

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

BRIAN DAVISON, et al.,

Defendants, and

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

Relief Defendants.

**DAVISON'S MEMORANDUM IN OPPOSITION TO RECEIVER'S
RENEWED VERIFIED MOTION FOR AN ORDER TO SHOW CAUSE**

Brian Davison, pursuant to Middle District Local Rule 3.01(c), opposes the Receiver's Renewed Verified Motion for an Order to Show Cause Why Brian Davison Should Not be Held in Contempt for Failure to Comply with the Court's Orders (Doc. 767) (the "Receiver's Motion"), filed January 17, 2023. The financial aspects of the Final Judgment have been satisfied as **the Receiver has admitted recovering more than the full amount of the SEC's judgment from assets turned over by Davison.**¹

¹ On August 15, 2022, the Receiver admitted that "[t]he net proceeds from the sale of assets turned over to the Receiver by Davison exceed the sum of \$27,013,060." Receiver's Responses and Objections to Davison's First Request for Admissions (Doc. 632-1, No.3) (emphasis added). In addition, as of August 15, 2022, the Receiver still had other property turned over by Davison in his possession. Receiver's Responses and Objections to Davison's First Interrogatories (Doc. 632-2, No.7).

Davison's Renewed Motion to Alter or Amend the Final Judgment (Doc. 768) ("Davison's Motion") should be decided prior to any decision on this Motion. If Davison's Motion is granted, the Receiver's Motion must be denied.

Even if Davison's Motion is denied, the Receiver's Motion still should be denied because the Final Judgment has been paid in full, the Receiver cannot meet the elements of civil contempt, the performance sought by the Receiver is impossible, and the Receiver may not use a motion for contempt as a vehicle to attempt to collect a money judgment.

Finally, in its supervisory role over the receivership, the Court should exercise its equitable power to reject the Receiver's attempt to extract additional assets from Davison.

I. RELEVANT BACKGROUND

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

Davison is liable to the Commission for disgorgement of \$24,600,000, representing net profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest on disgorgement of \$913,060, and a civil penalty of \$1,500,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, **for a total of \$27,013,060.**

(Doc. 355-1 at 6) (emphasis added). The financial aspects of the Final Judgment have been satisfied as **the Receiver has admitted recovering more than the full amount of the SEC's judgment as net proceeds from the sale of assets turned over by Davison.**

The Receiver asserts the novel and unsupported approach that he is entitled to additional assets from Davison even if the full amount of the Final Judgment has been paid because “the assignment creates obligations of Davison to the Receiver that are separate and apart from the obligation to the SEC.” (Doc.767, p. 5). The Receiver cites no legal authority for that novel proposition, and entirely ignores the Court’s inherent power to restrict or reject the Receiver’s actions.

The Receiver repeatedly cautioned EquiAlt investors about third-party attempts to purchase their claims for pennies on the dollar. “In other Receiverships in which the Receiver has been involved, various entities have approached investor victims and offered to purchase an assignment of their claims for pennies on the dollar. **Any investor who is approached with such a proposal should carefully review the information provided by the Receiver as it appears unwise to accept such an offer.**” (Doc. 319 at 30-31) (emphasis added).

The recently filed Joint Motion of Receiver and Investor Plaintiffs for Preliminary and Final Approval of Proposed Settlements (Doc. 760) (the “Settlement Motion”) describes the background of this case and shows that **the Receiver’s counsel to EquiAlt investors was prescient.** “On February 11, 2022, the Securities and Exchange Commission (“SEC”) commenced this Action in this Court against EquiAlt, Davison, Rybicki, and others, alleged that they ‘conducted a Ponzi scheme raising more than **\$170 million** from over 1,100 investors nationwide,

many of them elderly, through fraudulent unregistered securities offerings.’” (*Id.*, p.6) (emphasis added).

Despite the near constant repetition of the “Ponzi Scheme” refrain in the Receiver’s filings; the Receiver’s Quarterly Status Reports and the Settlement Motion reveal that as of September 30, 2022, the Receiver had:

- a. Nearly \$71,000,000 in cash (Receiver’s Eleventh Quarterly Status Report, Doc. 706, p.4);
- b. Assets sold or under contract he expects to produce another \$31,671,000 in gross proceeds (Receiver’s Eleventh Quarterly Status Report, Doc. 706, pp.9-12);
- c. nearly 200 remaining real estate properties (Receiver’s Eleventh Quarterly Fee Application, Doc. 710, p. 9), worth an average of at least \$300,000 for a total of \$60,000,000 (that should have been sold into a rising market instead of into the current declining market)²;
- d. a \$44,000,000 settlement with the law firm defendants (Settlement Motion, Doc. 760);

² The Receiver’s Eleventh Quarterly Status Report, (Doc. 706), does not offer a valuation of the remaining EquiAlt properties. Available data shows the median sale price of homes in Tampa for December 2022 was \$375,000. <https://www.redfin.com/city/18142/FL/Tampa/housing-market> (checked January 17, 2023). Davison believes the \$300,000 average value stated above for EquiAlt properties to be conservative.

