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16 BURTON W. WIAND, as Receiver
17 EQUIALT FUND, LLC; EQUIALT FUND II, LLC;
18 EQUIALT FUND III, LLC; EA SIP, LLC; EQUIALT QUALIFIED
19 OPPORTUNITY ZONE FUND, LP; EQUIALT SECURED INCOME
20 PORTFOLIO REIT, INC.; and their Investors

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 BURTON W. WIAND, as Receiver on
24 behalf of EQUIALT FUND, LLC;
25 EQUIALT FUND II, LLC; EQUIALT
26 FUND III, LLC; EA SIP, LLC,
27 EQUIALT QUALIFIED
28 OPPORTUNITY ZONE FUND, LP;
EQUIALT SECURED INCOME
PORTFOLIO REIT, INC.; and their
investors,

Case No. 2:20-cv-08849

COMPLAINT
DEMAND FOR JURY TRIAL

Plaintiffs,

v.

PAUL R. WASSGREN; FOX
ROTHSCHILD LLP; and DLA
PIPER LLP (US),

Defendants.

1 This Complaint is filed by BURTON W. WIAND (“the Receiver”) in his
2 capacity as the Court-appointed Receiver for EQUIALT FUND, LLC (“Fund 1”);
3 EQUIALT FUND II, LLC (“Fund 2”); EQUIALT FUND III, LLC (“Fund 3”); and
4 EA SIP, LLC (“EA SIP Fund”); EQUIALT QUALIFIED OPPORTUNITY ZONE
5 FUND, LP (QOZ Fund); and EQUIALT SECURED INCOME PORTFOLIO REIT,
6 INC. (REIT) (collectively referred to as “The Investment Funds” or “The Funds”).
7 The Receiver, on behalf of The Funds and their Investors, now sues Defendants
8 PAUL R. WASSGREN (“Wassgren”); FOX ROTHSCHILD LLP (“Fox
9 Rothschild”); and DLA PIPER LLP (US) (“DLA Piper”) (collectively,
10 “Defendants”), as set forth more fully below.

11 **OVERVIEW**

12 On February 14, 2020, the United States District Court for the Middle District
13 of Florida unsealed an emergency enforcement action filed by the Securities and
14 Exchange Commission (“S.E.C.”) against a Florida-based private real estate firm,
15 EQUIALT LLC (“EquiAlt”), and appointed Mr. Wiand as the Receiver for various
16 EquiAlt Defendants. Named as Defendants in the SEC case were its CEO Brian
17 Davison (“Davison”), Managing Director Barry Rybicki (“Rybicki”), and the first
18 four EquiAlt Investment Funds listed above. On August 17, 2020, the United States
19 District Court for the Middle District of Florida expanded the Receivership to
20 include the QOZ Fund and the REIT.

21 That action (“The Enforcement Action”) is styled S.E.C. v. Davison et al., and
22 is assigned Case No. 8:20-cv-00325-T-35AEP in the United States District Court for
23 the Middle District of Florida, Tampa Division (the “Court”). The S.E.C. and the
24 Receiver have found that The Funds were operating as a classic “Ponzi scheme.” On
25 February 14, 2020, the Court in The Enforcement Action appointed Burton W.
26 Wiand as the Receiver and granted him broad authority to institute actions and legal
27 proceedings on behalf of the Funds and their Investors. On July 1, 2020, the Court
28 authorized the Receiver to retain the undersigned counsel to pursue claims against

1 law firms that provided services to EquiAlt and The Funds.

2 Wassgren, as an attorney working first at Fox Rothschild and later at DLA
3 Piper, either was grossly negligent or he knowingly aided, abetted and conspired
4 with EquiAlt and the “EquiAlt Insiders” (Davison, Rybicki and BR Support Services,
5 LLC) in the creation and perpetration of fraudulent and illegal investment scheme,
6 by preparing inadequate security disclosure and compliance materials and other sales
7 documents, aiding in the operation of an illegal sales program and otherwise
8 providing legal services to EquiAlt and its principals in order to further their Ponzi
9 scheme.

