UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:20-CV-325-T-35-NHA

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

Defendants, and

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

Relief Defendants.
_____/

RECEIVER'S OPPOSITION TO BRIAN DAVISON'S MOTION TO STRIKE

Comes now the Receiver Burton W. Wiand and files this Opposition to Defendant Brian Davison's Motion to Strike Receiver's Response to Court's Order as an Unauthorized Reply ("**Motion to Strike**") (Doc. 1380).

On October 16, 2025, the Court requested the parties "to advise the Court whether and to what extent the sale of the silver coins was intended as a resolution of the outstanding motions." (Doc. 1367) The Receiver filed his

response to the Court's request on October 28, 2025. (Doc. 1373) ("**Receiver's Response**") Mr. Davison did not file any response to the Court's Order. Rather, Mr. Davison filed a Motion to Strike the Receiver's response as "an unauthorized reply."

Davison's motion (1) seeks to strike the submission by the Receiver without any legal basis, (2) makes baseless arguments regarding the expenses of the Receivership that Davison lacks standing to assert, (3) falsely asserts that the massive fraudulent scheme orchestrated by Davison was not a Ponzi scheme, (4) seeks to undermine the outstanding work done by the Receiver, and (5) incorrectly states that Davison's victims (over 1,600 claims) have received all of their money back. The filing is a baseless ad hominem attack on the Receiver and his dedicated team by the perpetrator of one of the largest frauds in Tampa's history.

I. The Receiver's Response is Not a Pleading and Thus Not Subject to a Rule 12(f) Motion to Strike.

Davison does not reference any basis for the motion to strike. Indeed, there is none. Presumably, the motion is based on Rule 12(f). However, Rule 12(f) applies only to pleadings. Pursuant to Federal Rule 7, the only allowed pleadings are a complaint, an answer to a complaint, an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an answer to a third-party complaint, and if the Court allows, a reply to an answer. The

response requested by the Court and filed by the Receiver is not a pleading and therefore is not subject to a motion to strike under Rule 12(f). *See Centennial Bank v. ServisFirst Bank, Inc.*, 2018 WL 11354042, at *2 (M.D. Fla. Dec. 18, 2018); *Feingold v. Budner*, 2008 WL 46100311, at *3 (S.D. Fla. Oct. 10, 2008).

II. The Receiver's Response is Relevant, Material and Not Prejudicial.

Even if Rule 12(f) applied to the Receiver's Response, the substance of the response is proper and not subject to being struck. First and foremost, a motion to strike is a drastic remedy and is disfavored by the courts. *Schmidt v. Life Ins. Co. of N. Am.,* 289 F.R.D. 357, 358 (M.D. Fla. 2012). Under Rule 12(f), a motion to strike is meant to "clean up pleadings, streamline litigation and avoid unnecessary forays into immaterial matters." *Hutchings v. Federal Ins. Co.*, 2008 WL 4186994, at *2 (M.D. Fla. Sept 8, 2008). A court will not entertain a motion to strike unless "the objectionable matter clearly is irrelevant and prejudicial to the moving party." *Allstate Ins. Co. v. Meek*, 2020 WL 2114613, at *2 (M.D. Fla. May 4, 2020).

In this case, there are a number of pending motions that are specifically related to Davison's deficient turnover of assets and the continued asset freeze over the Merrill Lynch accounts.[1] The Receiver's Response is material and

[1] *See* Docs. 767, 768, 1302, and 1304.

relevant to not only the Court's question to the parties but also to each of these pending motions and thus should not be struck under the relevant caselaw.

III. Davison's Motion to Strike is an Untimely Objection to the Receiver's Fees.

At the heart of Mr. Davison's motion is not a request to strike but rather a tirade regarding the fees approved by this Court for the services provided by the Receiver and his team of professionals. The Court appointed the Receiver pursuant to a lengthy and detailed Order, which sets forth not only the powers vested in the Receiver but also the duties and obligations imposed on the Receiver. (Doc. 11) ("**Appointing Order**") Pursuant to the Appointing Order, the Receiver is required to submit quarterly fee applications that comply with the billing instructions provided by the SEC. Each fee application is submitted to the SEC for its review and any objections.[2] Thereafter, the Receiver files the fee application with the Court.

Any party with standing and a valid interest in the Receivership estate has fourteen days to object to each fee application. On only one occasion did Mr. Davison object to the Receiver's fees. On May 20, 2020, Davison filed a response to the Receiver's initial fee application. (Doc. 97) In that response, Davison requested that the Receiver submit a budget, that the Court impose a

[2] The Receiver has submitted twenty-three fee applications. The SEC has not objected to any of the invoices submitted by the Receiver or his professionals.

cap on fees and expenses, and that the Court impose a 20% holdback on fees. *Id.* A hearing was held on the motion, and the Court ultimately determined to impose a 20% holdback on fees for the Receiver and his lead counsel – the law firm of Wiand Guerra King P.A. That holdback was imposed for the first three quarters of this Receivership (*i.e.*, for work from February to September 2020), resulting in a reserve of $38,383.20 in Receiver fees and $95,228.15 in legal fees. Five years later, the Court has still not ordered the release of these escrowed fees.