- e. an additional \$5,457,147.76 in settlements with Selling Agents that are subject to certain offsets and may be of questionable collectability (*Id.*, pp.28-30, App. A); and,
- f. other assets including interests in two (2) breweries the Receiver has represented to the Court will have substantial value to the Receivership Estate³ and which he believes “are becoming more valuable.”⁴

Adding nothing for the potentially greater value of the remaining EquiAlt real estate, the additional settlements with Selling Agents or the Brewery Interests, **the Receiver’s filings show Receivership assets of at least \$206,671,000, even after paying the costs to operate the EquiAlt business since February 2020 and paying approximately \$4,000,000⁵ to the Receiver and his professionals.⁶**

³ Receiver’s Sixth Quarterly Status Report (Doc. 352, pp.25-26).

⁴ (Receiver’s Eleventh Quarterly Status Report, Doc. 706, p.17). Davison has been unable to find any document in which the Receiver has assigned specific values to the brewery interests. The Receiver has stated that Commerce Brewing “company’s operations are stabilizing and the Receiver is optimistic regarding the progress of this asset.” (Doc. 352, pp.25-26). (*Id.*) The Receivership owns the building leased to Commerce Brewing and a 20% equity interest in the company. (*Id.*) As to Bolero Snort, the Receivership owns a 5% equity interest in the brewery business and owns the building leased by the brewery. (*Id.*) The Receiver is “optimistic” about both assets. (*Id.*) **The Receiver now has in excess of \$82 million in cash.** (Doc. 793, p. 4).

⁵ The total through the Order Granting the Tenth Fee Application is \$3,939,085.48. (*See* Doc. 172, p.2; Doc. 230, p.3; Doc. 260, p.3; Doc. 288, p.3; Doc.391, p.3; Doc. 426, p.3; Doc. 570, p.3, Doc. 578, p.3; Doc. 586, p.3; and Doc. 731, p.3). The Receiver’s Eleventh Quarterly Fee Application (Doc. 710) seeks an additional \$477,991.92 for time through 9/30/22. (*Id.* at 42-43). Magistrate McCoy has issued a Report and Recommendation recommending approval of those additional fees, **raising the total to nearly \$4,500,000.** (Doc. 780, p.32).

⁶ The Receiver and counsel for the Investor Plaintiffs have or will seek leave of Court to pay approximately \$10,000,000 in legal fees and costs related to the Law Firm settlement.

The Final Judgment allowed Davison to satisfy the judgment by turning over certain enumerated assets to the Receiver. (Doc. 355-1, 6-8). Davison turned over to the Receiver in good faith his family home, an extensive watch collection, jewelry, and heirlooms with significant sentimental value. The Receiver's Motion seeks contempt sanctions because Davison turned over 58 American Eagle gold coins instead of 61 and 480 silver as opposed to 480 platinum American Eagle Coins listed in the Final Judgment. (Doc. 587). The Receiver makes no showing, much less by clear and convincing evidence, that Davison has or ever had the 3 remaining gold coins or the 480 platinum coins.⁷

Davison believed that the 480 American Eagle Coins he had were platinum and that he had 61 gold American Eagle Coins. (Davison Decl., ¶¶ 6-11, attached as Ex.1). One of the attorney's assisting Davison in the turnover of assets was Gerald Davis, Esq. of Trenam Law. Mr. Davis was present at the turnover of assets at Davison's home on Davis Island on August 31, 2021. (Davis Decl., ¶ 7, attached as Ex.2). Davis's Declaration states in relevant part:

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

⁷ The attachments to the Receiver's Motion suggest that as of the date of the settlement, the **estimated** value of the platinum coins was \$432,000 and the gold coins were worth \$1,470.84 each. (*Id.*, Ex.5, pp.1-2). The Receiver's only potential **evidence** of the value of the coins is in the Declaration of Carlos Lopez who claimed the difference in value of 480 platinum versus silver coins was \$478,000 as of August 31, 2021. (*Id.*, Ex.2, ¶ 5).

box that appeared designed to hold 480 coins, he stated that the coins were silver instead of platinum. Mr. Davison appeared shocked by that statement and indicated he believed he had purchased platinum coins from the Gold & Diamond Source; which I know to be located on Ulmerton Road in Clearwater. I do not recall Mr. Davison ever saying he, “got a really good deal” on the coins or mentioning IDC Coin & Bullion; a competitor of Gold & Diamond Source. I’m familiar with IDC Coin & Bullion and know it also is located on Ulmerton Road in Clearwater.

