UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION,
Plaintiff,
v.

Case No. 8:19-CV-886-T-33SPF

OASIS INTERNATIONAL GROUP, LIMITED; OASIS MANAGEMENT, LLC; SATELLITE HOLDINGS COMPANY; MICHAEL J. DACORTA; JOSEPH S. ANILE, II.; RAYMOND P MONTIE III; FRANCISCO "FRANK" L. DURAN; and JOHN J. HAAS,

Defendants,

and
FUND AMDINISTRATION, INC.; BOWLING GREEN CAPITAL MANAGEMENT LLC; LAGOON INVESTMENTS, INC.; ROAR OF THE LION FITNESS, LLC; 444 GULF OF MEXICO DRIVE, LLC; 4064 FOUNDERS CLUB DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE, LLC; and 4 OAKS LLC,

Relief Defendants.

SUR-REPLY TO RECEIVER'S REPLY FOR MOTION FOR ORDER TO SHOW CAUSE.

STEPHEN PREZIOSI IS NOT COUNSEL OF RECORD FOR DACORTA IN THE CIVIL CASE IN THE U.S. DISTRICT COURT AND IS EXCLUSIVELY APPELLATE COUNSEL TO MR. DACORTA.

Mr. Wiand asserts that I am the attorney of record in the case that was decided by this Court under Case Number 8:19-cv-886. He is wrong. The only reason I made a motion *pro hac vice* to be admitted to this case was to answer Mr. Wiand's motion for contempt on the subpoena that he served in 2024. My motion *pro hac vice* was made immediately after Mr. Wiand filed a motion to hold me in contempt of his subpoena. I even called Mr. Wiand and spoke to him about this and his subpoena, and I told him over the phone that I would be contesting his subpoena because the documents he sought were protected by attorney client privilege. I called Mr. Wiand and discussed this with him, and he is personally aware that the only reason that I appeared in this case is to contest his subpoena.

In fact, I spoke with Mr. Wiand by phone on July 11, 2024 by and informed him that I was filing a motion to quash/modify his subpoena. I am including the letter, which was a follow-up to our phone call that I sent to Mr. Wiand on July 11, 2024 regarding his subpoena. (Exhibit A – letter to Mr. Wiand dated July 11, 2024). Mr. Wiand, knowing that I was appearing only for the purpose of contesting the subpoena, did not oppose my motion for special admission. (Exhibit B – unopposed motion for special admission dated July 17, 2024). The motion for special admission was filed the week after I spoke with Mr. Wiand on the phone and he agreed to my special admission to this Court for the sole purpose of contesting the subpoena.

Mr. Wiand's assertions that I am counsel to DaCorta on this case is also absurd because my motion for special admission was filed after motions for summary judgment were decided and the case closed. As Mr. DaCorta's appellate counsel, why would I move to become counsel in the lower court on a closed case? This Court decided the motion for summary judgment on December 3, 2023, and the case was decided and closed, a full seven months before my motion *pro hac vice*. (See Wiand's Reply Doc. 919 pg. 1 "*the Court granted Preziosi's motion to appear in this action pro hac vice almost two years ago on July 24, 2024.*") There is no other reason that I would appear in a case that was decided and closed in December of 2023, other than to contest Mr. Wiand's subpoena.

It is no coincidence that the motion pro hac vice coincides in time with Mr. Wiand's subpoena and after this case was decided and closed. Mr. Wiand's assertion that I am counsel to Mr. DaCorta at the District Court level makes absolutely no sense for several reasons. First, I am an appellate lawyer. My practice is exclusively in the area of appeals and habeas petitions. Second, the case was decided and closed in December of 2023. Why would I enter on a closed case? Third, my *pro hac vice* motion coincides in time with Wiand's filing of the subpoena and service on me in New York City. [1]

[1] It should be noted that Mr. Wiand was unable to serve the subpoena on me and that I reached out to his process server who was unable to gain entrance into my office building in New York City. I made arrangements to personally meet with Wiand's process server to accept the subpoena, otherwise Wiand would have been unable to serve the subpoena on me.

