UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No: 8:20-cv-00325-MSS-AEP

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

Defendants,

128 E. DAVIS BLVD, LLC, 310 78TH AVE, LLC, 551 3D AVE S, LLC, 604 WEST AZEELE, LLC, BLUE WATERS TI, LLC, 2101 W. CYPRESS, LLC, 2112 W. KENNEDY BLVD, LLC, BNAZ, LLC, BR SUPPORT SERVICES, LLC, CAPRI HAVEN, LLC, EANY, LLC, BUNGALOWS TI, LLC, EQUIALT 519 3RD AVE S., LLC, MCDONALD REVOCABLE LIVING TRUST, 5123 E. BROADWAY AVE, LLC, SILVER SANDS TI, LLC, TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.
_____/

NON-PARTY PAUL WASSGREN'S NOTICE OF LIMITED APPEARANCE AND MOTION TO SEEK CLARIFICATION OF THE COURT'S ORDER APPOINTING THE RECEIVER

Non-Party Paul Wassgren respectfully seeks a limited appearance in this action to ensure compliance with this Court's February 14, 2020 Order Granting Plaintiff's Emergency *Ex Parte* Motion for Appointment of Receiver (Doc. 11) (the "Receivership Order").

INTRODUCTION

A purchaser of debentures issued by EquiAlt, LLC ("EquiAlt") filed a putative class action in California Superior Court naming as defendants Paul Wassgren ("Wassgren"), a former attorney for EquiAlt, and Benjamin Mohr, a former EquiAlt sales agent. *See Robert G. Mar v. Benjamin Charles Mohr, et al*., Case No. 20-CIV-1986 (Cal. Sup. Ct.) (hereinafter the "Mar Case"). Wassgren has removed the Mar Case to the United States District Court for the Northern District of California and intends to move to add EquiAlt as a required party to the Mar Case. The present motion simply seeks to confirm that Wassgren will not violate the Receivership Order by seeking to join EquiAlt to the Mar Case.[1]

Wassgren is also filing a separate and independent motion in this Court to enjoin the Mar Case. There are good reasons why the Mar Case should be put on hold, as set forth in that motion. But whenever the Mar Case is adjudicated, it should be adjudicated with EquiAlt as a party. And to avoid any risk of waiver, Wassgren seeks to add EquiAlt as a party now.

SCOPE OF THE RECEIVERSHIP ORDER

On February 14, 2020, the Court issued an Order Granting Plaintiff's Motion for Appointment of Receiver. (Doc. 11). Paragraph 17 of the Receivership Order provides that all persons with actual notice of the Order "are enjoined . . . from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the

[1] Undersigned counsel enters his limited appearance in this case solely for the purpose of filing this Motion to Seek Clarification of the Court's Order Appointing the Receiver. Wassgren need not formally intervene to bring this motion because as an individual potentially affected by the Receivership Order, he has standing to request clarification of that order. *See, e.g., FTC v. Global Mktg. Grp*., Case No. 06-cv-2272 (M.D. Fla. Apr. 5, 2007) (Doc. 74) (Moody, J.) (granting affected third party's motion to modify an injunction over Receiver's objection without motion for intervention); *United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) (considering appeal non-party "who did not seek to intervene in the district court" and finding that "non-parties who are bound by a court's equitable decrees have a right to move" the court for relief related to such orders).

Receiver or which affect the property of the Corporate Defendants and Relief Defendants." (Doc. 11 ¶ 17). In this action and related litigation, the Receiver, Burton W. Wiand,[2] has taken the position that Paragraph 17 of the Receivership Order enjoins third parties from *filing,* as well as "prosecuting," causes of action that may, among other things, interfere with his administration of the Receivership Estate. The Receiver has taken this position with regard to causes of action seeking relief against Receivership Entities such as EquiAlt, as well as claims against non-Receivership Entities, such as sales agents and attorneys hired by the Receivership Entities during the course of EquiAlt's alleged Ponzi scheme. *See Steven J. Rubinstein, et al. v. EquiAlt, LLC, et al.*, Case No. 8:20-cv-448-T-02TGW (M.D. Fla.) (Doc. 26) (Notice of Filing by Receiver requesting a stay of proceedings); *id*. at Doc. 26 (Receiver arguing that permitting Plaintiffs' claims against sales agents and other third parties violated Court's Receivership Order).

The Court addressed the scope of the Receivership Order during a July 31, 2020, hearing in this action. On July 22, 2020, Plaintiffs' counsel in the related class action of *Richard Gleinn, et al. v. Paul Wassgren, et al.,* Case No. 8:20-cv-1677-MSS-CPT (M.D. Fla.) (hereinafter the "Gleinn Case"), filed an "Investor Plaintiffs Notice of Special Appearance and Motion for Confirmation of Unimpeded Right to Prosecute Investor Claims" (hereinafter the "Confirmation Motion") in this action. (Doc. 145). In their Confirmation Motion and at the July 31 hearing, the Gleinn Case plaintiffs argued that the decision in *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296 (11th Cir. 2020), permitted investor actions like the Gleinn Case to be filed notwithstanding the

[2] The Court appointed Mr. Wiand as Receiver over Brian Davison; Barry M. Rybicki; EquiAlt LLC; EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; EA SIP, LLC; 128 E. Davis Blvd, LLC; 310 78th Ave, LLC; 551 3d Ave S, LLC; 604 West Azeele, LLC; 2101 W. Cypress, LLC; 2112 W. Kennedy Blvd, LLC; 5123 E. Broadway Ave, LLC; Blue Waters TI, LLC; BNAZ, LLC; BR Support Services, LLC; Bungalows TI, LLC; Capri Haven, LLC; EA NY, LLC; EquiAlt 519 3rd Ave S., LLC; McDonald Revocable Living Trust; Silver Sands TI, LLC; and TB Oldest House Est. 1842, LLC (hereinafter referred to as the "**Receivership Estate**" or "**Receivership Entities**").

injunction provision contained in this Court's Receivership Order. (Doc. 145); *see* ***Exhibit A***, excerpts from July 31, 2020 hearing transcript, at 11:15-23. At the hearing,[3] the Receiver took the position that at least some portion of the claims raised in the Gleinn Case rightfully belonged to the Receiver, but it agreed that the proper procedure for raising that issue was in a motion in the Gleinn Case. *Id*. at 11:24-12:11.