(Id. at ¶¶ 8-14).

When he prepared his asset list, Davison inadvertently miscounted the number of gold coins he had and believed the 480 coins he had were platinum, not silver. When he prepared the asset list, the 480 coins were in opaque plastic sleeves of 20 coins each, inside a plastic case with slots for the sleeves. Because he believed the coins were platinum, he shook a couple of the sleeves to make sure they were full but did not open them to examine the coins.⁸

The Receiver has offered no proof that Davison ever had the 3 additional gold coins or 480 platinum coins he seeks to obtain by contempt or that Davison has the coins now. Davison has affirmatively declared that he does not have them. As such, there is no record evidence to suggest Davison has the other 3 gold coins or 480 platinum coins. Thus, the performance sought by the Motion is impossible.

The pejorative language about Davison’s alleged actions or inactions in the Motion is not evidence and does not support the relief requested. The Receiver has made numerous mistakes or clerical errors in his Status Reports in this case, including:

⁸ Davison’s Supplemental Declaration is attached as Ex. 3. (*See* Ex. 3, ¶¶ 3-8).

1. Net proceeds from auctions in Hong Kong, Geneva, Las Vegas: Taking the higher report numbers from the watch sales per the Seventh and Ninth Quarterly Report, the net proceeds from the auctions in Hong Kong, Las Vegas, and Geneva auctions were \$7,650,083.11 (Doc. 563, p.16). But the Eighth and Ninth Quarterly Reports state that the net proceeds from those same auctions were \$13,000,000 (Doc. 490, p.4; Doc. 563, p.2); a discrepancy of **\$5,349,916.89**.
2. Sale of Patek Philippe 2497 pink gold watch: The Receiver's Seventh Quarterly Report states that the net proceeds from this sale was \$6,100,000 (Doc. 441, p. 19). The Ninth Quarterly Report states that the net proceeds were \$6,177,308.43 (Doc. 563, p.16); a discrepancy of **\$77,308.43**.
3. Sale of 2019 Rolls Royce Cullinan: The Fourth Quarterly Report lists the net proceeds of this sale as \$75,551.74 (Doc. 265, p.1). But that same report also lists \$31,144.38 in net proceeds (*Id.*, p. 48); a discrepancy of **\$44,407.36**.
4. Sale of 2009 Ferrari 430 Scuderia: The Second Quarterly Report states that the net proceeds from this sale were \$326,856.47 (Doc. 179, p.48). The Final Judgment states that the net proceeds from this sale was \$327,856.47 (Doc. 355-1, p.7); a discrepancy of **\$1,000**.
5. Sale of Patek Philippe 5270G watch: The Seventh Quarterly Report states that the net proceeds were \$1,060,000 (Doc. 441, p.20). The Ninth Quarterly Report

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

6. Sale of 2020 Bentley Convertible GTC V8: The Fourth Quarterly Reports lists net proceeds from this sale as \$45,896.13 (Doc. 265, p.48). But the Final Judgment lists the net proceeds as \$45,994.78; a discrepancy of **\$98.65**.
7. Number of Claim Forms: The Ninth Quarterly Report lists 1900 proof of claim forms (Doc. 563; p.3), and 1800 proof of claim forms (*Id.* at 22).

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

Davison prepared his list of assets at a time when his life, family and business had been turned upside down by these proceedings. (Davison Decl., ¶¶ 3-4). The Receiver asserts that listing 61 gold coins instead of 58 and mistaking silver coins for platinum reflects a depraved mind; yet the Receiver made numerous errors in his Status Reports to this Court even after spending more than \$4,500,000 in Receivership assets on behalf of himself and his Retained Personnel. Application of the standard espoused by the Receiver would require the Court to conclude that the mistakes in the Receiver's Status Reports were intentional deception.