10 EquiAlt and the EquiAlt Insiders raised more than \$170 million from at least
11 1,100 unsuspecting investors around the country, by selling them fraudulent,
12 unregistered securities, and then by comingling and diverting the investors funds for
13 improper purposes. The Defendants knew or should have known that these
14 unregistered securities were being issued and sold in violation of applicable
15 securities laws and that the Fund’s assets were being used for improper and
16 fraudulent purposes. This operation was a classic “Ponzi scheme” operation: the
17 promised returns on investments were inadequate, so investors were paid with the
18 money of other, subsequent investors. Along the way, EquiAlt and the EquiAlt
19 Insiders enriched themselves by looting multi-millions of dollars from The Funds for
20 things such as personal real estate, luxury cars, jewelry, jets, and the like, and by
21 charging fees, commission and expenses that were not disclosed and were not
22 earned.

23 The Receiver now seeks relief against Wassgren, Fox Rothschild and DLA
24 Piper for their actions and participation in the fraudulent and illegal EquiAlt
25 investment scheme.

26 **THE PARTIES, JURISDICTION, AND VENUE**

27 1. The Receiver is an attorney practicing in Tampa, Florida; on February 14,
28 2020, he was appointed pursuant to the Federal Court Order referenced above, giving

1 him the full and exclusive power, duty and authority to investigate all manner in
2 which the affairs of the Funds were conducted and to institute actions and legal
3 proceedings on behalf of the Funds and their Investors.

4 2. Fund 1 is a Nevada limited liability company formed by Wassgren on
5 May 23, 2011. Fund 1 raised approximately \$110 million from 733 investors from
6 January 2011 through November 2019.

7 3. Fund 2 is a Nevada limited liability company formed by Wassgren on
8 April 24, 2013. Fund 2 raised approximately \$39 million from 266 investors from
9 2013 through November 2019.

10 4. Fund 3 is a Nevada limited liability company formed by Wassgren on
11 June 26, 2013. Fund 3 raised approximately \$2.6 million from investors from July
12 2013 through December 2015.

13 5. The EA SIP Fund is a Nevada limited liability company formed by
14 Wassgren on May 23, 2016, and it raised 21.7 million from 138 investors from April
15 2016 through November 2019.

16 6. The QOZ fund is a Delaware Limited Partnership formed by Wassgren on
17 August 10, 2018 and began raising money from investors thereafter.

18 7. The REIT is a Maryland corporation formed by Wassgren on June 27,
19 2017 and began raising money from investors immediately including exchanging
20 debentures in the earlier Funds for shares of the REIT without any proper exchange
21 valuations taking place.

22 8. Wassgren is an attorney, licensed in California and Nevada, who worked
23 at, and was an agent of, Fox Rothschild from approximately July of 2010 through
24 May of 2017, following which he began work as an attorney and agent for DLA
25 Piper, where he is still employed as of the filing of this Complaint.

26 9. During the period of July 2010 through May 2017, Fox Rothschild was
27 responsible for the supervision of Wassgren and for any improper, negligent or
28 illegal actions taken by Wassgren.

1 10. During the period of May 2017 through the present, DLA Piper was
2 responsible for the supervision of Wassgren and for any improper, negligent or
3 illegal actions taken by Wassgren.

4 11. Fox Rothschild is a 900 +/- attorney law firm headquartered in
5 Philadelphia, Pennsylvania, and it provides services from multiple offices throughout
6 the United States, including Los Angeles, California.

7 12. DLA Piper LLP (US) is a United States affiliate of a global law firm
8 headquartered in London, the United Kingdom with approximately 4,200 attorneys;
9 DLA Piper LLP (US) is headquartered in Baltimore, Maryland and it provide
10 services from multiple offices, including offices located in Los Angeles, California.

11 13. Wassgren acted as the attorney for the Investment Funds and also for both
12 EquiAlt and the EquiAlt Insiders, during the time he was employed at both Fox
13 Rothschild and DLA Piper.

14 14. The matter in controversy is in excess of \$75,000; the parties are diverse,
15 and this Court has jurisdiction pursuant to 28 U.S.C. §1332.

16 15. This Court also has jurisdiction over the parties and over this cause
17 pursuant to 28 U.S.C. §754, which provides that a duly appointed Receiver has the
18 capacity to sue in any district.

19 16. The actions of Wassgren as described in this Complaint emanated
20 primarily from the Los Angeles offices of Fox Rothschild and DLA Piper.

21 **ADDITIONAL ALLEGATIONS COMMON TO ALL COUNTS**

22 17. Beginning in 2011 and up through and including February of 2020, The
23 Funds were operated as a Ponzi scheme, raising more than \$170 million from over
24 1,100 investors nationwide, through fraudulent and unregistered securities.