The Court ultimately issued a limited order at the hearing, ruling that it would "not consider a Complaint filed by the [Gleinn] investors to pursue what the investors believed to be their rights under law as a violation of the court's injunction" and deferring a decision on the merits of the Confirmation Motion until the issue was ripe for decision in the Gleinn Case. *Id*. at 12:19-24. The Court subsequently issued a written Order denying the Confirmation Motion "without prejudice as to the investors' ability to raise these defenses either affirmatively or defensively in the related" Gleinn Case. (Doc. 184 ¶ 8).

THE MAR CASE

On May 7, 2020, Robert Mar, an investor in EquiAlt securities, filed a complaint in the Superior Court of San Mateo County, California, against Benjamin Mohr, an insurance agent who allegedly had sold Mar $100,000 in EquiAlt securities. Mar's complaint alleges that Mohr and his insurance agency, as agents of EquiAlt, violated California's securities laws and made materially false representations in promoting EquiAlt's securities. On September 10, 2020, Mar amended his complaint to add EquiAlt's former attorney, Paul Wassgren, as a defendant. *See* ***Exhibit B***, *Amended Complaint filed in the Mar Case.* The Mar Case allegations and claims substantially mirror those brought in the instant action and those brought in the Gleinn Case. The

[3] At the time of the July 31, 2020 hearing, the Receiver's response to the Gleinn Case plaintiffs' Confirmation Motion had not yet been filed. *See Exhibit A* at 7:16.

two putative classes for which Mar seeks certification, however, are limited to California residents. *Id.* ¶ 76. On November 2, 2020, Wassgren removed the Mar Case to the United States District Court for the Northern District of California. *See Robert G. Mar v. Benjamin Charles Mohr, et al.,* Case No. 3:20-cv-07719 (N.D. Cal.) (Doc. 1).

While the Mar Case does not name EquiAlt or any of the other Receivership Entities as defendants, the claims target the property of the Receivership. For example, the Mar Case plaintiffs assert a cause of action for the sale of securities by unregistered brokers, in violation of California Corporations Code § 25210. *See Ex. B*, Mar Am. Compl. ¶¶ 87 - 94. If proven, the plaintiffs in the Mar Case would be entitled to rescission of the sale agreement and recovery of "the consideration paid for the security plus interest at the legal rate[.]" Cal. Corp. Code § 25501.5(a)(2). The agreements sought to be rescinded in the Mar Case were entered into by EquiAlt and signed by EquiAlt's principals. (Doc. 1 ¶ 11) (SEC Complaint alleging EquiAlt's Managing Director "personally signed subscription agreements" with investors); *see also Ex. B*, Mar Am. Compl. ¶¶ 48-49 (accord); *id*. at Exhibit E[4] (subscription agreement between EquiAlt and named plaintiff); *id*. at Exhibit F (debenture executed by EquiAlt and named plaintiff). As a result, these agreements are property of the Receivership Estate. *Lindsey v. Starwood Hotels & Resorts WorldWide, Inc*., Case No. CV-023822-GAFF-MOX, 2008 WL 11363357, at *9 (C.D. Cal. June 13, 2008), *reversed on other grounds, Lindsey v. Starwood Hotels & Resorts Worldwide Inc*., 409 F. App'x 77, 78 (9th Cir. 2010) (explaining that rights under a contract are held by the party on whose behalf the agreement was executed); *see also* Doc. 11, Receivership Order at ¶ 21 ("Title to all property, real or personal, all contracts . . . is vested by operation of law in the

[4] The Mar Amended Complaint includes over 200 pages of exhibits. For sake of brevity, only those exhibits referenced herein are attached to the Amended Complaint as part of *Exhibit B*.

Receiver.").

Likewise, any consideration returned to the Mar Case plaintiffs as a result of rescission also is held by the Receivership. (Doc. 11 ¶ 21) (vesting title to all EquiAlt property in Receiver); *id*. ¶¶ 1, 8 (instructing Receiver to take possession of all EquiAlt bank accounts); *see also* Doc. 1 ¶¶ 12-16 (SEC Complaint alleging amounts the various Receivership Entities raised from investors and that "EquiAlt"s primary business [was] to manage Fund 1, Fund 2, Fund 3, and the EA SIP Fund"); *id*. at ¶ 37 (stating EquiAlt's "primary business was to directly, or indirectly, manage all of the day-to-day operations of Funds including the solicitation of investors, and all of the Funds accounting and financial activities").

REQUEST FOR CLARIFICATION OF RECEIVERSHIP ORDER

Wassgren's counsel in the Mar Case intends to bring a motion to join EquiAlt in that case as a required party under Federal Rule of Civil Procedure 19, because, *inter alia*, plaintiff in the Mar Case has alleged causes of action seeking to rescind the investment contract he entered with EquiAlt and to recoup the consideration he paid to EquiAlt. "No procedural principle is more deeply embedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable." *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975). EquiAlt, as the signatory to the contract, is an indispensable party. *See Allegro Consultants, Inc. v. Wellington Techs., Inc*., No. 13-CV-02204-BLF, 2014 WL 4352344, at *7 (N.D. Cal. Sept. 2, 2014) (dismissing with leave to amend claims seeking to void contract where party to that contract had not been joined).[5]

[5] Wassgren intends to seek the transfer of the Mar Case from the U.S. District Court in the Northern District of California to this Court. In addition, Wassgren is simultaneously filing a motion to enjoin the Mar Case pursuant to Paragraph 17 of the Receivership Order. (Doc. 11). Mr. Wassgren respectfully submits that transferring and coordinating the Mar Case with other related cases before this Court would avoid duplicative litigation and the potential for inconsistent rulings and conserve the resources of the

