyer?

MR. WIAND: Wassgren.

MS. JOHNSON: Yeah, his name is Paul Wassgren and he's actually named --

THE COURT: Lassgren?

MR. WIAND: Wassgren. He is out in Las Vegas and

now, I think, LA.

THE COURT: All right.

MR. WIAND: And, Judge, you know, these are things that I would look at. I'm not making any statements that there's --

THE COURT: I'm just getting the names to make sure I don't have any conflicts.

MR. WIAND: Right.

THE COURT: I understand that that's just the preliminary assertion potential.

MR. WIAND: These are the kind of things a receiver looks at, and I will.

THE COURT: But let me stop you there. With respect to that though, if these individuals have retained counsel in connection with the investigation, and you're not trying to see their privileged information, how do you go about assuring that doesn't happen?

MR. WIAND: Well, with respect to their personal representation, I mean, that's not information that I would ask for, and I would -- because I'll ask for information relating to the representation of the entities, and I'm entitled to that. With respect to the individuals, these people are represented by very astute lawyers and I would imagine that they will indicate that there are privileged materials that they don't want to give me, and we'll work

through that, and I would anticipate we'll work through it without assistance of the Court unless there's something that I wouldn't anticipate.

THE COURT: All right.

MR. WIAND: Now, you mentioned the value of money with respect to looking at claims that would be made. One of my major tasks, I think, in this is to make those evaluations from a practical business dollar sense situation. I do not believe in claims that are not going to benefit the estate. As I indicated, I will -- before any significant claim is made, I will definitely come to the Court and explain to you why I think it is appropriate and why it will make dollar benefit to the -- to the estate and hopefully we can reach a conclusion on that.

THE COURT: Well, you understand that the tener of the appointment order doesn't indicate that. The order is broad and expansive and discretionary and such, and so do you -- and I accept you at your word on your representations here. Do you believe that you all together can fashion an order that is more consistent with the representation than the breadth of the order that I got?

MR. WIAND: I think we can, Judge. I don't think that's a problem. And I also think that with respect to other cases that I've worked in, I'll also have -- I apologize for not being specific, I didn't write this

order, so I'm not specific on all of its terms, but many times they'll indicate that the receiver has sort of unfettered authority to settle any claims and do things like that. If it's any kind of significant claim, I don't feel comfortable doing it without the Court blessing it, but oftentimes I will ask that the Court give me authority to settle any claims, any single or aggregate claims that are less than a number, say 25 or $50,000, so we're not running back to court spending $5,000 to get a $6,000 transaction approved.

THE COURT: All right.

MR. WIAND: And that has always seemed to have worked well.

With respect to -- you mentioned do we do things in stages. I think that, you know, obviously we would go out and go after the low-hanging fruit. I would hope the forensic accountants will then go through the information and they will generally pull out a list of significant distributions that I ought to look at as to whether or not they're worthwhile.

One of the things in these cases -- in this case, and I've done a little work through the internet to look at it, is Mr. Rybicki and these others have set up these single purpose LLCs to buy real property, and there are various different transactions in that. I am given to believe that

their only source of income is out of these entities, which would be investor funds. We would need -- we would want to do tracing through that, and if we get to a point that it looks like those things were acquired with investor funds, I would be coming back to the Court asking you to expand the receivership to include those assets in the receivership also.

THE COURT: These are different than the relief defendants? These are just separate LLCs that might have some corpus available to make subsequent purchases, or these LLCs already have assets, hard assets?

MR. WIAND: They all have -- they already have hard real estate assets and they are all recent.

THE COURT: And they are different than the relief defendants that we already know about?

MR. WIAND: They are in addition to the relief defendants, Judge.

THE COURT: All right.

MR. WIAND: And I don't think that from the -- from the Commission's ability and the records they were provided they had the ability to do tracing work on those particular entities where they might well have been included. I can't speak for that, but that would be my guess.

THE COURT: All right.

MR. WIAND: And so those would -- those would be --

THE COURT: I'm sorry. When you say "recent," how recent do you mean? Since November?

MR. WIAND: Last three years, something of that nature.

THE COURT: But not since November necessarily?

MR. WIAND: Yes, some of them have been since -- some of them were in December of '19.

THE COURT: All right.