25 18. The primary operators of this Ponzi scheme were the EquiAlt Insiders
26 acting with the aid and assistance of Defendants.

27 19. EquiAlt was the entity that issued debentures to investors, and EquiAlt
28 was used by Davison and Rybicki as a management entity to further their fraudulent

1 scheme.

2 20. While both Davison and Rybicki were listed as managers of EquiAlt,
3 EquiAlt was primarily under the direct day to day management of Davison, who was
4 located in Tampa, Florida.

5 21. Davison took the lead concerning the day-to-day operation of EquiAlt and
6 The Funds, while Rybicki took the lead regarding sales and marketing efforts for the
7 solicitation of investments from the public, through BR Support Services, LLC (“BR
8 Support”).

9 22. Rybicki managed BR Support, and he acted as the head of marketing and
10 sales for The Funds, with the aid and assistance of Defendants.

11 23. Wassgren regularly gave legal advice to and helped structure the
12 operation of both EquiAlt and BR Support, and he well knew, or should have known,
13 that both entities were operating illegally and in violation of applicable securities
14 laws and were operating as fraudulent enterprises.

15 24. Rybicki and BR Support were based in Arizona and the sales and
16 marketing efforts for The Funds were directed by Rybicki from his office in Arizona.

17 25. The sales of investments in The Funds were made to investors in
18 numerous states by a network of unlicensed and unregistered selling agents.

19 26. In the Private Placement Memoranda that Wassgren drafted for The
20 Investment Funds, Investors were falsely promised that 90% of their money would
21 be used to purchase real estate. Instead, their money was systematically looted for
22 the personal benefit and use of the EquiAlt Insiders, a fact well known to Wassgren.

23 27. Selling compensation paid to Rybicki and/or BR Support at the rate of
24 12%, which made the 90% representation of the amount to be invested in real estate
25 a false statement. When added to other administrative and operational costs, the 90%
26 representation only becomes more outlandish.

27 28. Wassgren also consulted directly with Rybicki and directly with the
28 unlicensed and unregistered sales agents who were selling investments in the Funds;

1 Wassgren advised Rybicki and these unlicensed agents in ways to attempt to disguise
2 and mischaracterize the illegal selling fees.

3 29. Wassgren, first at Fox Rothschild, and later at DLA Piper, provided legal
4 representation and acted as counsel to EquiAlt, the EquiAlt Insiders and to the Funds
5 for compensation; this included the drafting and revision of private placement
6 memoranda, other sales documents, and rendering advice on regulatory compliance,
7 selling practices, and numerous legal matters.

8 30. Wassgren, through his offices at Fox Rothschild and DLA Piper,
9 participated in the selling process by receiving and approving questionnaires and
10 subscription documents from investors before they were issued investment securities,
11 thus making Wassgren the gatekeeper for the fraudulent scheme to admit new
12 investors.

13 31. The Defendants, as the attorneys for The Investment Funds, owed a duty
14 to each of The Funds to protect their respective legal interests and to assure the
15 Funds operated in compliance with applicable laws.

16 32. The interests of the EquiAlt Insiders and EquiAlt were in conflict with the
17 interests of The Investment Funds and their Investors, and Wassgren regularly
18 counseled the EquiAlt Insiders and EquiAlt regarding transactions that resulted in the
19 improper payment or diversion of The Funds' assets for the benefit of EquiAlt and
20 the EquiAlt Insiders, and their affiliated entities.

21 33. The Defendants, in the course of their representation of The Investment
22 Funds, failed to conduct an adequate due diligence investigation into the EquiAlt
23 Insiders, EquiAlt and/or the operation of The Investment Funds.

24 34. Fox Rothschild and DLA Piper owed their Investment Fund clients a
25 fiduciary duty to provide competent legal representation and protect the interest of
26 The Funds, and they failed in this duty.

27 35. The conduct of Defendants as described in this Complaint was material
28 and resulted in a significant loss to The Investment Funds, and their Investors.

1 36. By their actions and inactions, the Defendants knowingly allowed and/or
2 aided and abetted the EquiAlt Insiders and EquiAlt in fraudulent, improper and
3 illegal activities, thereby defrauding the Funds and its Investors.

4 37. Davison and Rybicki improperly diverted money from The Investment
5 Funds to themselves, EquiAlt, BR Services and other affiliated entities, often with
6 the knowledge, aid and assistance of Wassgren.