Wassgren interprets the Receivership Order and the Court's ruling at the July 31, 2020 hearing to allow EquiAlt to be joined as a required party to the Mar Case pursuant to Rule 19. To be clear, Wassgren also interprets the Receivership Order to support enjoining the Mar Case because that order prohibits "prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Corporate Defendants and Relief Defendants" (Doc. 11 ¶ 17), as discussed in Wassgren's concurrently filed motion to enjoin the Mar Case. But this Court's injunction against "prosecuting any actions" which involve the Receiver or affect the property of the Corporate Defendants or Relief Defendants (Doc. 11 ¶ 17) applies to the Mar Case *regardless* of whether or not EquiAlt is added as a party. Wassgren does not interpret the word "prosecuting" in this Court's injunction order as prohibiting merely *joining* EquiAlt as a party to the Mar Case, if appropriate. The Mar Case will have to be adjudicated at some point, and in order to adjudicate it fully and fairly, EquiAlt must be joined as a party.

The relief Wassgren seeks here is fully consistent with the Receiver's position that the Rubinstein Case and the Gleinn Case, if actively prosecuted without coordination with the Receiver's actions, could undermine the Receivership. Wassgren agrees that coordination and proper sequencing of the adjudication of these matters is essential, and that such coordination and sequencing should be supervised by this Court. The Receiver, however, has previously taken the position that merely *filing* an action asserting claims against the Receivership Entities or assets, as opposed to *prosecuting* that action, violates the Receivership Order. Accordingly, out of an abundance of caution, and before filing a Rule 19 motion, Wassgren is filing the instant motion

---

Receivership Estate. In addition, consolidating and coordinating the Mar Case with other related cases pending before this Court ensure the Mar Case class members (defined as persons who were California residents at the time of their investments) do not receive preferential treatment by virtue of their separate lawsuit, thus promoting the goal of an equitable recovery by all of EquiAlt's investors.

to confirm that merely joining EquiAlt as a required defendant to the Mar Case will not violate the Receivership Order.

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for Wassgren conferred with counsel for the Commission, and the Commission takes no position on the instant motion. The Receiver has expressed that he is evaluating the motion and has, at this time, not expressed his intention to either support or oppose the motion. Counsel for plaintiff Robert G. Mar opposes the relief requested in this motion. Counsel for defendant Benjamin Charles Mohr takes no position on this motion.

CONCLUSION

For the foregoing reasons, non-party Paul Wassgren respectfully requests the Court to issue an order clarifying the scope of the Receivership Order and confirming that EquiAlt may be joined to the Mar Case without violating that order.

Dated: November 5, 2020

Respectfully submitted,

/s/ Simon A. Gaugush

Simon A. Gaugush
Florida Bar No. 440050
D. Matthew Allen
Florida Bar No. 866326
Erin J. Hoyle
Florida Bar No. 117762
CARLTON FIELDS, P.A.
P.O. Box 3239
Tampa, FL 33601-3239
Telephone: 813.223.7000
Facsimile: 813.229.4133
E-mail: sgaugush@carltonfields.com
E-mail: mallen@carltonfields.com
E-mail: ehoyle@carltonfields.com

Counsel for Paul Wassgren

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2020, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, thereby serving this document on all attorneys of record in this case.

/s/ Simon A. Gaugush
Simon A. Gaugush

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
vs.	**Case No. 8:20-CV-00325-MSS-AEP**
BRIAN DAVISON, et al.,	
Defendants.	

MOTION HEARING
BEFORE THE HONORABLE MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

JULY 31, 2020
10:07 A.M.
TAMPA, FLORIDA

Proceedings recorded by mechanical stenography, transcript produced using computer-aided transcription.

DAVID J. COLLIER, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
801 NORTH FLORIDA AVENUE, 7TH FLOOR
TAMPA, FLORIDA 33602

APPEARANCES:

FOR THE PLAINTIFF:

Alise M. Johnson
Chanel Rowe
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131

FOR THE DEFENDANT BRIAN DAVISON:

Howard Andrew Fischer
Moses & Singer, LLP
405 Lexington Avenue
New York, New York 10174
(212) 544-7872

Charles M. Harris, Jr.
Trenam Law
101 East Kennedy Boulevard, Suite 2700
Tampa, Florida 33602
(813) 223-7474

FOR THE DEFENDANT BARRY M. RYBICKI:

Adam Seth Fels
Fridman, Fels & Soto, PLLC
2525 Ponce de Leon Boulevard, Suite 750
Coral Gables, Florida
(305) 569-7001

FOR THE RECEIVER:

Burton W. Wiand
Katherine Donlon
Wiand Guerra King, PL
5505 West Gray Street
Tampa, Florida 33609-1007
(813) 347-5100

FOR MOVANT BANK OF AMERICA:

Miguel Mario Cordano
Liebler, Gonzalez & Portuondo, PA
44 West Flagler Street, Suite 2500
Miami, Florida 33130-1808
(305) 379-0400

FOR MOVANT FERRARI FINANCIAL SERVICES:

Carmen Contreras-Martinez
Genovese, Joblove & Battista, PA
44th Floor
101 SE 2nd Street
Miami, Florida 33131-2311
(305) 913-6684

ON BEHALF OF MOVANT INVESTORS:

Jeffrey Roger Sonn
Sonn Law Group PA
19495 Biscayne Boulevard, Suite 607
Aventura, Florida 33180-2320
(305) 912-3000

Francis J. Balint, Jr.
Bonnett, Fairbourn, Friedman & Balint, PC
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
(602) 274-1100

P R O C E E D I N G S

- - - o0o - - -

THE COURT: Good morning. Call the case, please.

COURTROOM DEPUTY: Court calls Case Number 8:20-CV-325-T-35AEP, Securities and Exchange Commission versus Davison, et al.