Mr. Wiand makes misrepresentation after misrepresentation to this Court. He agreed to my pro hoc vice motion only to contest the subpoena and now he attempts to turn this to his advantage by misrepresenting the purpose of my appearance before this Court. For example, concerning the subpoena, Mr. Wiand asserts in his Reply (Doc. 919 pg. 2 and in Doc. 828 pgs. 22-23 that "*While Mr. Preziosi has not clarified the source of his funding, he was clearly recruited by Winters and the Oasis Helpers, including an individual named Greg Mellick.*"). This is absolutely false. I provided Mr. Wiand with the source of payments upon receiving his subpoena and spoke to him over the phone about it on July 11, 2024. (See Exhibit A – Letter to Wiand concerning the subpoena and information provided to him, including the payments made to my firm for the appeal). Mr. Wiand's assertions to this Court are, again, false and misleading. He had this information in his possession when he made this false representation to this Court that I have not clarified the source of the funding. This is a deliberate and false representation, especially when Mr. Wiand had this information in his possession already. Mr. Wiand now doubles down in his Reply in this motion sequence and still falsely asserts that I did not provide this information.

In short, as the record before this Court reflects, I have not represented Mr. DaCorta at the District Court level in any capacity and my appearance, as evidenced by the documents filed with this Court and my communications with Mr. Wiand, was exclusively to contest the subpoena issued by Mr. Wiand.

MR. WIAND'S ASSERTIONS THAT STEPHEN PREZIOSI HAS ANY KNOWLEDGE OR ASSOCIATION WITH OASIS HELPERS IS FALSE, MISLEADING, AND THERE IS NO EVIDENCE TO SUGGEST OTHERWISE.

Mr. Wiand's assertions that I am associated or had knowledge of the actions of the "Oasis Helpers" is completely false and without evidence or basis. While Mr. Wiand hopes to weave truth from mere repetition into his legal arguments, he has not produced even one credible piece of evidence to show that there is any connection or communication between myself and the Oasis Helpers regarding the alleged interference with the Receivership.

First, it should be noted that Mr. Wiand has completely changed his argument from his initial motion for an order to show cause where he argued the following: *Unlike Winters and the Helpers Group, Preziosi was not involved in the claims process to the best of the Receiver's knowledge. The Receiver has not identified any communications between Preziosi and victim-investors, and Preziosi has produced competent legal work...* (Doc904 pg. 21). He has now made a full 180° turn in his Reply and argues that my communications show "active concert and participation" and that I am somehow stealing money from investors. (Doc. 919 pgs. 6-7). The chasm between "no communications identified between Preziosi and investors and Preziosi has produced competent legal work" to "Preziosi refuses to divulge communications and is somehow stealing from investors" is quite a leap. While it is not entirely clear which argument Mr. Wiand is making, I will attempt to address all of them.

The Only Communications Referenced In this Case: Emails Already Inspected In SDNY

It should also be noted that Mr. Wiand's assertions that I refused to produce communications with the Oasis Helpers (Doc. 919 pg. 2 and Doc. 828 pgs. 22-23) is false. Mr. Wiand writes "*Mr. Preziosi has refused to produce communications with the Oasis Helpers or other documents relating to the funding of the appeal and his engagement.*"

All of the documents– as I told Mr. Wiand over the phone on July 11, 2024 – fell within the attorney-client privilege. This was confirmed by United States District Court Judge Analisa Torres of the Southern District of New York where the issue of my communications with one person – not multiple people as Wiand asserts – was fully litigated and decided. I provided all of these emails to U.S. District Court Judge Analisa Torres and she inspected all documents *in camera* and found that they were privileged communications regarding legal strategy of the appeal to the 11th Circuit Court of Appeals. (See Exhibit C Order dated January 9, 2026). None of those communications mentioned anything about Oasis Helpers as Wiand asserts. They all dealt with the legal arguments concerning the appeal. Judge Torres specifically held:

Preziosi asks this court to modify the subpoena to exclude the emails exchanged between him and Melick. See Mot. at 1–2. Preziosi argues that the documents subject to paragraph 5 of the subpoena—a set of emails exchanged between him and Greg Melick—are covered by the attorney-client privilege, and as such, the subpoena should be modified to prohibit their disclosure. See Mot. at 12. He argues that Melick acted as a paralegal while composing his emails and that the substance of all emails concerns "legal research, legal arguments, and legal strategy."