Other than this one objection, neither Mr. Davison nor any interested party, has objected to any fee application submitted by the Receiver. Each of the fee applications[3] have been the subject of extensive Reports and Recommendations by the appropriate magistrate and then ultimately approved by this Court. Davison's current objections, years after the Court's approval of the Receiver's fees, are baseless and untimely.[4]

[3] The Twenty-Third Motion for Fees is still pending.

[4] Davison has no standing to object in this case. He never filed a claim against the Receivership (nor could he). *See S.E.C. v. Nadel*, 2012 WL 12910648, at *2 (objector had no standing as he was not aggrieved and had no financial stake). Further, he has been dismissed from the case. Pursuant to the Court's Judgment, he relinquished "all legal and equitable right, title and interest in the property and assets ('Funds')" he turned over and "no part of the Funds shall be returned to him." Doc. 355-1 at 9.

EquiAlt's aggrieved investors have not objected to the fees submitted by the Receiver and his team. Rather, numerous investors have reached out to the Receiver to voice their approval and appreciation for the work he and his team have accomplished.

IV. The Success of the Receivership Has More Than Substantiated the Fees Approved in this Case

As this Court is well aware, it is very rare for the defrauded investors in a Ponzi scheme to recover a large percentage of their investment, much less 107% of the Court's allowed amounts.[5] *See Winston & Strawn LLP v. F.D.I.C.*, 894 F. Supp. 2d 115, 117-18 (D.D.C. 2012)(receivership surplus is a rarity). The Receiver and his team, including the attorneys at Johnson Pope and investors' counsel who negotiated the settlement with DLA Piper and Fox Rothschild, have worked tirelessly and diligently for the benefit of the investors and other creditors in this case. For example, through the case against the law firms, the Receiver added over $34 million to the distribution pot. Additionally, the Receiver negotiated an advantageous agreement with Sotheby's to auction the watches turned over by Messrs. Davison and Rybicki, benefiting the investors with over $18 million in proceeds from watches and jewelry. Another example of the Receiver's efforts was the negotiation of the purchase of a parcel of

[5] *See* Motion to Approve Third Distribution (Doc. 1326) at 7.

commercial land in downtown St. Petersburg to complete a contiguous multi-parcel sale of land resulting in proceeds of over $20 million to the Receivership.

Cumulative disbursements to the Receiver and his team through September 2025 are $6,815,705.42, just 4.2% of the total recovery to date in this case.[6] The fees paid to the Receiver are less than one percent. Since inception, the Receivership has collected $7,240,160.71 in interest and dividend income. Doc. 1378-1 at 5. Thus, in addition to paying more than 100% of the investors' allowed amounts, the Receivership has covered its costs through interest received.

Although the investors have received approximately 107% of their allowed amounts (with more to come), the Court should not be lulled into Mr. Davison's argument that the investors have been made whole because they have not. The allowed amounts in this case were based on the invested dollars less any distributions received by the investors. However, these investors were promised returns of 8-10-12% by Messrs. Davison and Rybicki. The investors will never see all of the money that Davison promised with his fraudulent debentures. *See* Motion to Approve Third Distribution (Doc. 1326) at 20 (under proposed interest calculation, investors still owed $58 million) Despite the

[6] Additionally, the Court approved payments of $9,586,869.46 to the attorneys who brought the cases against DLA Piper and Fox Rothschild which resulted in a net gain to the Receivership of over $34 million.

incredible work of the Receiver to undo the damage cause by Davison's perfidy, the investors will never recover these returns.

Further, since the inception of this case until the first Court-approved distributions were paid in the fall of 2023, these investors received no monies on their investments. Many of the investors were retirees living on fixed incomes and relied upon these fraudulent returns. Davison's insinuation that he is blameless because the Receiver has returned a large amount of money to those Davison defrauded is specious. If a bank robber is arrested outside the bank and the police recover the stolen money, the robber is not blameless. For Mr. Davison to now argue that these people have been made whole is shameful.

V. Receiver's Fees are Reasonable and Appropriate

When the SEC filed this action against Mr. Davison in February 2020, the SEC requested that the Court appoint a receiver over the assets of the corporate entities involved. To that end, the SEC submitted three candidates for appointment. Each of the receiver candidates submitted proposals to the SEC regarding their fees for both the Receiver and their proposed professionals. As noted in Mr. Wiand's submission and the SEC's Motion to Appoint Receiver (Doc. 6), Mr. Wiand discounted his $500 hourly rate by 30% to a capped rate of $360/hour. Similarly, partner rates were capped at $350/hour (discounted from as high as $475/hour) and associate rates were

capped at $240/hour, discounted from as high as $290/hour.[7] In addition to these discounts, neither the Receiver nor his professionals have requested an increase in these rates since this case was instituted almost six years ago. These rates pale in comparison to Mr. Davison's counsel's rates: partners - $550-$1,350; counsel - $450-$925; associates - $335-$565; and paralegals - $320-$350. Doc. 795-1. Mr. Davison's lead counsel from February 2020 to August 2021, Howard Fischer, charged $730/hour while co-counsel Kent Kolbig charged $765/hour. Doc. 765 at 4.