Counsel, please state your appearance for the record, starting with counsel for the plaintiff.

MS. JOHNSON: Good morning. Alise Johnson for the Securities and Exchange Commission, and I have with me Chanel Rowe, who is also with the Securities and Exchange Commission.

THE COURT: Good morning.

MR. FISCHER: Good morning, Your Honor. Howard Fischer from Moses & Singer for defendant Brian Davison, and also with me is Charles Harris from the Trenam Law Firm in Tampa, who apparently is in his conference room, either that or has a very large office in his home.

MR. HARRIS: Office.

MR. FELS: Good morning. Adam Fels from the law firm of Fridman, Fels & Soto on behalf of Barry Rybicki.

MS. DONLON: And this is Katherine Donlon from Wiand Guerra King on behalf of the Receiver.

MR. CORDANO: Good morning. It's Miguel Cordano

on behalf of Bank of America.

THE COURT: All right. That concludes the introduction of everyone who has a speaking role in these proceedings.

We are here really to deal with several outstanding motions, the most significant of which is the show cause motion, but there are a few preliminary motions that can probably be dealt with more quickly and get some people on their way if they choose to be.

MS. DONLON: Your Honor, you became muted, I believe.

THE COURT: At what point, do you know?

Well, I'll just start over.

MS. DONLON: You said there were several motions that would be done quickly and let people leave if they wish.

THE COURT: All right. The one that is most obvious is the motion for the attorney's fees that are being sought by counsel for Ferrari. Has that matter been resolved or do we need to resolve it here on this hearing?

MS. DONLON: Your Honor, Ms. Contreras-Martinez and I have been talking and I believe that we have resolved that and that they will be able to file a claim with the Receiver for those fees.

THE COURT: In the normal course as a standard

creditor?

MS. DONLON: Yes.

THE COURT: So whatever other creditors get, they would be in line with those creditors at the same level?

MS. DONLON: Yes, Your Honor.

Is that your understanding, Carmen?

MR. CONTRERAS-MARTINEZ: Good morning, Your Honor. Carmen Contreras-Martinez, Saul, Ewing, Arnstein & Lehr, on behalf of Ferrari Financial Services, and, yes, the attorney's fees would be as a general unsecured claim along with any other claimants pro rata.

We have one -- we have one pending issue with regard to the deficiency claim on the other two vehicles, but I am sure that counsel for the Receiver and I will be able to work that out.

THE COURT: All right. Well, I'm going to consider that matter resolved. I don't think it's on a pending motion, I just think it was part of the motion to approve the sale of personal property with the holdout, I think. Is that right, Ms. Contreras-Martinez?

MR. CONTRERAS-MARTINEZ: Yes, Your Honor. You had asked that the Receiver escrow the attorney's fees until the hearing today, and we have agreed that we will be filing a claim in the receivership estate for that $3,400.

THE COURT: All right. So you're free to stay on

or leave at your preference. That will be made a part of the Court's final amended order on the approval of the sale of the personal property.

MR. CONTRERAS-MARTINEZ: Thank you, Your Honor. If I could be excused, that would be my preference. Thank you.

MS. DONLON: Your Honor, then does this mean that we can release those funds from the escrow?

THE COURT: Yes.

MS. DONLON: All right. Thank you.

THE COURT: There's also a fairly substantial motion that I think may be premature and that is the investors' motion for confirmation of unimpeded right to prosecute investor claims, which sounds to me like a backwards motion to dismiss, so a motion to not dismiss. The response, as I understand it, is not yet due, but it is important to the Court's resolution of the case to help it sort of move along, and so what I understand the investors to be arguing is that the investors believe the investors have a claim against counsel for the Receivership entities, Wassgren, DLA, and what's the name of the second firm?

MS. DONLON: Fox Rothschild.

THE COURT: Yes, and that they may have such a claim, but I'm not sure what the Court needs to do about a motion to confirm their unimpeded right to prosecute said

claim versus hearing this matter on a motion to dismiss that might be filed by someone.

Counsel for the investors, do you want to be heard?

MR. SONN: Your Honor, this is Jeffrey Sonn on behalf of the investors. My co-counsel, Frank Balint, is also on the line.

The motion, as Your Honor pointed out, doesn't have to be heard today. We could hear it in the other case in the ordinary course. It was because of the pending injunction that we wanted some clarity on the fact that -- I wasn't going to argue it today, but just to tee it up, the *Isaiah versus JPMorgan* case which recently came down through the Eleventh Circuit affirmed the investors' rights to prosecute their claims that they solely own, and given prior actions by the Receiver, we felt that it was in the best interests of Receiver -- best interests of the investors to bring this to the Court's attention so that we don't have any misunderstanding with the Receiver in the future. So I would ask that we take this up in the ordinary course of the other case at the appropriate time.

THE COURT: Well, so you're withdrawing your motion to confirm your unimpeded right to prosecute?

MR. SONN: No. Maybe I misunderstood Your Honor. We would like to go ahead with that motion, but I didn't

know it was going to be set for today, because there's no response filed yet.

THE COURT: Ms. Donlon, are you going to be heard on this or is Ms. Johnson going to be heard on this?

MS. DONLON: I'm like Mr. Sonn, I wasn't aware that this motion was going to be heard today.

What we had brought to the attention of Mr. Sonn was that this Court had already approved the Receiver's retention of counsel to pursue claims against those same defendants, and it's my understanding that Johnson Pope is in the process of finalizing that filing and it should be filed next week, so that was --

THE COURT: Well, that was before *Isaiah* was decided, so now they're saying don't interfere with our right to prosecute investor claims, and so here we are.

Do you think you still own those claims after this Eleventh Circuit decision?

MS. DONLON: I mean, the client of the firm -- I mean, the client of those law firms was EquiAlt, so yes, I do believe that we own certain claims. I'm not suggesting that the investors maybe don't have separate claims, but perhaps there needs to be more coordination related to similar claims against the same defendants.