Preziosi represents that all of the emails concern the scope of his appellate representation of DaCorta. Id. at 1–2; see also id. at 19–26. Preziosi produced the emails for the Court's in camera review via email on January 2, 2025, and the Court

agrees with his characterization. The emails include selected record material from the underlying civil action, and Melick comments on some of that material, all of which would have been relevant to Preziosi's appellate strategy.
(Exhibit C pg. 7).

Mr. Wiand's assertions that I refused to provide communications with "Oasis Helpers" is a false statement. None of the communications had anything to do with the "Oasis Helpers." In fact, as U.S. District Court Judge Torres held, the communications were *all relevant to Preziosi's appellate strategy*.

Mr. Wiand attempts to twist and misconstrue the holdings of the Southern District of New York by stating the following in his Reply:

Preziosi argues that the SDNY vindicated him by finding that certain of his communications with Greg Melick are protected by the attorney-client privilege or work product doctrine, but that argument only supports the Receiver's case. It shows that Preziosi acted in "active concert and participation" with Melick and other Respondents. (Doc. 919 pg. 6).

There are several falsehoods woven into Mr. Wiand's Reply. First, the Southern District of New York did not find that "certain" communications were privileged as Wiand asserts, it found that "all" of the communications were privileged and "all" communications were relevant to appellate strategy. Second, Wiand misrepresents and exaggerates that the communications were with "Respondents" (plural); this is false, they were communications with one person. Third, Wiand asserts that the emails show that I acted in "active concert and participation" with Melick and other Respondents. The SDNY inspection of those communications and subsequent holding demonstrates that this is false. In fact, the Court held that the emails were all relevant to appellate

strategy, and nothing more. The holdings of the Southern District of New York render Mr. Wiand's assertions of "active concert and participation" – *res judicata* false.

MR. WIAND HAS NOT PROVIDED ANY EVIDENCE THAT THERE IS A CONNECTION BETWEEN THE ALLEGED CONTINGENCY FEES AND THE LEGAL FEES PAID FOR THE APPEAL.

Mr. Wiand alleges, without evidence, that Mr. DaCorta's legal fees were paid from some contingency fee plan or derived from "after-acquired assets." While Mr. Wiand repeatedly alleges this, he has not provided any evidence to support the allegation and has misconstrued the definition an after acquired asset. He also claims that I did not conduct any investigation into the persons who offered to pay for the appeal. He is wrong.

There Is No Evidence That The Legal Fees Were Derived From A Contingency Fee Of The Oasis Helpers

There is no evidence that the source of funds that paid Mr. DaCorta's legal fees is sourced by victims paying a contingency fee. Wiand has produced no documents or witnesses to prove such a contingency fee exists or that Mr. DaCorta's legal fees were paid from such a source. In fact, Mr. Wiand has not produced any evidence that the friends of Mr. DaCorta ever received any payouts from the Receivership. Wiand claims at Doc. 919 pg. 5 that the receivership paid "Claimant A" a distribution (Doc. 919 pg. 5) and that those distributions are the source of the funds that paid Mr. DaCorta's legal fees. This is a complete fabrication, and there is no evidence that the friends of Mr. DaCorta, who paid his legal fees, ever received a distribution from the Receivership.

And even if they did receive a distribution from the Receivership Mr. Wiand provides no reason why the Receiver should now control the future spending of those funds or why the Receivership should have any control over the spending of those distributions.

Mr. Wiand Misconstrues The Definition of After Acquired Assets

Mr. Wiand asserts that the persons who offered to pay the legal fees for the appeal are not making informed choices and are being fed misrepresentations and acting under duress AND, therefore, the Receiver has an interest in the funds. He then assets that the funds are "after acquired assets." There are several fallacies in Wiand's logic and conclusory leaps.

First, Mr. Wiand does not know at all what information the friends of Mr. DaCorta had or acted on when offering to pay the legal fees for the appeal. Wiand makes consistent misrepresentations about what he knows to be the source of funding and the source of information upon which these people acted. He has never spoken to these people and he has no idea and no evidence as to the source of information upon which they acted or the funds that they used to pay legal fees.