7 38. A legitimate investment fund usually has an audit performed by an
8 independent certified public accounting firm in order to verify the accuracy of the
9 books and accounts of the fund; a legitimate fund also has other checks and balances
10 in place. None of these financial verifications or normal checks, balances and
11 safeguards were in place for The Investment Funds, a fact well known to Defendants.

12 39. In representing the interests of The Investment Funds, Defendants should
13 have recommended and insisted on the establishment of these checks, balances and
14 safeguards.

15 40. Defendants held themselves out as highly experienced attorneys who are
16 experts and specialists in the legal, regulatory and customary compliance aspects of
17 the investment fund business, and as such they should have recognized the lack of
18 financial controls and checks and balance to be a “red flag” for fraudulent activity.

19 41. The standard of care owed by and expected from expert, specialized
20 counsel is greater than that which would be expected from an attorney without such
21 specialized expertise.

22 42. The Defendants never acquired any waivers of the multiple conflicts of
23 interest existing between The Investment Funds, EquiAlt and the EquiAlt Insiders,
24 and in any event, the existing conflicts of interest were unwaivable.

25 43. During the course of the representation of The Investment Funds, the
26 Defendants knew, or should have discovered, that The Funds were being illegally
27 sold and marketed.

28 44. Both Fox Rothschild and DLA Piper failed in their respective duties to

1 properly supervise Wassgren, and otherwise provide quality and uncompromised
2 legal advice and legal services to The Investment Funds, in at least the following
3 manner:

- 4 A. Fox Rothschild and DLA Piper failed to advise and protect The
5 Investment Funds by recommending or structuring proper
6 checks and balances in the operation of The Funds, and by
7 allowing EquiAlt and the EquiAlt Insiders to operate The
8 Investment Funds without the customary checks, balances and
9 oversights routinely employed in the operation of an investment
10 company such as The Funds;
- 11 B. Fox Rothschild and DLA Piper failed to conduct an adequate
12 review of the controls and practices in place for The Investment
13 Funds;
- 14 C. Fox Rothschild and DLA Piper were operating with
15 irreconcilable conflicts of interest;
- 16 D. Fox Rothschild and DLA Piper failed to have a system of
17 supervision in place to prevent Wassgren from undertaking
18 representation that had conflicts of interest.
- 19 E. Fox Rothschild and DLA Piper failed to have a system of
20 supervision in place to deter and prevent Wassgren from giving
21 illegal advice and from aiding and abetting the fraudulent
22 scheme described in this Complaint.
- 23 F. Fox Rothschild and DLA Piper failed to exercise due diligence
24 in their preparation of investment disclosure materials prepared
25 for and utilized by EquiAlt and the EquiAlt Insiders in soliciting
26 investments from the public; these disclosure materials contain
27 material misrepresentations as well as omissions of material
28 facts;
- G. Fox Rothschild and DLA Piper failed to advise The Investment
Funds (and their investors) that Davison and Rybicki were
selling and operating The Funds illegally; and
- H. Fox Rothschild and DLA Piper failed to advise and protect The
Investment Funds from being sold through illegal solicitation

1 and sales activities and paying illegal compensation to
2 unregistered brokers and dealers.

3 45. Additional conflicts and failings of Fox Rothschild and DLA Piper are
4 likely to be uncovered through discovery.

5 46. Fox Rothschild and DLA Piper, while failing to take proper actions to
6 protect the interests of The Investment Funds and make adequate and appropriate
7 disclosures, charged hundreds of thousands of dollars in legal fees that were paid
8 from The Investment Funds' money.

9 47. Fox Rothschild and DLA Piper did not protect the interests of its clients,
10 The Investment Funds, but rather chose to favor the interests of EquiAlt, the EquiAlt
11 Insiders and their affiliated entities.

12 48. Theft and diversion of invested money from The Investment Funds by
13 EquiAlt and the EquiAlt Insiders could have been avoided, had Defendants done an
14 adequate job of properly representing the interests of The Investment Funds, as they
15 were paid to do.

16 49. The Investment Funds, through the appointment of the Receiver, have
17 been cleansed of any wrongdoing otherwise imputed to The Investment Funds
18 through the doctrine of *in pari delicto*, or any similar theory.

19 50. The delayed discovery doctrine, the continuing violations doctrine, and
20 equitable tolling apply to this cause of action.

21 51. The facts and details outlined in this Complaint were discovered upon and
22 after the SEC filed its enforcement order in February 2020.