II. LEGAL ARGUMENTS

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

To succeed on a claim for civil contempt, the complainant must show by clear and convincing evidence that (1) the defendant violated a valid and lawful order, (2)

the order was clear and unambiguous, and (3) the defendant had the ability to comply with the order. *Checkers Drive-In Rests. Inc. v. One Hundred Twenty LLC*, Case No. 8:11-CV-2462-T-35-MAP, 2012 WL 13106395, at *1 (M.D. Fla. Jan. 4, 2012) (Scriven, J.) (quoting *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010)). “As the movant, the receiver had the burden to show that the receivership was entitled to the requested relief. . . . however, the receiver did not submit any **evidence** to the district court” *S.E.C. v. Torchia*, 922 F.3d 1307, 1312-13 (11th Cir. 2019) (reversing portions of order approving receiver’s actions) (emphasis added).

In this case, the Receiver’s Motion is long on *ad hominem* argument about Davison’s actions and character and shockingly short on evidence to support the claims made. For example, the Receiver provides no evidence: (a) of the current value of the coins (Doc. 767, p.2); (b) to support the statements allegedly made by Davison during the turnover of assets (*Id.*, p.7); (c) of Davison’s alleged lack of candor regarding the provenance documents for watches turned over (*Id.* and p.8, n.5);⁹ (d) characterizing the absence of evidence of purchase of 480 coins as “misrepresentation” rather than mistake (*Id.*, p.9); (e) that Davison’s ability to comply with the coin turnover is “implicit” in his consent to the negotiated Assignment (*Id.*, p.12); (f) that a “reasonable conclusion” is that Davison’s conduct was willful and intentional, and

⁹ The Motion cites to Doc. 441, pp. 18-19. The reference apparently should be to Doc. 441, pp. 16-17 but those statements are only the Receiver’s assertions in his Seventh Quarterly Status Report and not evidence. If the Receiver claims to have been told that information by watch experts, that is hearsay and the subject of expert testimony; and there is no evidence the Receiver qualifies as a watch expert.

that his representations were fraudulent (*Id.*, p.15); (g) that the difference between the platinum and silver coins “was an intentional misrepresentation” (*Id.*); and (h) that the difference in the coins was “immediately apparent to an informed observer.” (*Id.*, p.16).¹⁰

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

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

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

¹⁰ The Declaration of Carlos Lopez states only that a “coin dealer would not have made a mistake by giving a buyer silver instead of platinum.” (*Id.*, Ex. 2, ¶ 2). The Receiver uses that statement to suggest Davison is an expert or “informed observer” of the difference between silver and platinum coins.

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

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

To enter coercive sanctions for civil contempt, the Court must find that the defendant is continuing to violate a Court order. *See Volk Enters. Inc. v. TNI Packaging Inc.*, Case No. 1:06-CV-318-JTC, 2008 WL 11406010, at *3 (N.D. Ga. Mar. 21, 2008) (citing *Boylan v. Detrio*, 187 F.2d 375, 378 (5th Cir. 1951)).¹¹

Civil-contempt sanctions are coercive if the defendant, “has the ability to control the extent of the sanction and purge himself of the sanction.” *Volk Enters. Inc.*, 2008 WL 11406010, at *3 (citing *Jove Eng'g Inc. v. IRS*, 92 F.3d 1539, 1558–59 (11th Cir. 1996)). Sanctions for past conduct, such as a fine, have no coercive effect and do not constitute civil-contempt sanctions but sanctions for criminal contempt. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828–29 (1994).¹²

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

¹² Criminal-contempt proceedings are criminal proceedings; thus, “criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such proceedings.” *Bagwell*, 512 U.S. at 826 (citations omitted). These protections include the right to proof beyond a reasonable doubt and, for contempt involving

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

C. The Receiver’s Motion Fails to Show Davison Had the Ability to Comply

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

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

imprisonment for more than six months, the right to a jury trial. *See id.* at 826–27 (collecting cases).

dispute, Davison possessed 480 silver coins and 58 gold coins; all of which he turned over to the Receiver.

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

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

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

"[I]nability to comply is a complete defense to a contempt citation." *Newman v. Graddick*, 740 F.2d 1513, 1525 (11th Cir. 1984). "[A] person who attempts with reasonable diligence to comply with a court order should not be held in contempt." *Id.* (citation omitted); *see also Matthews Int'l Corp. v. Lombardi*, Case No. 2:20-CV-89-NR, 2021 WL 1929266, at *2 n.1 (W.D. Pa. May 13, 2021) ("[A] 'good faith mistake' or 'excusable oversight' is relevant to the substantial compliance defense.").