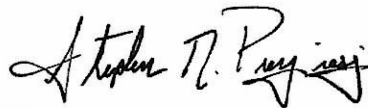
I spoke to these people personally over the phone. They asserted that they are friends of Mr. DaCorta and that they know him personally and wish to help him. I confirmed this with Mr. DaCorta before ever accepting any retainer fee.

Second, Mr. Wiand consistently misrepresents the definition of an after acquired asset. In order to be an "after acquired asset" the after-acquired assets include property obtained after receiver's appointment derived from or traceable to the fraudulent

scheme. *Chartschlaa v. Nationwide t. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008); *In re Bumper Sales, Inc.*, 907 F.2d 1430, 1437 (4th Cir. 1990); see also *United States v. Mitchell*, 476 F.3d 539, 544 (8th Cir. 2007). None of the funds in question are related to or derived from the Oasis entities and their activities. Mr. Wiand's assertion that DaCorta's legal fees were paid with after acquired assets is false and misleading.

Most importantly, the Consolidated Order of this Court dated July 11, 2019 does not speak of "after acquired assets" or legal fees paid by third parties that are the personal funds of those third parties. The asset freeze portion of this Court's order speaks of assets and property that existed or were derivative of the assets owned or controlled by the defendants in this case. The personal funds of former lenders are not part of the receivership estate and are not subject to the asset freeze that is part of this Court's Consolidated Order. Mr. Wiand's application for an Order to Show Cause must, therefore, be denied in its entirety.

June 3, 2026
New York, New York



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Mr. Burton N Wiand
And Mr. Chemere Ellis,
1408 N. West Shore Blvd. Suit 1010
Tampa, FL 33607

July 11, 2024

Re: Subpoena of Documents in case of Commodity Futures Trading Commission

Oasis International Group LTD   19CV 886-T-33SPF

Dear Mr. Wiand,

Pursuant to the subpoena that you served upon my firm and our conversations of the phone on July 11, 2024. I am furnishing you with all documents as outlined in your subpoena as listed in the addendum entitled “Specific Request for Information and Documents.” As we discussed on the phone, I am providing all documents listed in items 1 through 4, and I will be filing a motion to modify your subpoena regarding communications with non-parties. If there are any questions, please contact me at my office.

Respectfully,

Stephen N. Preziosi, Esq.

United States District Court
Middle District of Florida
Tampa Division

COMMODITY FUTURES TRADING COMMISSION

Plaintiff,

v. **NO. 19-CV-886-T-33SPF**

OASIS INTERNATIONAL GROUP, LTD et al.

Defendant.

Unopposed Motion for Special Admission

Stephen N. Preziosi , Esquire, moves for special admission to represent defendant Michael DaCorta in this action.

I am not a member in good standing of The Florida Bar.

I am a member in good standing of a bar of a United States district court; specifically, United States District Court of the Southern District of New York.

I have not abused the privilege of special admission by maintaining a regular law practice in Florida. I have initially appeared in the last thirty-six months in these cases in state or federal court in Florida:

None.

I will comply with the federal rules and this Court's local rules.

I am familiar with 28 U.S.C. § 1927, which provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

I have paid the fee for special admission or will pay the fee upon special admission.

I will register with the Court's CM/ECF system.

I affirm the oath, which states:

> I will support the Constitution of the United States. I will bear true faith and allegiance to the government of the United States. I will maintain the respect due to the courts of justice and all judicial officers. I will well and faithfully discharge my duties as an attorney and officer of this Court. I will conduct myself uprightly and according to the law and the recognized standards of ethics of the legal profession.

/s/

Stephen N. Preziosi, Esq.

Dated: July 17, 2024

Local Rule 3.01(g) Certification

I have conferred with the opposing party and represent the opposing party Mr. Burton Wiand (the receiver) and Alison Auxter (CFTC attorney) have no objection to my special admission.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ____________
DATE FILED: 1/9/2026

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In RE SUBPOENA BY A RECEIVER IN COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

OASIS INTERNATIONAL GROUP, LIMIT ET AL.,

Defendants.