THE COURT: So is the Receiver prepared to challenge this motion or concede the motion or still needs

more time?

MS. DONLON: We still need more time, and we were planning on filing a response after discussing it with the SEC. We were trying to get past the hearing today. We didn't realize it was on the docket for today.

THE COURT: Well, it goes on the docket today because part of what you want me to do is maintain this injunction, and over what assets and what rights the injunction would apply would run directly into this claimed right of the investors to pursue at least this claim, the legal claims, and I'm just trying to see if maybe this motion is oddly worded and maybe it is a motion -- it's a preemptive motion to not dismiss, and it seems like it belongs in that case and not in this case.

MR. SONN: Your Honor, if I may.

MR. BALINT: Excuse me, Your Honor. If I may speak to this. This is Francis Balint. I am co-counsel with Jeff Sonn for the investors.

THE COURT: Which one is going to argue for the investors, you or Mr. Sonn?

MR. BALINT: Well, I'll let Mr. Sonn proceed since he began originally, Your Honor. Thank you.

THE COURT: Thank you.

Yes, sir.

MR. SONN: Your Honor, this is Jeff Sonn. We

filed it in this case because the injunction is in this case and we had in the past received communications from the Receiver that the Receiver thought they owned the investor claims. We thought, in the abundance of caution, because of the injunctions in this case, to file the motion on the basis of *Isaiah*, which clearly said that investors solely own the claims that they own and the Receiver does not, and given the Receiver's prior communications with our office about their position, which is against the interests of the investors' rights to bring their own claim, that we felt it was best brought before Your Honor in this case.

Your Honor's earlier comments led me to believe that -- whether it was going to be taken up in the ordinary course of the other case, but as Your Honor just pointed out and I agree, it is a motion directed to the rights of the investors in light of the pending injunction, and we believe *Isaiah* preserves the investors' rights to bring the claims they solely own, which *Isaiah* clarified that the Receiver does not own and cannot bring, and if the investors don't bring those claims at this time, they could be barred by the statute of limitations. They have -- they had to be filed, they had to be -- they have to preserve them and go forward with them, as *Isaiah* allows them to do.

THE COURT: Well, the short answer to your question is that to the extent that the Eleventh Circuit has

said investors have the right to prosecute those claims, I'm not empowered to overrule that right, and so what I think the answer is is that the motion to confirm that you have the right to prosecute your claims should be granted, and then the question that will follow in the lawsuit that's now been transferred from Judge Covington to me, I think, will be whether you own the claims that you are asserting, and that will be brought typically on an answer or on a motion to dismiss that suit.

Any objection to that procedure from the Receiver?

MS. DONLON: No, Your Honor?

THE COURT: Mr. Sonn?

MR. SONN: We will follow whatever the Court decides, but we agree with Your Honor's comments that as long as Your Honor understands that we didn't want to do anything to in any way impede the injunction or the rights of the investors in light of the injunction, we were just trying to tread carefully.

THE COURT: The Court will not consider a Complaint filed by the investors to pursue what the investors believe to be their rights under law as a violation of the Court's injunction. The Court will deal on the merits in that case with any challenge to the investor asserted rights under prevailing law.

MR. SONN: Thank you, Your Honor.

THE COURT: And so the investors may stay on and the lawyers for the investors may stay on, but if that's what you came to this hearing to hear, you are free to leave collectively or individually.

MR. SONN: Yes, Your Honor. Thank you.

MR. BALINT: Thank you, Your Honor.

THE COURT: Give me one second.

All right. The Court is back in session.

Then we're looking at the -- I guess the next one to take up is the big one, which is the emergency motion/show cause motion which we're all here on.

I have read all of the paper that I can stand to read with respect to all of these filings. I am well-familiar with the parties' contentions. I am most particularly interested in hearing from the SEC about the allegations of fraud as against Mr. Davison and the allegations of fraud against Mr. Rybicki and what to do with what appears to be blame sharing by the two principals in evaluating the need to maintain this injunction. So if you want to start there, or if you want to start somewhere else, that's also fine.

MS. JOHNSON: Good morning, Your Honor. I think that's an invitation for the SEC to address those issues, and, yes, defendants would have you believe that this company was run by a ghost, that no one was in control, and

EXHIBIT B

MARK C. MOLUMPHY (SBN 168009)
mmolumphy@cpmlegal.com
DONALD J. MAGILLIGAN (SBN 257714)
dmagilligan@cpmlegal.com
TAMARAH P. PREVOST (SBN 313422)
tprevost@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff, individually and on Behalf of All Others Similarly Situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

ROBERT G. MAR, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BENJAMIN CHARLES MOHR, an individual;
BEN MOHR, INC., a corporation;
PAUL RANDALL WASSGREN, an individual; and
DOES 1 through 25, inclusive,

Defendants.

CASE NO. 20-CIV-01986

AMENDED COMPLAINT; INDIVIDUAL AND CLASS ACTION

PART 1 OF 3 [EXHIBITS A-G]

1. Violation of Cal. Corp. Code § 25210;
2. Fraud and Deceit;
3. Intentional Misrepresentation;
4. Negligent Misrepresentation.
5. Violation of Cal. Corp. Code § 25110.

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Plaintiff **ROBERT G. MAR** ("Plaintiff"), on behalf of himself and all other similarly situated individuals and entities (the "Class," as defined below), alleges as follows upon information and belief based, *inter alia*, upon investigation conducted by Plaintiff and his counsel, except for those allegations pertaining to Plaintiff personally, which are alleged upon knowledge:

I. INTRODUCTION

1. This case arises from a $170 million Ponzi scheme operated by EquiAlt, LLC. EquiAlt claimed to pool investor funds, purchase distressed real estate, and return 8–10% annual profit to investors with little risk. Instead, EquiAlt misappropriated investor funds by paying existing obligations with new investor money; by purchasing luxury automobiles, fine jewelry, and chartering jets for the executives; and by paying substantial undisclosed commissions—as much as ten-to-fourteen percent—to unregistered sales agents.