To succeed on an inability-to-comply defense, the defendant must show that he has made “in good faith all reasonable efforts” to meet the terms of the court order. *CFTC v. Wellington Precious Metals Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992). The defendant “must go beyond a mere assertion of inability and satisfy his burden of production on the point by introducing evidence in support of his claim.” *In re Chase & Sanborn Corp.*, 872 F.2d at 400. After the defendant establishes his inability-to-comply defense, the burden shifts back to the complainant to prove the defendant’s ability to comply. *See Wellington Precious Metals*, 950 F.2d at 1529.

In this case, Davison made all reasonable efforts to comply with the Court’s order requiring him to disgorge 480 platinum coins and 61 gold coins. During the scheduled turnover of his assets, Davison gave the Receiver the 480 coins he believed were platinum. Davison also turned over all of his gold coins to the Receiver. (Davison Decl., ¶¶ 9-14). Thus, Davison turned over all property he had and believed complied with the Court’s order. Davison’s mistake about whether his 480 coins were platinum or silver and how many gold coins he had does not suggest, much less prove by clear and convincing evidence, that he did not make all good faith reasonable efforts to comply with the Court’s order.¹³

Davison’s good-faith substantial compliance with the Court’s order defeats the Receiver’s claim for civil contempt. The burden then shifts to the Receiver to prove

¹³ Davison’s efforts to prepare a correct list of assets, the events surrounding the turnover of the coins to the Receiver, and Davison’s subsequent efforts to determine the provenance of the 480 coins are detailed in his Declaration, Ex. 1 and Supplemental Declaration, Ex. 3).

that Mr. Davison had the ability to comply with the Court's order, which the Receiver cannot do. The Receiver has had more than 2 and 1/2 years and has charged the Receivership nearly \$4,500,000 for himself and his Retained Personnel but cannot present any evidence that Davison ever had more than the 58 gold coins and the boxed set of 480 silver coins he turned over. Davison's good-faith efforts to comply with the Court's order defeat the Receiver's motion for civil contempt.¹⁴

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

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

If the Receiver can prove civil contempt by clear and convincing evidence, he can seek to recover actual damages as a result of the alleged contempt. The Receiver will not succeed because he cannot prove actual damages suffered because Davison has fully satisfied the SEC's \$27,013,060 money judgment. The Receiver's original Motion for An Order to Show Cause recognized that the purpose of the Final

¹⁴ The Receiver's glib suggestion that Davison cannot show impossibility of performance because he “could purchase 480 platinum coins and turn them over to the Receiver” (Doc. 767, p.14), flies in the face of the Court's order freezing Davison's assets and the Receiver's knowledge that Davison has no source of funds to purchase 480 platinum coins.

Judgment ordering Davison to disgorge 480 platinum coins and 61 gold coins is to satisfy the \$27,013,060 judgment. *See* (Doc. 587 at 4) (“In order to satisfy this [\$27,013,060 judgment] obligation[,] Davison was directed to deliver specified assets to the Receiver, including the Platinum Coins.”).

Because Davison satisfied the \$27,013,060 judgment by the turnover of assets, the Receiver cannot prove that he has suffered actual damages by Davison’s failure to turn over coins he never possessed.

F. Civil Contempt Cannot be Used to Collect Damages.

The Receiver cannot recover actual damages because his request for relief is really an attempt to collect on a final judgment that has been satisfied. The Receiver asks the Court to find Davison in contempt and direct “that \$511,000 of the funds held in frozen accounts that were to be retained by Davison be transferred to the Receiver.” (Doc. 767 at 7). The Receiver fails to point to any actual damages he suffered as a result of Davison’s mistakes with respect to his coin collections.

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

The *Brown* decision demonstrates the distinction between contempt damages and collection of a money judgment. In that case, the parties entered into a settlement agreement for claims under the Fair Labor Standards Act (FLSA). *Id.* at *1. The Court

approved the settlement, entered partial judgments on the FLSA claims and awarded the plaintiffs attorney's fees and costs the Court would later determine. *Id.* Shortly after, the Court entered an order awarding the plaintiffs \$68,204.50 in attorney's fees and \$560 in costs. *Id.* But the order did not specify when the fees and costs were due; nor did the order amend the partial judgments to reflect the attorney's fees and costs awarded. *Id.*

After defendants failed to pay the plaintiffs' attorney's fees and costs, the plaintiffs moved for an order finding the defendants in contempt. *Id.* at *2. The Court denied the plaintiffs' motion because the order awarding attorney's fees did not specify when the defendants had to pay the awards. *Id.* The Court also concluded that, to the extent the plaintiffs sought to collect a final money judgment for attorney's fees, civil contempt was the wrong avenue for seeking such relief. *Id.*¹⁵