24 Misc. 577 (AT)

ORDER

ANALISA TORRES, District Judge:

In this action, Stephen N. Preziosi, an appellate attorney representing Michael DaCorta in a pending appeal of a civil action in the United States Court of Appeals for the Eleventh Circuit, *Commodity Futures Trading Comm'n v. Oasis Int'l Grp., et al.*, No. 24-10132 (11th Cir. appeal filed Jan. 5, 2024), seeks an order modifying a subpoena issued by the United States District Court for the Middle District of Florida in the underlying civil action for which Preziosi is handling DaCorta's appeal. *See* Mot., ECF No. 1; Subpoena, ECF No 1-2; Summ. J. Order, ECF No. 780, *Commodity Futures Trading Comm'n v. Oasis Int'l Grp., Ltd.*, No. 8:19 Civ. 886 (M.D. Fla. Dec. 6, 2023) (the "civil action"). The subpoena was issued by Burton W. Wiand, the court-appointed Receiver in the civil action. Subpoena at 1. The Receiver cross-moves for indirect civil contempt on the basis of Preziosi's noncompliance with the subpoena. *See* Contempt Mot., ECF No. 7.

BACKGROUND

In 2019, the Commodity Futures Trading Commission (the "CFTC") brought a civil action in the United States District Court for the Middle District of Florida against Michael DaCorta and various other individuals and entities claiming violations of the Commodity

Exchange Act and CFTC regulations. Mot. at 2. The complaint alleged that from April 2014 to April 2019, DaCorta and his co-defendants fraudulently solicited investments in two foreign currency commodity pools, raising approximately $75 million from over 700 U.S. residents. *See* Resp., ECF No. 5, at 2. Around the same time, the federal government initiated criminal proceedings against DaCorta and others. *Id.* at 4. In 2022, a jury found DaCorta guilty on three counts: conspiracy to commit wire and mail fraud, engagement in an illegal monetary transaction, and filing a false income tax return; he was sentenced to 23 years' imprisonment and order to pay over $53 million in restitution. Resp. at 4; Mot. at 3.

Wiand was appointed as a Receiver in the civil action and was authorized to "marshall[] and preserv[e]" assets related to the civil action. Order Appointing Receiver, ECF No. 1-1, at 2; *see* Mot. at 3; Resp. at 3. The Receiver alleges that, shortly after DaCorta's criminal indictment was issued, Greg Melick, a non-party to the civil action "began soliciting Ponzi Scheme investor victims to raise money" for DaCorta's legal representation and hired an Illinois attorney, Brent Winters, with that money. Resp. at 4. The Receiver claims that, prior to the actions relevant to this motion, Melick worked "in the business of distributing movies." *Id.* at 5. The Receiver also alleges that Melick engaged in a "persistent smear campaign against the Receiver," using false claims concerning available assets in an attempt to encourage potential investors to fund DaCorta's legal representation, and that, with Melick's assistance, DaCorta retained Preziosi for his Eleventh Circuit appeal after the Middle District of Florida granted summary judgment to the CFTC in the civil action. *Id.* at 5–6. The Receiver's papers suggest that Preziosi's representation of DaCorta in the civil appeal results from "[p]ersistently exploiting the same investor victims to benefit the convicted felon that victimized them in the first place." *Id.* at 6.

On June 10, 2024, about the time that Preziosi perfected DaCorta's appeal in the Eleventh Circuit (which remains pending), the Receiver served the instant subpoena on Preziosi. *See* Subpoena; Mot. at 4; Resp. at 8. That subpoena made various requests, generally focusing on documents or correspondence related to the funds used to pay for Preziosi's representation of DaCorta. *See* Subpoena at 8; Mot. at 4–5. Preziosi responded by producing all documents sought in paragraphs 1–4 of the subpoena or denying that such documents existed.[1] *See* Mot. at 5; Resp. at 8.

At issue in this proceeding is paragraph 5 of the subpoena, which sought "[a]ny and all communications with Brent Winters, Greg Melick, Jason McKee, Intermountain Precious Metals, any person affiliated with the Oasis Replevin Group (a/k/a 'Oasis Helpers'), and/or Michelle Utter." Subpoena at 8. With respect to paragraph 5, Preziosi states that he informed the Receiver that he had one phone conversation each with Brent Winters and Jason McKee, that he had no documents reflecting these conversations, and that he had no communications with any other individual listed in the paragraph except for Greg Melick. Mot. at 6. Preziosi claims, however, that Melick was "a paralegal at another law firm that also represents" DaCorta, and that Preziosi had exchanged "a number of emails" with Melick "regarding legal research, legal argument for the appellate brief, legal analysis of facts, case law for the brief," and "statutory and regulatory law." Mot. at 5–6. Preziosi refused to produce these emails on the ground that they are protected as attorney work product. *See id.* at 6–7; Resp. at 8.

