

**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.

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**RECEIVER'S UNOPPOSED MOTION FOR LEAVE
TO FILE UNDER SEAL – SPECIFICALLY, CLAIMANT IDENTITIES**

Burton W. Wiand, the Court-appointed receiver over the assets of the corporate defendants and all relief defendants (the “**Receiver**” and the “**Receivership**”), moves the Court pursuant to Local Rule 1.11(c) for an order permitting the Receiver to file under seal very limited information relating to the identities of more than 1,500 individuals and entities who have submitted

claims as part of the claims process established in this Receivership (the “**Claimants**”). *See* Docs. 335, 347 (establishing claims process).

1. The Receiver intends to file a motion seeking an order approving his determinations and priority of claims, a plan of distribution, and an objection procedure (the “**Claims Determination Motion**”).

2. The Claims Determination Motion will reference and attach exhibits identifying submitted claims by claim number rather than by Claimant name. The Receiver assigned each claim a number and intends to send each Claimant a letter providing the Claimant’s identifying number. The Receiver proposes to file with the Court under seal a separate cross-reference list with the names of each Claimant and the corresponding claim number (the “**Cross-Reference List**”). This will allow the Court to match the Claimants to the claim determinations proposed by the Receiver in the Claims Determination Motion.

3. The purpose of filing this information under seal is to protect the privacy of EquiAlt investors and the financial repercussions they experienced. The Receiver believes the preservation of investor privacy, especially with respect to financial information, is a compelling justification to depart from the public’s qualified right of access to judicial filings, as described by L.R. 1.11(a).

4. Sealing the Cross-Reference List will neither prejudice any party’s interests nor cause any harm to any third parties. In fact, the Receiver has

used this procedure on multiple prior occasions. *See, e.g., S.E.C. v. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Docs. 673, 674 (M.D. Fla. 2012) (Lazzara, J.); *S.E.C. v. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Docs. 1362, 1363 (M.D. Fla. 2019) (Covington, J.); *S.E.C. v. HKW Trading LLC*, Case No. 8:05-cv-01076-T-24TBM, Doc. 159 (M.D. Fla. 2008).

5. Pursuant to Local Rule 1.11(c), the Receiver requests that the Cross-Reference List be sealed indefinitely until further order of the Court or to the extent permitted by Local Rule 1.11(f). This will alleviate the need to employ Receivership resources to move to renew the seal and will prevent inadvertent release of sensitive information.

MEMORANDUM OF LAW

The Receiver respectfully submits that the narrow request to file under seal a list of the names of the Claimants with corresponding claim numbers used in the Claims Determination Motion to protect the privacy of the Claimants outweighs the public's qualified right of access to this information. The right of access to judicial records pursuant to common law is well established but is not absolute. *Microllumen, Inc. v. Allegrati*, 2007 WL 1247068 (M.D. Fla. Apr. 30, 2007). The presumption of public access must be balanced against any competing interest. *United States v. Maali*, 2004 WL 2656879 (M.D. Fla. Aug. 30, 2004). "[I]n contrast to the compelling justification required for closure of criminal trials, the trial court has broad latitude where

only the common-law right of access to court records is implicated.” *Id.* (quoting *United States v. Noriega*, 752 F. Supp. 1037, 1040 (S.D. Fla. 1990)).

The public has no overriding interest in learning the identities of the more than 1,500 victims of the EquiAlt scheme or the details relating to their investments. The relief requested in this motion is consistent with Local Rule 1.11(c), which provides:

If no statute, rule, or order authorizes a filing under seal, a motion for leave to file under seal: (1) must include in the title “Motion for Leave to File Under Seal”; (2) must describe the item proposed for sealing; (3) must state the reason: (A) filing the item is necessary, (B) sealing the item is necessary, and (C) partial sealing, redaction, or means other than sealing are unavailable or unsatisfactory; (4) must propose a duration of the seal; (5) must state the name, mailing address, email address, and telephone number of the person authorized to retrieve a sealed, tangible item; (6) must include a legal memorandum supporting the seal; but (7) must not include the item proposed for sealing.

L.R. 1.11(c). First, this motion is properly titled.

Second, the item proposed to be sealed is the Cross-Reference List, and as explained above, it consists of the Claimants’ names and their associated claim numbers.

Third, the filing is necessary because the Receiver is required to present his recommended claim determinations to the Court, and the Court should know the identities of the Claimants for numerous reasons, including to protect against conflicts of interest and, in some cases, to substantively evaluate the Receiver’s determinations. Sealing the Claimants’ identities and using claim

numbers where possible is necessary to avoid disclosing sensitive financial information about hundreds of fraud victims.

In addition, victims are often targeted by secondary or “reloading” scams, which promise recoveries and refunds that never materialize in exchange for upfront payments. Redaction of the Claimants’ names is unsatisfactory because doing so would defeat the purpose of filing the names with the Court – *i.e.*, to monitor any potential conflicts of interest and to evaluate the Receiver’s determinations. *Cf., e.g.*, Doc. 11 ¶ 39 (imposing on the Receiver “a continuing duty to ensure that there are no conflicts of interest ...”).

Fourth, the Receiver would prefer the names be sealed indefinitely absent further order of the Court, but at minimum, the seal should extend 90 days after this Receivership is closed and all appeals exhausted. *See* L.R. 1.11(f) (“No seal under this rule extends beyond ninety days after a case is closed and all appeals exhausted.”).

Fifth, only the parties to this action and their attorneys should be permitted to obtain a copy of the Cross-Reference List. Those individuals’ contact information is reflected on the docket, but to comply with the language of L.R. 1.11(c)(5), the information is also attached as **Exhibit A**.

Sixth and seventh, this motion contains a memorandum of law and does not include or attach the Cross-Reference List.

WHEREFORE, the Receiver respectfully requests that this Court enter an order permitting the filing under seal of the Cross-Reference List identifying the Claimant name(s) that correspond to the assigned claim number on exhibits to the Claims Determination Motion.

LOCAL RULE 3.01(G) CERTIFICATE OF COUNSEL

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC has no objection to the relief sought herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 27, 2022, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court through the CM/ECF system, which served counsel of record.

s/ Jared J. Perez

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EXHIBIT A

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