23 52. The activities and breaches of duty by Defendants have caused multi-
24 millions of dollars of damage to The Funds and their investors, including money
25 stolen, improperly diverted, improperly charged as fees, commissions and in paying
26 legal fees for which no value was received.

27 53. By December of 2020, investors in The Funds will be owed
28 approximately \$167 million in principal and interest; however, The Funds have

1 nowhere near sufficient assets to meet the obligations owed to the investors.

2 54. Damages in this dispute are expected to be in excess of \$100,000,000.

3 55. The Complaint filed in the United States District Court for the Middle
4 District of Florida by the S.E.C. enumerates numerous entities designated as “Relief
5 Defendants.” These Relief Defendants were all under the ownership and/or control
6 of EquiAlt or one or more of the EquiAlt Insiders and many of them improperly
7 received funds and assets from The Investment Funds to the detriment of their
8 investors. These Relief Defendant entities were established and formed by Wassgren
9 and he assisted, aided and abetted in many of the transactions by which money was
10 improperly diverted from The Investment Funds in favor of the Relief Defendants.

11 56. Wassgren prepared all of the offering documents used by The Investment
12 Funds to improperly solicit investments. These disclosure documents in the form of
13 Private Placement Memoranda (the “PPMs”) were deficient in various and numerous
14 respects.

15 57. The PPMs made misrepresentations of material fact and omitted facts
16 which were necessary in order to make an informed investment decision. Among the
17 failure of the PPMs and the sales of The Investment Funds, are the following:

18 A. Prior to starting The Funds, both Rybicki and Davison filed for
19 personal bankruptcy. The PPMs all describe Davison and
20 Rybicki’s business experience in glowing terms, and their
21 previously failed business careers involving real estate and
22 mortgage financing (the business of the Funds) but the PPM
23 omitted from disclosure the facts that both Davison’s and
24 Rybicki’s prior real estate ventures ended in personal
25 bankruptcy for each of them.

26 B. The investments were improperly sold without either state or
27 federal securities registration. The Funds purportedly were sold
28 under a Regulation D (“Reg D”) exemption from registration,
however, none of The Funds qualified for a Reg D exemption or
any other exemption from registration.

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- C. The Funds were offered and sold as one continuous integrated offering such that the offering of all The Funds are, under the securities laws, a single offering, negating any attempt to construe or interpret the offerings as separate and distinct.

- D. The Offering Memoranda for The Funds failed to disclose the nature and amount of commissions that would be paid for selling agents. The Offering Memoranda for Fund 1 states “Securities are being offered directly through the Company. No commissions of any kind will be paid to selling agents or brokers.” That representation drafted by Wassgren was false and was known by Wassgren to be false. The Funds paid a 12% commission to Rybicki and/or BR, who, in turn, paid a least one-half of that commission to various unlicensed sales agents. All of this was known by Wassgren, who was often in direct contact with these unlicensed sales agents.

- E. All of the PPMs use of proceeds charts show that at least 90% of the investor’s money would be placed in real estate and investment assets. This was a false representation and Wassgren, who was involved in monitoring real estate transactions, knew that the acquisitions for real estate were no where near 90% of the investment funds.

- F. Wassgren regularly was in contact with selling agents for The Funds. None of these selling agents were registered or licensed to sell securities and could not legally engage in the transactions of selling these securities to investors. This fact is well known to Wassgren.

- G. Wassgren advised Rybicki, who was in charge of sales efforts, as well as numerous selling agents, that they were allowed to sell these investments without license or registration, in violation of securities laws.

- H. Additionally, Wassgren advised Rybicki and selling agents as to methods and manners in which they could operate in order to accept commissions as “finder’s fees,” “seminar expenses” or other classifications that were intended to improperly avoid the securities laws licensing requirements.

1 I. Wassgren designed the investments to purportedly be exempt
2 from registration under Regulation D of the securities laws.
3 Under Regulation D, one of the requirements for qualification is
4 that there be no more than 35 unaccredited investors. In
5 addition, unaccredited investors, to the extent admitted into the
6 investment, are required to receive the heightened degree of
7 financial disclosure. All of the investors submitted
8 questionnaires and subscription documents to Wassgren who
9 would review them and advise the company as to whether that
10 investor should be accepted into The Funds. As a result,
11 Wassgren knew the integrated funds had well in excess of 35
12 unaccredited investors. This process placed Wassgren in the
13 middle of this program to illegally sell unregulated securities
14 through unlicensed agents.