On July 31, 2024, counsel for the Receiver requested that Preziosi produce a privilege log of withheld documents. Resp. at 8. According to the Receiver, Preziosi refused to do so, and

[1] Although Wiand characterizes Preziosi's response to the balance of the subpoena as "sparse," he does not claim that Preziosi failed to comply with any request made in paragraphs 1 through 4 of the subpoena. *See* Resp. at 8; *see generally* Contempt Mot.

informed the Receiver that he would file an objection to the subpoena in the civil action. *Id.* Claiming that Preziosi had consistently refused to comply with the subpoena, on August 16, 2024, the Receiver filed a motion for contempt in the Middle District of Florida. *See* Resp. at 8. On December 3, 2024, the Florida district court dismissed the motion after determining that it did not have jurisdiction under Federal Rule of Civil Procedure 45. Resp. at 9; Mot. at 11; Order, ECF No. 1-3. Preziosi filed this motion shortly afterwards, on December 10, 2024. *See generally* Mot. After supporting memoranda were submitted related to Preziosi's motion, the Receiver also filed a motion for indirect civil contempt against Preziosi, *see* Contempt Mot.[2] On December 12, 2024, the Court ordered Preziosi to submit the emails at issue to the Court for *in camera* review, and Preziosi complied with that order. *See* ECF No. 2.

LEGAL STANDARD

I. Privilege

Under the Federal Rules of Civil Procedure, a court where compliance is required for a duly issued subpoena "must quash or modify a subpoena that . . . requires disclosure of privileged or other protected matter, if no exception or waiver applies." Fed. R. Civ. P. 45(d)(3)(A)(iii). Federal Rule of Civil Procedure 26(b)(3) defines one such privilege, protecting "documents and tangible things that are prepared in anticipation of litigation or for trial"—known as the attorney work-product privilege. *See United States v. Adlman*, 134 F.3d 1194, 1196–97 (2d Cir. 1998). The attorney work-product privilege "is intended to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation,' free from unnecessary intrusion by his adversaries." *Id.* at 1196. If a document is subject to the privilege, then that document is only discoverable where the party

[2] The Receiver also seeks, "in the alternative," an order compelling production of documents subject to paragraph 5 of the subpoena, as well as an award of attorney's fees and costs. Contempt Mot. at 9–10.

seeking discovery shows that the privilege has been waived or that an exception applies. Fed. R. Civ. P. 26(b)(3)(A)(iii); *see Ricoh Co., Ltd. v. Aeroflex Inc.*, 219 F.R.D. 66, 70–71 (S.D.N.Y. 2003) (discussing waiver of the work-product privilege).

Courts construe the attorney work-product privilege to cover a broad range of documents which are prepared in anticipation of litigation. The Second Circuit has held that Rule 26(b)(3) does not only protect materials which are made "primarily" or "exclusively" to aid in litigation but extends its coverage to documents which, for example, analyze potential litigation outcomes, even if the documents' primary purpose is to assist business decisions. *Adlman*, 134 F.3d at 1198, 1199. Courts have also held that the attorney work-product privilege covers documents prepared at the request of an attorney, even when they are not prepared by the attorney herself. *See, e.g.*, *Strougo v. BEA Assocs.*, 199 F.R.D. 515, 522–24 (S.D.N.Y. 2001) (protecting documents prepared by financial advisory firms at the request of attorneys from disclosure).

II. Contempt

To establish contempt, the Receiver must "establish that (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner." *Perez v. Danbury Hosp.*, 347 F.3d 419, 423–24 (2d Cir. 2003) (quoting *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995)).