G. The Court Should Reject the Receiver's Attempt to Extract Additional Assets from Davison

The Court has "broad authority in supervising an equity receivership and determining the appropriate actions to be taken in the administration of the receivership." (Receiver's Motion, Doc. 767, p.10) (citing *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)). The Receiver is an officer of the court who acts under

¹⁵ Under Eleventh Circuit precedent, a writ of execution—not civil contempt—was the proper remedy for collecting a money judgment. *Id.* Just as plaintiffs sought to collect on a money judgment for attorney's fees through contempt proceedings in *Brown*, the Receiver seeks to collect on the \$27,013,060 judgment in this case through contempt proceedings; despite Davison having satisfied the \$27,013,060 judgment.

supervision of the court, “for the court must independently approve the Receiver’s legal and factual findings.” *Id.* at 1577 (citations omitted).

In this case, where a receiver was appointed based on an alleged Ponzi scheme that raised \$170 million from investors, and after three years of running the business and charging \$4.5 million to do so, the receiver has more than \$206 million in assets, the Court should exercise that broad authority to reject the Receiver’s attempt to extract additional assets from Davion.

The Receiver’s request that “Davison should be subject to an appropriate fine for his conduct and the payment of the Receiver’s costs and attorney’s fees in bringing the original and renewed motions” and that “should Davison fail to cure his contempt he should be subject to a continuing fine and/or imprisonment until his contempt is cured” (Doc. 767, p.18); is overreach on a stunning scale and would necessarily turn the Motion into a criminal contempt proceeding giving Davison the right to a jury trial.

III. CONCLUSION

Davison requests that the Court deny the Receiver’s Motion (Doc. 767). If the Court intends to set a hearing on the Receiver’s Motion, it should be set concurrently with a hearing on Davison’s Motion (Doc. 768).

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 31st day of January 2023.

/s/ Stanley T. Padgett
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Co-Counsel for Defendant,
Brian Davison

DECLARATION OF BRIAN DAVISON

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

1. I am over the age of 18 and have personal knowledge of the facts stated in this Declaration.
2. I am one of the named defendants in the case styled SEC v. Brian Davison et al., Case No. 8:20-CV-325-T-35AEP.
3. When I learned about the case, it turned my world upside down. Throughout its existence, EquiAlt regularly obtained legal advice from top-notch law firms and I believed EquiAlt operated lawfully and fully compliant.
4. I was shocked to be locked out of my office and my business, have my assets frozen and my primary personal computer taken from me. The backup computer I retained was only intermittently connected to the internet so there were substantial gaps in data.
5. I did my best under those circumstances to create a complete list of assets, including my coin and watch collection which I had been collecting since 2013, even though I did not have access to any of the records kept on my primary personal computer or in EquiAlt's offices.
6. The coins I collected typically came in individual plastic sleeves or collectively in plastic rolls.

7. When I attempted to count the gold coins, I came up with 61. After I learned of this case I never sold, transferred, concealed, or gave away any of my gold coins.
8. When I looked at the 480 coins to put them on the asset list, they were in a plastic U.S. mint box that contained slots for rolls of coins. The U.S. mint box was slightly longer and narrower than a shoebox and was inside a cardboard box.
9. I opened the cardboard box, opened the U.S. mint box, and counted the number of slots of rolls of 20 coins and determined there were 480 coins.
10. I believed the coins were platinum, not silver.
11. I have never owned any other set of 480 coins. After I learned of this case I never sold, transferred, concealed, or gave away any set of 480 coins.
12. Many of my assets were turned over to the Receiver on August 31, 2021, at my home located at 128 Biscayne Avenue, Tampa, Florida 33606.
13. The turnover began with my placing the coin collection, including the gold coins and the 480 boxed coins, on the granite countertop in the kitchen.
14. I watched as a representative of the Receiver examined and counted the coins.
15. When the Receiver's representative counted the American Eagle gold coins, he found only 58 gold coins.

16. I was shocked when the Receiver's representative examined the box holding the 480 coins and stated that the coins were silver instead of platinum.

17. I had made purchases of coins through International Diamond Center, Inc. (IDC) located on Ulmerton Road in Clearwater and thought I may have bought the set of 480 coins from IDC.

18. On or about November 28, 2022, IDC produced certain documents related to my coin purchases pursuant to Subpoena, copies of which are attached as Ex.1. The IDC records do not reflect a purchase of 480 silver or platinum coins.