15 J. It appears that in each and every instance the investor was
16 accepted, and no investors were rejected. Well in excess of 35
17 investors into this continuous integrated offering were non-
18 accredited investors thereby violating the Regulation D offering
19 exemption. Because Wassgren was the gatekeeper for the
20 Subscription Agreements, he well knew that the number of
21 accredited investors had been exceeded.

22 K. Additionally, Wassgren well knew that there was virtually no
23 financial disclosure or performance track records given to
24 investors, including the unaccredited investors thereby omitting
25 from disclosure material and required information.

26 L. Wassgren knew and omitted from any disclosures that funds
27 would be transferred from one Fund to another to pay interest
28 and expenses between The Funds.

M. Wassgren knew and failed to disclose that the amount of selling
commission compensation that was being paid by The Funds
which, in and of itself, prevented The Funds from allocating at
least 90% of The Funds invested money in real estate, and that
other expenses would further reduce the funds available for real
estate investment.

N. The Memoranda and disclosure documents prepared by
Wassgren failed to disclose that substantial assets in The Funds
were in fact being improperly diverted to, or were being used of

1 the benefit of the EquiAlt Defendants and the Relief Defendants
2 and were not being used for legitimate Fund purposes.

3 O. Another restriction for Regular D offerings is they cannot be sold
4 by a “general solicitation.”

5 P. Defendants knew that the EquiAlt securities were being offered
6 through a pattern of general solicitation in violation of the
7 applicable securities laws, and they aided, abetted and
8 participated in those general solicitations.

9 Q. In addition to preparing and drafting the Private Placement
10 Memoranda, Wassgren consented to the inclusion of his name,
11 along with the law firm Defendants, in various offering materials
12 utilized by Davison and Rybicki to promote The Funds, and he
13 assisted, aided and abetted the illegal sales activities.

14 R. In 2018, the EquiAlt Insiders, with the assistance of Wassgren,
15 established two new Funds, the Qualified Opportunity Zone
16 (“QOZ”) and the EquiAlt Security Income Portfolio REIT
17 (“REIT”). These funds were formed by diverting investor’s
18 money from the existing EquiAlt Funds into QOZ and REIT.
19 The redemption of certain investors debentures from the existing
20 Funds at full value and then reinvesting the proceeds with QOZ
21 and the REIT constitute fraudulent transactions without
22 sufficient disclosure and to the detriment to the existing Funds
23 and their investors.

24 58. Each of the deficiencies listed above constitute violations of both Federal
25 and State securities laws as they also constitute a pattern of fraudulent activity
26 perpetrated by EquiAlt and the EquiAlt Insiders, all of which was aided and abetted
27 by Defendants.

28 59. There are a myriad of federal and state laws and regulations involving the
sale of securities to the public and the rendering of investment advice for a fee. Strict
compliance with these laws is required, unless the transactions, persons or activities
are specifically exempted.

60. The securities laws applicable to or implicated in the operations of The

1 Investment Funds and the activities of the managers of those Funds included, at least,
2 the following:

3 A. The Securities Act of 1933 and Its Accompanying Rules and
4 Regulations. Compliance with this law requires that securities
5 offered to the public, unless exempt from registration, be
6 registered, and that there be no material misstatements or
omissions in the registration documents.

7 B. The Securities and Exchange Act of 1934 and Its
8 Accompanying Rules and Regulations. This law requires that
9 all offerings made to the public, including all ongoing
10 disclosures made to the public regarding securities, must be free
11 of material misstatements or omissions whether or not such
12 securities are registered.

13 C. State Securities laws including those in California and the other
14 states where The Funds were sold also require full and complete
15 disclosure of all material facts and other material omissions.

16 61. These illegal securities were continuously sold from May, 2011 through
17 November, 2019 – a period of 8½ years. As time went on, it is clear that the
18 Defendants gained actual knowledge of the illegal activities of Davison, and/or
19 should have known of them, and by failing to act, knowingly aided and abetted those
fraudulent activities.

20 62. An exemption to the 1933 Securities Act’s registration requirements
21 exists when an issuer can satisfy the requirements of an exemption. In this case The
22 Investment Funds were sold under the purported exemption of the Act’s Regulation
23 D (“Reg D”); however, under Reg D’s Rule 502.c. (codified at 17 C.F.R. §230.502),
24 a “general solicitation” of the investment in question destroys an otherwise valid
25 1933 Act exemption. “General solicitation” is defined under that Reg D Rule to
26 include any “communication published in any newspaper, magazine, or similar
27 media....”.