DISCUSSION

As a preliminary matter, the Receiver argues that the Court must deny Preziosi's motion to modify the subpoena as untimely, because he filed it well after the return date of the subpoena, failed to produce a privilege log at the time he responded to the subpoena, and has not shown good cause for either alleged deficiency. *See* Resp. at 10–11. Although the text of Federal Rule

of Civil Procedure 45 states that "[q]uashing or [m]odifying a subpoena" is "[r]equired . . . on timely motion," *see* Fed. R. Civ. P. 45(d)(3)(A), courts in this circuit have routinely considered motions to quash that were not timely filed. *See, e.g.*, *In re DMCA Section 512(h) Subpoena to YouTube (Google, Inc.)*, 581 F. Supp. 3d 509, 516–17 (S.D.N.Y. 2022) (citing *Nike, Inc. v. Wu*, 349 F. Supp. 3d 310, 320 (S.D.N.Y. 2018) (considering an untimely motion under the Court's "broad discretion" because "good cause exist[ed] to overlook [the] delay in filing it"), *aff'd* 349 F. Supp. 3d 346 (S.D.N.Y. 2018); *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975) (finding that because no prejudice would result from the delay, "failure of [the] movant to comply with the literal requirements of Rule 45(b) does not provide grounds for a reversal of the judgment below"); *Grigsby & Assoc., Inc. v. Rice Derivative Holdings, L.P.*, No. 00 Civ. 5056, 2001 WL 1135620, at *4 (S.D.N.Y. Sept. 26, 2001) (considering an untimely motion to quash where the "subpoenas contain[ed] non-specific, overbroad production requests").

Preziosi filed this motion well after the return date of the original subpoena—which was June 14, 2024—but the Court declines to deny his motion as untimely. Preziosi responded to the subpoena on July 11, 2024, asserted the privilege that is now at issue, and otherwise responded to all requests made in the subpoena. The Receiver then filed a motion for contempt before the Middle District of Florida in August 2024, *see* Resp. at 8–9; Motion for Contempt, ECF No. 834, No. 8:19 Civ. 889 (M.D. Fla. Aug. 16, 2024), and Preziosi filed the instant motion shortly after the Florida district court concluded that this issue should be adjudicated before this Court. *See* ECF No. 1-3.

Although Preziosi could have brought this motion before this Court more promptly, nothing in the record suggests that the delayed filing is due to bad faith or dilatory tactics.

Preziosi communicated his intention to object to the subpoena shortly after the subpoena's original return date, and the Receiver does not argue that that delay (from June 14 to July 11, 2024) reflects a lack of diligence. Nor does the Receiver argue that the untimely filing has caused it undue prejudice; the Receiver does not argue that delayed adjudication of its subpoena has interfered with his duties in any way other than preventing him from viewing the subject documents. As a result, the Court will, in its discretion, consider the motion to modify on the merits. *See, e.g.*, *Langford*, 513 F.2d at 1126.

I. Motion to Modify the Subpoena

Preziosi asks this court to modify the subpoena to exclude the emails exchanged between him and Melick. *See* Mot. at 1–2. Preziosi argues that the documents subject to paragraph 5 of the subpoena—a set of emails exchanged between him and Greg Melick—are covered by the attorney-client privilege, and as such, the subpoena should be modified to prohibit their disclosure. *See* Mot. at 12. He argues that Melick acted as a paralegal while composing his emails and that the substance of all emails concerns "legal research, legal arguments, and legal strategy." *Id.*

Preziosi represents that all of the emails concern the scope of his appellate representation of DaCorta. *Id.* at 1–2; *see also id.* at 19–26. Preziosi produced the emails for the Court's *in camera* review via email on January 2, 2025, and the Court agrees with his characterization. The emails include selected record material from the underlying civil action, and Melick comments on some of that material, all of which would have been relevant to Preziosi's appellate strategy. They were clearly prepared "in anticipation of" Preziosi's pending appeal. *See Adlman*, 134 F.3d at 1197–98. The fact that Melick—and not Preziosi—composed the emails is immaterial to the question of whether they were ultimately produced "in anticipation of," and with the express

goal of aiding, Preziosi's appellate litigation strategy. *See Strougo*, 199 F.R.D. at 522–24.