19. Since the filing of the Receiver's Motion for Order to Show Cause (Doc. 587), I have reviewed all of the personal credit card statements in my possession, including Citi Credit Card accounts ending in 4515 and 2484 for the period 2/2016-12/2020; Barclay Credit Card accounts ending in 7484, 9129, 6688 and 8425 for the period from 12/2013-4/20/19; and Barclay Black Card accounts ending in 5512, 4167, 3138, 1975, 4966, 1979, 2868 and 8991 for the period from 9/2014-2/2020.

20. Since the filing of the Receiver's Motion for Order to Show Cause (Doc. 587), I also reviewed bank records recently provided by the SEC for my personal account at Chase ending in 8545 for the period 2/2103-1/2020; for the EquiAlt/McDonald Trust accounts at Bank of America ending in 0138 and

5514 for the period 3/2013-10/2019; and for the EquiAlt account at Wells Fargo ending in 1052 for the period 2/2014-12/2019.

21. In reviewing the credit card and bank statements, I was not able to locate a charge, check or wire transfer that would correspond to the purchase of either 480 silver or platinum coins.

22. I do not recall where I got the boxed set of 480 American Eagle coins, so I do not know where or when I bought them or at what price and have exhausted all avenues available to me to obtain records of the purchase.

23. I have never owned any boxed set of 480 coins other than the one I turned over to the Receiver on August 31, 2021.

I DECLARE under penalty of perjury that the foregoing is true and correct and is executed on January 17, 2023.

DocuSigned by:
Brian Davison
E4BE45D98D41FC
Brian Davison

EXHIBIT 1

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

UNITED STATES DISTRICT COURT

for the Middle District of Florida

DA 26189 11/23/22

Securities and Exchange Commission

Plaintiff

v.

Brian Davison, et al.

Defendant

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

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

To: International Diamond Center, LLC

(Name of person to whom this subpoena is directed)

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

See Exhibit A

Table with 2 columns: Place (Padgett Law, P.A., 201 E. Kennedy Blvd, #600, Tampa, FL 33602) and Date and Time (12/05/2022 10:00 am)

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

Table with 2 columns: Place and Date and Time (both empty)

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

Date: 11/22/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Stanley T. Padgett, Esq.

Attorney's signature

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

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

Notice to the person who issues or requests this subpoena

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

**BUSINESS RECORDS
CERTIFICATE OF AUTHENTICITY**

I, Chad Masters, am employed by

KMA Sunbelt trading Corp cab@shopidc.com

3696 Ulmerton Rd Clearwater, FL 33762 727-573-2313

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

My official title is Coin Manager

I am familiar with the type of documents and records received, created, and

relied upon by KMA Sunbelt Trading
(name of business entity)

in the ordinary course of its business.

List Documents

I further certify that:

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

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


SIGNATURE

11/28/22
DATE

KMA Sunbelt Trading Corp

3696 Ulmerton Road
 Clearwater, FL 33762
 (727) 572 - 6323

Bill To :
 BRIAN DAVISON
 128 BISCAYNE AVE
 TAMPA, FL 33606
 Phone :

Sales Receipt

Customer # : 1100022077



Sales Receipt #		Date	Time	Salesperson	
KMA-106693		02/10/2017	05:14 PM	Coin	
Item #	Description	Qty	Price	Discount Amount/Code	Amount
COINK05	1 oz American Gold Eagles Spot \$1235.00	65.00	\$1,293.00		\$84,045.00
*** Payment(s) ***					
Pay Code	Pay Date	Pay Amount			
WIRE	02/10/2017	\$84,045.00			
Subtotal:					\$84,045.00
Sales Tax:					\$0.00
Total:					\$84,045.00
Total Paid:					\$84,045.00
Balance:					\$0.00

International Diamond Center 19
 10330 North Dale Mabry Hwy. Suite 110
 Tampa, FL 33618
 (813) 961 - 0097

Bill To :
BRIAN DAVISON
 128 BISCAYNE AVE
 TAMPA, FL 33606
 Phone : 7025758166

Sales Receipt

Customer # : 1100022077



Sales Receipt #		Date	Time	Salesperson		
K19-105825		08/16/2015	12:55 PM	Coin		
Item #	Description	Qty	Price	Discount Amount/Code	Amount	
S982107060	2pcs 1 oz Gold Mapl Leaf - spot 1116.00 - 1177 each	1.00	\$2,354.00		\$2,354.00	
	2pcs 1 oz Gold Mapl Leaf - spot 1116.00 - 1177 each					
*** Payment(s) ***						
Pay Code	Pay Date	Pay Amount				
CASH	08/13/2015	\$2,354.00				
					Subtotal:	\$2,354.00
					Sales Tax:	\$0.00
					Total:	\$2,354.00
					Total Paid:	\$2,354.00
					Balance:	\$0.00