2. Defendant Benjamin Charles Mohr ("Mohr") is one of those unregistered sales agents. Mohr profited from EquiAlt's scheme that defrauded over 1,100 investors, some of whom trusted him with their retirement savings. Mohr solicited investments in EquiAlt and its real estate funds, provided investors with offering materials, provided advice on the merits of the investment, and received transaction-based compensation. Mohr was not registered as a broker-dealer and was not associated with a qualified broker-dealer. Mohr never disclosed that he was unlicensed and that it was illegal for him to sell the EquiAlt Securities. Nor did he disclose that the EquiAlt funds have lost money every year since inception and that they are insolvent.

3. Attorney Paul Randall Wassgren was the architect of EquiAlt and its funds, providing legal assistance to EquiAlt's principals since its inception in 2011. Wassgren created the legal structure of EquiAlt which resulted in unqualified securities being sold by unregistered sales agents like Mohr.

4. EquiAlt, LLC and its investment funds are now in Receivership. An independent audit by the Securities and Exchange Commission estimates that EquiAlt, LLC's assets are worth $85 million—$82 million less than their obligations coming due to investors in December 2020.

5. By this action, Plaintiff and the Class members seek to recover the damages caused

by Defendants' unlawful marketing and sales of unqualified EquiAlt Securities.

II. JURISDICTION AND VENUE

6. This court has personal jurisdiction over Defendants because they are residents of the State of California and, at all times relevant, the events which combined to produce the injuries sustained by Plaintiff occurred in this state. This court is competent to adjudicate this action and the amount in controversy exceeds the jurisdictional minimum of this court.

7. Venue is proper in the County of San Mateo, State of California, pursuant to Code of Civil Procedure § 395.5 as this litigation arises out of contracts made in San Mateo County, State of California.

8. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure section 395(b) because the action arises from a transaction consummated as a proximate result of a telephone call or electronic transmission made by a buyer in response to a solicitation by a seller leading to a contract signed by the buyer in San Mateo County.

9. Furthermore, Defendant Mohr operated out of an office in San Mateo County at 951 Mariners Island Boulevard, Suite 300, San Mateo, CA 94404 and at all times relevant to this complaint, Plaintiff resided in San Mateo County.

III. PARTIES

A. Plaintiffs

10. Plaintiff **ROBERT G. MAR** ("Mar" or "Plaintiff") was, at all relevant times, an individual who resided in Foster City, in the County of San Mateo, California. Mar invested one hundred thousand dollars ($100,000.00) in EquiAlt Securities through a transaction effected by the Mohr Defendants.

11. Mar brings this suit in his individual capacity and on behalf of all other similarly situated California residents and entities (the "Class," as defined in Section VI, *infra*.)

B. Defendants

12. Defendant **BENJAMIN CHARLES MOHR** ("Mohr") was, at all relevant times, an individual who resided in Contra Costa County at 6216 Lakeview Circle, San Ramon, California 94582. Mohr is individually licensed by the Department of Insurance as a Life-Only

Insurance Agent and as an Accident and Health Insurance Agent. Mohr represented to Plaintiff and the Class that he provided "retirement planning" services to California consumers.

13. Defendant **BEN MOHR, INC**. ("BMI", and collectively with Mohr, the "Mohr Defendants") is a now-dissolved California corporation that did business at 6216 Lakeview Circle, San Ramon, CA 94582. BMI was in the business of insurance brokering and life insurance sales. BMI's website (benmohrinc.com) offered retirement planning services. Ben Mohr filed a certificate of dissolution with the California Secretary of State on December 6, 2018 on behalf of BMI.

14. Defendant **PAUL RANDALL WASSGREN** ("Wassgren") was, at all relevant times, an attorney who provided legal services to Bran Davison, EquiAlt, LLC, and to the EquiAlt investment funds. Wassgren created the structure of the EquiAlt funds in an attempt to avoid federal registration and California qualification requirements, and he was the legal services provider to EquiAlt when the principals were misappropriating investor funds. Wassgren is a resident of Los Angeles County.

C. Unnamed and Doe Defendants

15. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants **DOES 1 through 25,** inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff further alleges that each fictitious Defendant is in some manner responsible for the acts and occurrences set forth herein. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious Defendant is responsible.

D. Agency, Concert of Action, and Conspiracy

16. At all times herein mentioned, each of the Defendants, inclusive, were the agent, servant, employee, partner, aider and abettor, co-conspirator and/or joint venturer of each of the remaining defendants named herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, alter ego and/or joint venture, and each defendant has ratified and approved the acts of each of the remaining

defendants. Each of the Defendants has aided and abetted, encouraged, and rendered substantial assistance to the other defendants in breaching their obligations to Plaintiff Mar and the Class as alleged herein. In taking action to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings complained of, as alleged herein, each of the Defendants acted with an awareness of his or her primary wrongdoing and realized that his or her conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

IV. BACKGROUND OF EQUIALT, LLC

17. EquiAlt, LLC is a private Tampa, Florida-based limited liability company. EquiAlt, LLC's management team included Brian Davison ("Davison"), owner and chief executive officer, and Barry Rybicki ("Rybicki"), managing director. Davison and Rybicki maintained control over EquiAlt, LLC, whose primary business is to manage four real estate investment funds: EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; and EA SIP, LLC (collectively, the "Funds.") The parent company, the management, and the Funds will hereinafter be referred to as "EquiAlt."

18. The Funds issued securities in the form of fixed-rate debentures (the "EquiAlt Securities.") The EquiAlt Securities are not nationally traded securities, and they are not issued by an investment company registered, or that has filed a registration statement, under the Investment Company Act of 1940, and as such, the EquiAlt Securities are not covered securities within the meaning of 15 U.S.C. § 77p(3) or 77r(b)(1)–(2).