VI. Davison's Request for Court "Intervention" is Redundant and Unnecessary

Although the Motion at issue is styled a Motion to Strike, Davison is actually seeking the Court's "intervention" over the Receivership. Clearly, Davison does not understand that the Receiver acts as an officer of the Court, operates at the behest of the Court, and is subject ***at all times*** to the supervision and authority of the Court. To that end, the Receiver submits quarterly status reports to the Court informing the Court of the Receiver's activities during that quarter. Further, pursuant to the Appointing Order, the Receiver must provide his "recommendations to the Court for the continuation or discontinuation of the receivership and the reasons for the

[7] As noted by the Court in ruling on the Receiver's fee applications, the rates submitted for legal services was below market rates. *See, e.g.* Doc. 141 at 14.

recommendations." Doc. 11 at ¶ 29.G. In each of his quarterly reports, the Receiver has provided this information as he continues to work for the benefit of the aggrieved investors in this case. Further, as required by the Appointing Order, the Receiver has sought and received the approval of this Court for the liquidation of the assets contained in the Receivership Estate, including over 300 properties, 70+ watches, numerous vehicles and other miscellaneous items.

In addition to the quarterly status reports, the Receiver and his team submit quarterly fee applications, including detailed invoices for this Court's review and approval.[8] Also attached to the Receiver's quarterly reports and fee applications is the Fund Accounting Report required by the SEC and the Court. This report provides quarterly and year-to-date information regarding the finances of the receivership.

VII. Davison's Lack of Remorse and His Continued Attacks on the Receiver and the Receivership

Rather than accept responsibility for the fraud in this case or even the tax fraud to which he pled guilty, Davison has instead chosen to attack the Receiver and the Receivership. Even at his sentencing, the Court noted

[8] Davison's request for a chart of fees charged seems superfluous considering that Davison attaches such information to his motion. However, the Receiver is not attesting to the accuracy of Mr. Davison's information, particularly the information related to the holdback.

Davison's failure to address his crime, instead speaking at length regarding the impact of the SEC's case on him and his family. Since the sentencing and prior to reporting to prison, Mr. Davison recorded a podcast with espoused con-man Matthew Cox wherein he brags about building his fraudulent empire (*i.e.*, EquiAlt). He even discusses how he financed his purchase of the $2.4 million Pagani automobile, not once acknowledging the $30+ million (including money he paid for the Pagani) he pilfered from the company to the detriment of the investors.[9] He has also founded a company, FounderVelocity, which "equips fund managers and capital raisers with the defensive systems they wish they'd had before the audit, the subpoena, or the raid." *See* foundervelocity.com and brianddavison.com.[10] Although Davison purports to have moved on from this episode in his life, he continues to undercut the Receiver and his efforts whenever he can as discussed more fully in the Receiver's Response which Davison is seeking to strike.

[9] Pursuant to 17 C.F.R. 202.5(e) and the Consent to Judgment executed by Mr. Davison (Doc. 353-2), Davison is not permitted to deny the allegations made against him by the SEC and that a refusal to admit the allegations is equivalent to a denial. Despite this prohibition, he brags about his real estate prowess and the "empire" he built.

[10] The website references a forthcoming book by Davison, "*Ponzified, a Private Field Manual for Those Building in Today's High-Risk, High-Compliance Climate*."

VIII. The Receiver Requests Fees for Davison's Vexatious and Malicious Motion.

This Court has the authority under 28 U.S.C. §1927 to order an attorney who "multiplies the proceedings in any case unreasonably and vexatiously" to personally satisfy the costs and attorney's fees incurred because of such conduct.[11] In order to meet the standard for sanctions under this statute, the Receiver must show objective bad faith on the part of Davison's counsel, showing that counsel acted knowingly or recklessly. *See Hyde v. Irish*, 962 F.3d 1306, 1310 (11th Cir. 2020). An attorney's conduct is unreasonable and vexatious when the conduct is so egregious "that it is tantamount to bad faith." *See Long v. Westgate Resorts, Ltd.*, 2025 WL 2144669, at *5 (M.D. Fla. July 28, 2025)(citing *Amlong & Amlong, P.A. v. Denny's, Inc.*, 500 F.3d 1230, 1239)(11th Cir. 2007)). In this case, such bad faith is apparent. Davison failed to provide any legal basis for his motion to strike but then used the "motion" to assail the character of the Receiver and the fees approved by this Court necessitating a response by the Receiver. Further, the timing of the "motion" and Davison's efforts to strike the Receiver's Response are telling given the Receiver's revelation about the depth, extent and devious nature of Davison's dishonesty. Such conduct should not be tolerated by this Court.

[11] Additionally, this Court can grant sanctions under its inherent authority.

CONCLUSION

Based on the clear language of Rule 12(f) and Davison's failure to prove any valid basis to strike the Receiver's Response, the Receiver respectfully requests that the Court deny Mr. Davison's frivolous and vexatious motion to strike and assess the fees and costs associated with the motion against Mr. Davison and his counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 26, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system

s/ Jared J. Perez
Jared J. Perez, FBN 0085192