MR. WIAND: And then also with respect to stages, we would not -- we would not do any clawback stuff until the analysis had been made by the -- by the accountants with respect to what the status of the funds in and out for the investors are, and then at a point in time we would file with the Court a proposal for setting up a claims process, setting a bar date, and we try to get our claims in and see what -- see what we've got for claims of that nature, and then as quickly as we can and as soon as we get funds in, start distributing to those people, if it -- if it turns out this is something that's not a viable entity.

THE COURT: All right.

MR. WIAND: There would also be analysis as we go on with respect to potential claims against vendors, as I mentioned. Might be a financial institution, might be a

law firm, might be an accounting firm, I don't -- I don't know, but those things are possible.

The other thing that you mentioned was with respect to these individuals' personal homes. I sort of got a feeling that they were thinking that these personal homes were something that might not be involved here. After we do tracings, if those homes were purchased with investor money, it's likely something that I would seek to recover from the estate, but that is something to be determined.

But that's the kind of step-by-step receivership program that I do. We will move quickly to get information to be able to come back to you and tell you an evaluation of what I see as your receiver and with respect to what the situation is, whether it is viability or whether -- where we ought to go forward. Once I get your authority on that then we will begin to -- begin to pull in assets and liquidate if it's -- if it's appropriate.

THE COURT: And what about carve-outs for sustenance and these kids' cars, that level of -- and attorney's fees for defense?

MR. WIAND: My experience is once these things happen there is very prompt discussions between the lawyers, me and the Commission with respect to doing that. Not too long ago we had one with the CFTC where we did that and it worked very quickly. We set up an amount of carve-out, and

in that one we actually determined certain assets that the individual had that he could use for his -- for his legal fees and ongoing living expenses. But those are things that are worked out and that I wouldn't want to come to court on and I'd like to get them done that way. The only one that I think I came to court on was that Arthur Nadel, he brought in some high-priced criminal lawyers and asked Judge Lazzara to give him a couple hundred thousand dollars and Judge Lazzara refused, but that's the only time I've had a judicial decision on that.

THE COURT: All right. And does the Commission know whether there is a parallel criminal investigation?

MS. JOHNSON: There is not one right now, but there are some aspects that I expect there will be a referral.

THE COURT: All right. Well, then what we need to do, I think -- thank you, Mr. Wiand. You can have a seat.

What I think we need to do then is submit a new proposed TRO and receivership appointment order that is more in line with what is the reality of how this will operate, and I'm available to sign it as quickly as you get it to me, with the sort of staged-out process that Mr. Wiand just described, with the initial attack being on the liquid assets and the real estate known, and I -- if there are these LLCs that have taken money and purchased assets,

I don't have a problem including those as part of the initial freeze and then dealing with the potential requests to relieve some of those assets -- release some of those assets from the freeze, but it's better to get them before they are dissipated, and then any of these sort of high-end personal assets that are easily traceable to be included. You will have to make a decision about whether you are comfortable including any of the trusts in the initial phase.

Then the order would direct Court approval on subsequent litigation efforts dealing with the more complicated issues, such as clawbacks, vendor litigation and perhaps trusts, if you decide that falls more in the difficult than the easy, and that the receiver will have authority up to X amount for settlement, not settlement of all claims, the receiver will maintain the properties, and maybe a period of time during which there could be no cutoffs instead of a vendor peril sort of provision for utilities and such.

And then the carve-outs that the receiver believes are appropriate to provide for sustenance, including household expenses and transportation can be left to the discretion of the receiver with only resort to the Court if agreements cannot be made with the defendants and their principals.

The retention of experts as necessary I'll just leave in the discretion of the receiver, trusting that if there is any unusual expenses or unusual type of vendor that will be required, that the Court will hear from the receiver before that entity or person is retained.

MR. WIAND: Judge.

THE COURT: Yes, sir.

MR. WIAND: I just wanted to indicate that in addition to needing the -- excuse me, in addition to needing the accountants up front, we also utilize IT consultants --

THE COURT: That's fine.

MR. WIAND: -- who capture the -- you know, they mirror everything and get us all the information so it doesn't walk away.

THE COURT: That's fine.

MR. WIAND: Thank you, Your Honor.

THE COURT: Ms. Davis, may I see you a second.

Did I omit to resolve anything?

I will allow, if you think it's necessary, for the marshals to accompany any -- who goes out and gets this property and executes these seizure orders? Procedurally, what happens?