19. Defendants and EquiAlt pursued a conspiracy to accomplish the wrongs complained of herein. Defendants were aware that EquiAlt was misusing and misappropriating investor funds, and that they planned to misuse and misappropriate investor funds, and that Defendants agreed with EquiAlt and others and intended that the misuse and misappropriation of investor funds be committed. Defendants and EquiAlt acted in furtherance of the objectives of the conspiracy as co-conspirators.

20. Defendants aided and abetted EquiAlt in committing the wrongs complained of herein. Defendants were aware of EquiAlt's misconduct and Defendants gave substantial

assistance or encouragement to EquiAlt and Defendants' conduct was a substantial factor in causing harm to Plaintiff and the Class members.

21. Defendants were the agents of EquiAlt in that they represented EquiAlt in effecting or attempting to effect purchases or sales of securities in California and they materially aided in the act or transaction constituting the violation. EquiAlt gave Defendants authority to act on its behalf, and Defendants were acting within the scope of their agency when they harmed Plaintiff and the Class members.

V. BACKGROUND OF INVESTMENTS

A. Defendant Mohr Solicited Mar and Others to Invest in EquiAlt

22. On April 25, 2018, Plaintiff received an email solicitation from BMI inviting potential investors to one of three upcoming investment seminars in San Mateo (May 15), Berkeley (May 16), and Walnut Creek (May 17). The email advertised "Exciting News" about investment opportunities including: (a) a new life settlement product; (b) investments earning 8–10% in as little as one year; (c) investments that are liquid within 60 days; and (d) investment opportunities outside the stock market. The email was sent to a number of California residents.

23. Plaintiff Mar responded to BMI's emailed solicitation and attended the May 15 seminar at Paul Martin's restaurant at Hillsdale Shopping Center in the city of San Mateo.

24. On May 16, 2018, Defendant Mohr told Plaintiff via email that EquiAlt offer is "8% for 4 years on a $25k minimum investment. 10% APR on $100k+ investment. You can invest cash or IRA. There is a 60 day liquidity notice, meaning you request your funds at any time and get them within 60 days." (**Exhibit A**.)

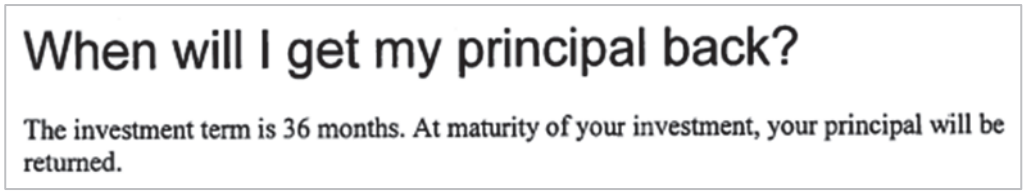
25. Plaintiff would learn that EquiAlt was offering loans in the form of fixed-rate debentures. Defendant Mohr provided EquiAlt's marketing materials as an attachment to May 16 email. (**Exhibit B**.) The marketing materials included claims about the safety, security, and low risk profile of the EquiAlt Securities, including "no risk of loan default" and that "EquiAlt has never lost investor dollars."

26. The marketing materials also detailed the terms of the EquiAlt Securities.

27. The marketing materials did not mention the "10% APR on $100k+ investment" offered by Mohr in his May 16 email.

28. On May 25, 2018, Plaintiff Mar met with Defendant Mohr again at Mohr's office in San Mateo. Mohr provided additional EquiAlt marketing materials to Plaintiff including Frequently Asked Questions ("FAQs") about the EquiAlt Secured Real Estate Income Fund. (**Exhibit C**.) One FAQ is, "Are these investments risky?" The materials assured potential investors like Mar and the Class members that "there is no risk of default" and that "Since inception, EquiAlt has redeemed 100% of principal, at maturity, to investors."

29. The FAQs provided by Mohr also promise that investors will get their principal back. "The main benefit of becoming an Investor in the Fund is that you earn a reliable stream of monthly income for three years and are assured of getting your principal back when the fund liquidates at that time." The marketing materials also answer the following FAQ:



30. At the May 25 meeting, Defendant Mohr also provided Plaintiff Mar with another EquiAlt brochure. (**Exhibit D**.) While similar to the May 16 brochure, the new brochure makes enhanced claims about EquiAlt's prior investment experience since 2008. The new brochure states that EquiAlt has made over 3,000 transactions in which they acquired $345 million in assets and liquidated $450 million. According to the May 16 brochure provided by Mohr, EquiAlt had made over 1,000 transactions in which they acquired $200 million and liquidated over $300 million in distressed real estate.

31. Plaintiff and the Class were persuaded to purchase investments with the promise of generous returns, with no risk of loan default, from a company who has never lost investor dollars over ten years and hundreds of millions of dollars' worth of real estate deals. Plaintiff agreed to invest part of his retirement income in EquiAlt Securities.

32. On June 7, 2018, Plaintiff Mar met with Defendant Mohr at Mohr's office in San Mateo located at 951 Mariners Island Boulevard, Suite 300.

33. Defendant Mohr made representations to Plaintiff about the safety, quality, and merits of the EquiAlt Securities. Defendant, by his words and conduct, represented that the EquiAlt Securities were a safe way to generate high returns on investment with low risk.

34. Defendant Mohr provided the paperwork to facilitate Plaintiff's investment in the EquiAlt Securities. Mohr did not provide financial statements for EquiAlt, LLC or EquiAlt Fund, LLC, the issuer of the EquiAlt Securities. Instead, Mohr provided a Prospective Purchaser Questionnaire, a Private Placement Memorandum, and a uniform Subscription Agreement for EquiAlt Fund, LLC ("Subscription Agreement.")

B. The Uniform Subscription Agreement Signed by Plaintiff Mar and Others

35. The uniform Subscription Agreement stated that EquiAlt Fund, LLC was seeking to issue "up to a maximum of One Hundred Million (100,000,000) units of Class A membership

(the 'Maximum Offering') to certain Accredited Investors . . ." at a price of ten dollars per unit. (**Exhibit E**.)