None of the Receiver's arguments provide a basis to find that the work-product privilege does not apply or was waived. The Receiver claims that the emails are not privileged because Melick was "not a paralegal" and instead was simply using the title to "conceal his years of fraudulent conduct," citing other instances of allegedly fraudulent conduct intended to manipulate investors. Resp. at 11. But Melick's allegedly fraudulent conduct has no bearing on whether the particular emails at issue here were prepared in anticipation of litigation, and thus come within the scope of the work-product privilege.[3] And, regardless of whether Melick is properly considered a "paralegal" or is in fact supervised by a licensed attorney, *see* Resp. at 12, Melick's emails were expressly prepared for an attorney and concern that attorney's legal strategy. As a result, those emails are covered by the work-product privilege.

The Receiver argues that a crime-fraud exception applies to the work-product privilege in this case, citing to *Ulico Casualty Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 1 A.D.3d 223 (N.Y. App. Div. 2003). Resp. at 12. Under that exception, New York state courts have refused to apply privilege where privileged communications "may have been in furtherance of a fraudulent scheme." *Ulico Casualty Co.*, 1 A.D.3d at 223. Although the Receiver raises allegations that Preziosi's representation of DaCorta was funded with illegitimately obtained funds, the Court holds that after *in camera* review, the emails themselves have no bearing on the allegedly fraudulent conduct. *See* Resp. at 13–14 (acknowledging that *in camera* review would be appropriate); *cf., e.g., Surgical Design Corp. v. Correa*, 284 A.D.2d 528, 528 (N.Y. App. Div. 2001) (finding that an attorney-client communication was not privileged because that

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[3] Of course, emails which concerned schemes to defraud investors, or emails which concerned the details of Mr. Preziosi's funding or retention, may very well not fall within the scope of the work-product privilege. But the Court's *in camera* review has determined that the emails subject to dispute in this action do, in fact, contain legal analysis and work product relevant to Preziosi's appeal strategy.

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communication "advis[ed]" the client that "its export practices were fraudulent under Brazilian law").

II. Motion for Indirect Civil Contempt

Because the subpoena must be modified to exclude the emails between Preziosi and Melick, the Court denies the Receiver's motion for indirect civil contempt. Under Federal Rule of Civil Procedure 45(e), the Court may find contempt in this matter where it finds "[f]ailure by any person without adequate excuse to obey a subpoena." The Court holds that Preziosi had an "adequate excuse" to refuse full compliance in this case—namely, that the subpoena sought privileged materials and should be modified to exempt those materials from its scope.

The only arguable basis for a finding of contempt, therefore, is Preziosi's untimely filing of the motion before this Court, or his alleged failure to produce an adequate privilege log. For the reasons discussed above, the Court also declines to find that Preziosi's untimely filing to modify or quash the subpoena constitutes noncompliance sufficient to justify an award of attorney's fees and costs. *See also Brentlor, Ltd. v. Schoenbach*, No. 13 Civ. 6697, 2018 WL 5619951, at *3 (S.D.N.Y. Jan. 9, 2018) ("[B]efore contempt sanctions are imposed on a non-party, the violation of a court order is also generally required." (quotation marks omitted)).

However, the Court finds that the privilege log, as produced at pages 19 through 26 of Preziosi's motion, is insufficient. *See* Mot. at 19–26. The privilege log does not include the email addresses of the senders or recipients of any email, and certain emails appear to include recipients beyond solely Preziosi. Accordingly, Preziosi shall produce a privilege log to the Receiver which identifies each email withheld from production, includes the email addresses of the senders and recipients of every email (including recipients included as a "cc"), and states the date and time that each email was sent. *See* Local Civ. R. 26.2(a)(2)(A).

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CONCLUSION

For the foregoing reasons, the Court GRANTS Preziosi's motion to modify the subpoena. The subpoena is MODIFIED to exclude the emails exchanged between Preziosi and Melick that Preziosi has identified in his motion at ECF No. 1 and which Preziosi has provided to the Court. The Receiver's motion for indirect civil contempt is DENIED. By **January 23, 2026**, Preziosi shall produce a privilege log consistent with this order to the Receiver, and file a letter on the docket certifying his compliance with this Order.

This order is without prejudice to the Receiver's ability to file a motion to further modify the subpoena and compel the production of specific emails, if Preziosi's privilege log provides grounds for the Court to revisit its decision. Any such motion shall be filed within 30 days of receipt of Preziosi's privilege log.

The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 1 and 7.

SO ORDERED.

Dated: January 9, 2026
New York, New York

ANALISA TORRES
United States District Judge