MR. WIAND: Your Honor, procedurally how this will work is once we have the order in place there is a fellow,

Roger Jernigan, and he has a company called RWG Associates, he's a private investigator and he's a certified law enforcement officer and an asset manager that acts as boots on the ground for me because he's cheaper than using a lawyer, but Roger and people that work with him will go with lawyers from the firm, we will go to the premises, we will secure the records, and we will talk to the people there, find out who is working there and that kind of thing, interview them, and we will also -- the Commission will take and notify all the banks and serve all the orders on it, we will serve the orders on all these people at the same time, and then we will make, you know, determinations at that point in time what goes forward with respect to the premises -- I mean, with respect to this operation.

Sometimes in these FTC cases, you know, these internet scam things, we just go in and close it up. We can't do that here. This has to continue to operate because it's running properties and receiving money and stuff like that, so I'll have to make determinations about how we continue to operate and go forward.

THE COURT: Well, do you need the U.S. Marshals with Mr. Jernigan's operation?

MR. WIAND: Judge, quite frankly, it's helpful and comforting to have that, because we don't know the reaction that you're going to have from people when you show up and

say, okay, I have a court order and now I am entitled to all of your records and I have -- and I have control of all the assets of this entity.

Sometimes it's very easy, sometimes it might be difficult, but my experience has been most of the agencies have had a law enforcement person go with us when we go knock on the door. They generally don't even stay.

THE COURT: Well, when you have a scam, a Ponzi scam as a phone center, there's one place to go.

MR. WIAND: Right.

THE COURT: When you have multiple properties, I think we're up to 12 or 15 properties, I assume there's someone on the ground at these properties, or is there a real estate vendor operation?

MR. WIAND: No. Most of these properties are homes, and they are homes that are owned by a single -- a single member and a single asset purpose LLC, and generally Mr. Davison or Mr. Rybicki are the control persons of those entities or the manager of the entities, so with respect to those particular entities, we don't have anybody to go there. I think the two places that I would suggest that we go is that we will go to the offices, the main offices where they conduct the management operations, and then we believe that Mr. Rybicki has an office in Phoenix or a place that he conducts business, because he is believed to be the

individual who oversees all of the sales activities and will have all those sales records. So those are the two places that we will go to and ask for records and to determine the business activity that's occurring.

THE COURT: And so going to each of these apartment units is not necessary because they're not on-site operated, these are standalone properties that are operated remotely from the management office?

MR. WIAND: There's no reason to do that, Judge. The only thing that I think we'll do with that is my staff will get together and prepare a whole bunch of lis pendens and file them with a copy of the order so that the properties are protected.

THE COURT: So you'll need our local Marshal's Office to coordinate with the office in Phoenix to facilitate someone in Phoenix going with whomever you appoint in Phoenix to go, and then our local Marshal's Office going with you to the local management office in Tampa?

MR. WIAND: Correct. That's it.

THE COURT: And at what time of day do you anticipate this would be done?

MR. WIAND: It, of course, depends on when we get the order, but -- and we were -- I've just been talking about that, as to when we want to do it. If we get the

order this afternoon or we get it tomorrow -- if we get it this afternoon and have time, then I would say at the opening of business tomorrow, but if that's not -- and you just don't want to push this too hard. The matter is under seal. If we get the order then -- and it comes out at a reasonable time, say on Friday, then the Commission would take and notify all the financial institutions late in the day, and first thing Tuesday morning we would probably go in.

THE COURT: All right.

MR. WIAND: Okay?

THE COURT: I will let the Marshal's Office know then on that type of schedule, because they -- you know, these officers are all over the place, picking up defendants, bringing them to court, and they just don't have marshals just sitting around waiting. So I'll just let them know to anticipate either a Friday afternoon or a Tuesday morning requirement, depending on when I get the order.

MR. WIAND: Very good.

THE COURT: The proposed order.

MR. WIAND: Thank you.

THE COURT: Thank you.

So we know we'll have the receiver, counsel, IT specialist, the sort of boots on the ground enforcement person, and if I didn't say the accountant, as the initial

additional professionals. Is there anyone else we can -- what about a real estate management company? Will that be a separate entity retained or will the receiver purport to do that?