KMA Sunbelt Trading Corp

3696 Ulmerton Road
 Clearwater, FL 33762
 (727) 572 - 6323

Bill To :
 BRIAN DAVISON
 128 BISCAYNE AVE
 TAMPA, FL 33606
 Phone :

Sales Receipt

Customer # : 1100022077



Sales Receipt #		Date	Time	Salesperson	
KMA-105907		07/14/2016	01:02 PM	Coin	
Item #	Description	Qty	Price	Discount Amount/Code	Amount
S982107914	1oz American Gold Eagles Spot \$1366	10.00	\$1,470.84		\$14,708.40
*** Payment(s) ***					
Pay Code	Pay Date	Pay Amount			
MC	07/06/2016	\$14,708.40			
				Subtotal:	\$14,708.40
				Sales Tax:	\$0.00
				Total:	\$14,708.40
				Total Paid:	\$14,708.40
				Balance:	\$0.00

KMA Sunbelt Trading Corp
 3696 Ulmerton Road
 Clearwater, FL 33762
 (727) 572 - 6323

Bill To :
 FUN SHOW 2017
 FORT LAUDERDALE, FL
 U.S.A.
 Phone :

Sales Receipt

Customer # : 1100029289



Sales Receipt #		Date	Time	Salesperson	
KMA-106625		01/04/2017	10:20 AM	Coin	
Item #	Description	Qty	Price	Discount Amount/Code	Amount
COINK05	1 oz Isle of Mann Platinum Nobles Brian Davison #9479	62.00	\$984.00		\$61,008.00
*** Payment(s) ***					
Pay Code	Pay Date	Pay Amount			
WIRE	01/12/2017	\$61,008.00			
Subtotal:					\$61,008.00
Sales Tax:					\$0.00
Total:					\$61,008.00
Total Paid:					\$61,008.00
Balance:					\$0.00

DECLARATION OF GERALD D. DAVIS, ESQ.

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

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

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

15. During the asset turnover meeting on August 31, 2021, I asked Mr. Wiand and/or his counsel/agents about turning over to Mr. Davison the assets he was entitled to retain under the Final Judgment.

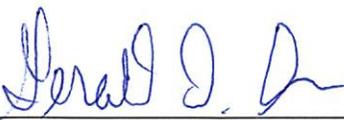
16. They demanded that Mr. Davison's counsel prepare the deed to turn over his home located 128 Biscayne Avenue, Tampa, Florida 33606 to the Receiver which I did and the executed original deed was provided to the Receiver at the asset turnover meeting on August 31, 2021.

17. The Receiver's counsel agreed to prepare the documents necessary for the Receiver to turn over to Mr. Davison the assets he was entitled to retain.

18. Despite that agreement, they failed to provide any such documents and since that time have demanded that Mr. Davison's counsel prepare those documents; a requirement absent from the Final Judgment.

19. My law firm Trenam Law ended up drafting the transfer documents on the brewery interests Mr. Davison was entitled to retain under the Final Judgment at considerable expense to Mr. Davison.

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



Gerald D. Davis

SUPPLEMENTAL DECLARATION OF BRIAN DAVISON

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

1. I am over the age of 18 and have personal knowledge of the facts stated in this Supplemental Declaration.
2. I am one of the named defendants in the case styled SEC v. Brian Davison et al., Case No. 8:20-CV-325-T-35AEP.
3. When I attempted to create an asset list, I opened the safe in my garage and pulled everything out.
4. The 480 coins were in a plastic box similar to the one shown on the attached Ex. 1. The plastic box was inside a cardboard box. I opened the top of the cardboard box. I took off the plastic lid and looked inside. I did not remove the plastic box from the cardboard box.
5. The coins inside the plastic box were in opaque sleeves of 20 coins similar to the sleeve shown on the attached Ex. 2.
6. I opened the plastic box, pulled out a couple of sleeves of the coins and shook them to make sure they were full.
7. I counted the number of sleeves, multiplied by 20 and came up with 480 coins.
8. I believed I had platinum coins so I did not open the opaque sleeves to check.

I **DECLARE** under penalty of perjury that the foregoing is true and correct
and is executed on January 31, 2023.

DocuSigned by:

Brian Davison

EXHIBIT 1



EXHIBIT 2