28 63. In order to qualify for Reg D exemption, the shares or units in The

1 Investment Funds could not be offered to the public under a general solicitation, but
2 rather the solicitation had to be targeted, by way of private placement, only to
3 investors who were known or believed to be accredited investors. An accredited
4 investor is one with certain minimum levels of income and/or net worth. Reg D
5 allows up to 35 non-accredited investors, provided however that no general
6 solicitation of investors is made.

7 64. With Wassgren acting as the investor’s gatekeeper, the Defendants knew
8 or should have known that The Investment Funds had been sold to more than the
9 allowable 35 “unaccredited investors.”

10 65. The sale of securities to unaccredited investors, even if such securities are
11 otherwise exempt from registration, triggers a requirement that investors be furnished
12 with audited or other full and complete financial statements. Even if a Reg D
13 exemption had been available to The Funds, the financial disclosure requirements of
14 the 1933 Securities Act were required to be met, because The Funds were being
15 offered and sold to many non-accredited investors.

16 66. The Investment Funds were sold as purported “private placements” but in
17 fact the sale of the securities was conducted as a general public solicitation with the
18 use of advertisements and solicitation practices prohibited in private placements, all
19 of which was well known to Defendants.

20 67. The Defendants knew, or should have known, that The Funds would
21 legally be treated as “integrated,” meaning that the investment funds were one
22 continuous offering.

23 68. Wassgren regularly improperly counseled and advised EquiAlt and the
24 EquiAlt Insiders that the unlicensed and unregistered sales force selling The
25 Investment Funds could legally be treated as “finders” and thereby avoid the
26 necessity of obtaining legal licenses for the sale of securities.

27 69. The combination of these sales practices, that were approved by
28 Wassgren and in which he participated, constitute a pattern and practice of selling

1 investment securities in violation of applicable securities laws and regulations.

2 70. The lack of adequate financial statements over an 8½ year period should
3 have put Defendants on notice that the performance of the Funds was unreliable,
4 which is in itself a disclosure requirement.

5 71. The provisions of the Securities and Exchange Act of 1934 require that no
6 misstatements of material fact, and no omissions of any necessary facts, be made in
7 conjunction with the sale of securities, whether or not those securities are entitled to
8 any registration exemption.

9 72. The Defendants knew or should have known that misstatements and
10 omissions of material fact had been made in the offering documents they prepared
11 and those misstatements and omissions were continuing to be made in conjunction
12 with the past and ongoing sales of The Funds; the Defendants knowingly aided and
13 abetted EquiAlt and the EquiAlt Insiders in these continuing violations, by failing to
14 alert any of the shareholders or appropriate authorities as to these ongoing activities,
15 and by continuing to assist, aid and abet the ongoing investments into The Funds.

16 73. The securities law violations set forth in this Complaint are evidence of
17 Defendants willful, intentional or grossly negligent conduct and participation the
18 fraudulent EquiAlt scheme.

19 74. All conditions precedent have occurred, or been satisfied or waived.

20 75. The Receiver reserves the right to amend this Complaint as appropriate.

21 **COUNT I**

22 **Breach of Fiduciary Duty**

23 76. All prior allegations are realleged and incorporated by reference.

24 77. Wassgren, Fox Rothschild and DLA Piper, as the attorneys for each of
25 The Investment Funds, owed a continuing fiduciary duty to each Fund.

26 78. This fiduciary duty required the Defendants to act in the best interest of
27 The Funds.

28 79. The Defendants also represented EquiAlt and the EquiAlt Insiders,

1 creating an ongoing conflict of interest.

2 80. The Defendants breached the fiduciary duties they owed to The
3 Investment Funds.

4 81. As a result of those fiduciary duty breaches, each of The Investment
5 Funds and their Investors have been damaged.

6 82. The actions of the Defendants in breaching their fiduciary duty to each of
7 The Investment Funds was intentional or grossly negligent.

8 WHEREFORE, the named Plaintiffs herein respectfully request judgment
9 against the Defendants for damages, punitive damages, prejudgment interest,
10 attorneys' fees, the costs of this action, and such other and further relief this Court
11 deems appropriate.

12 **COUNT II**

13 **Negligence/Gross Negligence/Professional Malpractice**

14 83. All allegations prior to Count I are realleged and incorporated by
15 reference.