MR. WIAND: Your Honor, with the number of these properties, I think it's going to be prudent that I get in some professional management help on that, but that will -- that doesn't need to happen now and I would rather take and make sure I get the Court's approval with respect to my suggestions of who that might be, because I'll probably look at a couple -- this is going to be quite a project if we have to do this, and it's -- I'm not going to just pick up a phone book, I'm going to make sure that I've got somebody that's talented to deal with some mess like this.

THE COURT: All right.

MR. WIAND: So I would come back to the Court and suggest who that -- who that might be.

THE COURT: All right. Well, if someone would prepare a modified order consistent with the determination made at this hearing and in regard to the retention of the Wiand firm, that's fine, based upon the representations made here about the relationship between the receiver and the firm, that's also fine.

Is there anything else that I can assist the parties with out of this hearing? Ms. Donlon?

MS. DONLON: I have nothing, Your Honor.

MS. JOHNSON: I'm sorry. I just want to make sure I'm clear.

So we'll go and prepare a modified order appointing receiver. Did you want the TRO asset -- I believe you want the asset freeze TRO order also modified along the lines of what we've discussed today?

THE COURT: That's right.

MS. JOHNSON: Okay. Thank you.

THE COURT: And so you don't have to file a separate motion to seal, the Court grants permission to file the motions -- the modified motions under seal, both as to the TRO and the appointment of the receiver, and the motions can exceed the page limit if necessary to present the information to the Court, and the matter will be held under seal, ex parte, in camera.

The order was a little odd on the release of it to the defendant, and it said I think three days from the date of the order or three days from the execution, whichever is sooner. Is that the general language?

MS. JOHNSON: What we usually do, as soon as we get the asset freeze in place, we would ask -- it would lift the seal, because obviously we'd go into the property. As soon as we're in the property, we can --

THE COURT: So that's accurate, in three days from

the date of the order or immediately upon the execution of the freeze order, the corporate and relief defendants will be notified?

MS. JOHNSON: Yes.

THE COURT: So if you'll make that modification in the proposed TRO as well.

MS. JOHNSON: Yes.

THE COURT: Mr. Dee, is there anything else you need to advise the Court of that we are not thinking about?

MR. DEE: No, Your Honor.

MS. JOHNSON: Yes, Your Honor, one more thing. They're entitled to a preliminary injunction hearing within 14 days of the entry of the order. I don't know if you know what your calendar looks like, if you wanted to go ahead and set that.

THE COURT: We could do it the 2nd, 3rd or 4th, which will be a little bit out of 14 days from today's date, but assuming the order goes out on the 14th, that would be a reasonable time. I can't do it on that Friday, the 28th, which is exactly 14 days from today, but if the freeze gets executed, for example, on Tuesday -- and why not Monday? Is Monday a holiday?

MS. DONLON: President's Day.

THE COURT: Yes. So let's -- 14 days from Tuesday would be the 3rd, so we could look at the 3rd or the 4th, or

even the 5th as possible days. So when you're talking to the lawyers, once they are on board, you all can look at scheduling time.

I just had a trial to settle, so we have some opening the 3rd, 4th and 5th, and if those times don't work you can just contact chambers and we will figure out a day that works, within reasonable parameters, to ensure that there is some time.

Sometimes the parties waive the preliminary hearing because the parties are able to work out a resolution that preservation the status quo, carves out the necessities for sustenance and such, and they don't really want to come to the Court because they're not ready to defend yet. I'm amenable to that if the parties work out a preliminary injunction order essentially that carries us through a merits determination. That's also something that I would be amenable to executing that's an agreed sort of order.

MS. JOHNSON: Nine times out of ten that's been my experience of what happens.

THE COURT: All right. Anything else before we conclude?

MS. JOHNSON: No. Thank you, Your Honor. I appreciate you taking the time out.

THE COURT: All right. Thank you for helping me

get this to some understanding.

We're dismissed. Thank you.

MR. WIAND: Thank you, Judge.

THE COURT: Look forward to working with you, Mr. Wiand. Please be nice.

MR. WIAND: I'm sorry?

THE COURT: Please be nice.

MR. WIAND: I am. I try to be, Judge.

THE COURT: Okay. Thank you.

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(Proceedings concluded at 11:56 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript of proceedings taken in a motion hearing in the United States District Court is a true and accurate transcript of the proceedings taken by me in machine shorthand and transcribed by computer under my supervision, this the 23rd day of March, 2020.

/S/ DAVID J. COLLIER

DAVID J. COLLIER
OFFICIAL COURT REPORTER