16 84. Wassgren, Fox Rothschild and DLA Piper were attorneys employed by
17 The Investment Funds, for compensation.

18 85. The Defendants owed but neglected their reasonable professional duties
19 and responsibilities owed to The Investment Funds.

20 86. The Defendants, as attorneys for the Funds, had unavoidable conflicts of
21 interest because they also represented the EquiAlt Insiders and EquiAlt.

22 87. The conduct described above fell below the standard of care expected
23 from independent and experienced counsel.

24 88. The Defendants breached the duties it owed to The Investment Funds of
25 Investors and committed negligence, gross negligence and/or malpractice, and
26 proximately caused damage to The Investment Funds and its Investors.

27 89. The Defendants' actions constituted gross negligence.

28 WHEREFORE, the Plaintiffs request judgment against Defendants for

1 damages, punitive damages, prejudgment interest, attorneys' fees, the costs of this
2 action, and such other and further relief this Court deems appropriate.

3 **COUNT III**

4 **Common Law Aiding and Abetting of Fraud**

5 90. All allegations prior to Count I are realleged and are incorporated herein
6 by reference.

7 91. There existed an underlying fraud in the sale of investments in the Funds,
8 and in the operation of the Funds.

9 92. The Defendants knew that EquiAlt and the EquiAlt Insiders actions,
10 activities and operations violated the securities laws.

11 93. The actions of EquiAlt and the EquiAlt Insiders constituted an ongoing
12 fraudulent investment scheme.

13 94. The Defendants knew they had irreconcilable conflicts of interest and
14 intentionally chose to ignore those conflicts and to render legal advice and assistance
15 that knowingly aided and abetted EquiAlt and the EquiAlt Insiders in continuing
16 their fraudulent scheme.

17 95. The Defendants gave substantial assistance to EquiAlt and the EquiAlt
18 Insiders in the advancement and commission of their fraud relating to The
19 Investment Funds.

20 96. In exchange for aiding and turning a blind eye to the fraudulent activities
21 of EquiAlt and the EquiAlt Insiders, the Defendants received hundreds of thousands
22 of dollars in fees.

23 97. The Defendants' conduct allowed, and knowingly aided and abetted
24 EquiAlt and the EquiAlt Insiders in committing and continuing their fraudulent
25 scheme, all to the detriment of The Investment Funds and their Investors.

26 WHEREFORE, the Plaintiffs request judgment against Defendants for
27 damages, prejudgment interest, punitive damages, attorneys' fees, the costs of this
28 action, and such other and further relief this Court deems appropriate.

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COUNT IV

Common Law Aiding and Abetting of Breach of Fiduciary Duty

98. All allegations prior to Count I are realleged and are incorporated by reference.

99. EquiAlt and each of the EquiAlt Insiders owed a fiduciary duty to The Investment Funds and their Investors.

100. EquiAlt and the EquiAlt Insiders breached their fiduciary duties to the Funds and their Investors.

101. The Defendants knew EquiAlt and the EquiAlt Insiders owed fiduciary duties to The Investment Funds and their investors.

102. The Defendants knew or should have known that EquiAlt and the EquiAlt Insiders were operating in a manner that breached their fiduciary duties to The Investment Funds.

103. The Defendants gave substantial aid and assistance to EquiAlt and the EquiAlt Insiders in the furtherance of their continued breach of fiduciary duties.

104. The Defendants knew that it had conflicts of interest and intentionally chose to ignore those conflicts and to render legal advice and assistance that knowingly aided and abetted EquiAlt and the EquiAlt Insiders in continuing this fraudulent scheme, and in exchange for aiding and turning a blind eye to EquiAlt and the EquiAlt Insiders' activities, the Defendants received hundreds of thousands of dollars in legal fees.

105. The Defendants' substantial assistance to EquiAlt and the EquiAlt Insiders knowingly aided and abetted their fraudulent scheme, to the detriment of The Investment Funds and their Investors.

WHEREFORE, the Plaintiffs request judgment against Defendants for damages, prejudgment interest, attorneys' fees, the costs of this action, and such other and further relief this Court deems appropriate.

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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

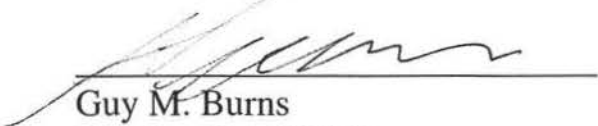
Dated: September 25, 2020

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