36. The Subscription Agreement stated that "The Units are being sold through [EquiAlt, LLC] without commissions." (*Id*. at ¶ 3.7(B).) The agreement also states that Equialt Fund, LLC "will pay finder's fees only in compliance with applicable law." (*Id*. at ¶ 6.6.)

37. The Subscription Agreement stated that Plaintiff Mar should have received EquiAlt's Offering Documents including:

> an executive summary of this offering, a copy of [EquiAlt Fund, LLC's] operating agreement, an accredited investor questionnaire, this Agreement and the Risk Factors incorporated into the Agreement, as such may have been amended or supplemented from time to time (collectively, the "Offering Documents")

38. Defendant Mohr did not provide the operating agreement or "The Risk Factors incorporated into the Agreement."

C. The Private Placement Memorandum Signed by Plaintiff Mar and Others

39. The Private Placement Memorandum ("PPM") provided by Mohr merely set out the terms of the debenture being issued by EquiAlt Fund, LLC. For Plaintiff Mar's $100,000.00 investment, EquiAlt Fund, LLC promised to repay the principal amount, plus ten percent annual interest on the unpaid principal amount, for 48 months. (**Exhibit F**.)

40. The PPM referred to the debenture as a "Loan." (*Id*. at ¶¶ 7, 11.)

41. The loan was to commence on July 12, 2018 for a maturity date of "July 2022."

42. The PPM provided by Mohr did not include any information about EquiAlt's financial statements, EquiAlt's intended use of the offering proceeds, risk factors, conflicts of interest, offering expenses, or the amount of selling compensation that will be paid to the manager and its affiliates.

D. Plaintiff Mar Purchased the EquiAlt Debentures Through Defendant Mohr

43. Plaintiff Mar decided to purchase the EquiAlt security based on EquiAlt and Defendants' representations about the safety, quality, and merits of the EquiAlt Securities.

44. On June 7, 2018, Plaintiff Mar signed the Prospective Purchaser Questionnaire, PPM, and Subscription Agreement while at Defendant Mohr's office in San Mateo. Plaintiff Mar

purchased 10,000 units for a total investment of one hundred thousand dollars ($100,000.00). (See **Exhibit E**, *supra*.)

45. At the June 7 meeting, Defendant Mohr never disclosed that he would receive a commission on the sale of the EquiAlt Securities.

46. Plaintiff Mar opened an account with IRA Services Trust Company at Defendant Mohr's direction for the purpose of facilitating Plaintiff's EquiAlt investment.

47. On July 9, 2018, Plaintiff Mar transferred $100,000.00 from his IRA Services Trust account to EquiAlt.

48. The Subscription Agreement was agreed to and accepted as of June 13, 2018 and signed by EquiAlt, LLC, the manager of EquiAlt Fund, LLC.

49. The PPM was executed on July 12, 2018 by EquiAlt Fund, LLC, the manager of EquiAlt Fund, LLC and signed by Rybicki. The PPM stated that the Holder of the loan was "IRA Services Trust Company FBO Robert G. Mar Traditional IRA."

E. Defendant Mohr is not Qualified to Sell the EquiAlt Securities

50. Plaintiff Mar never communicated with Davison, Rybicki, or any other EquiAlt representative before investing in the EquiAlt Securities. Defendant Mohr was the sole salesperson of the EquiAlt Securities.

51. Mohr is not registered as a broker-dealer in California. According to the financial Industry Regulatory Authority ("FINRA"), Mohr had been registered broker-dealer ten years earlier while employed by with Midamerica Financial Services Inc. Mohr received his license after passing the Uniform Securities Agent State Law Examination (Series 63), administered by FINRA, on August 31, 2009. Mohr's license expired in 2010 and he has not been licensed since.

52. On or about October 22, 2018, the State of California Department of Business Oversight issued a Desist and Refrain Order (the "DBO Order") to Defendants Mohr and BMI for selling, *inter alia*, EquiAlt Securities without the proper certification in violation of California Corporations Code section 25210. (**Exhibit G**.)

53. According to the DBO Order, Defendants had been offering, selling, and effecting transactions in EquiAlt Securities since at least 2017. "At least 10 California investors transferred

over $400,000.00 to EquiAlt through the assistance of BMI and Mohr, some using retirement funds, for 36 to 48 months in exchange for a profit of at least 8% to 10% per annum. BMI and Mohr hosted dinners with California investors and the vice president of Equialt to effect transactions in securities in the form of investment agreements in Equialt." (*Id*. at ¶ 3.)

54. The Commissioner found that Defendants did not have a certificate to act as a broker-dealer under section 25210 of the California Securities Law of 1968, and that:

> Based on the foregoing findings, the Commissioner is of the opinion that Ben Mohr, Inc. and Benjamin Charles Mohr are subject to the laws regulating broker-dealers under Corporate Securities Law of 1968, and has affected transactions in, or induced, or attempted to induce the purchase or sale of, securities as broker-dealers, without having first applied for and secured from the Commissioner a certificate authorizing these persons to act in that capacity, in violation of CSL section 25210.
>
> Pursuant to CSL section 25532, Ben Mohr, Inc. and Benjamin Charles Mohr are hereby ordered to desist and refrain from conducting business as a broker-dealer, unless and until certification has been made under said law or unless exempt.
>
> This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies and provisions of the Corporate Securities Law of 1968.

55. The Mohr Defendants never told Plaintiff Mar or the Mohr Class members that they needed a license to sell the EquiAlt securities, and Plaintiff and the Mohr Class members did not learn of the DBO order until after the EquiAlt Ponzi scheme was uncovered in February 2020.

56. When confronted with the DBO order in April 2020, Defendant Mohr said, "as part of an agreement with DBO I agreed that until I got further licensing I would not promote Equialt any further, hence the Cease & Refrain Order."

F. <u>The Wassgren Defendants</u>

57. EquiAlt's CEO Davison was deposed during the SEC's 2019 investigation into EquiAlt. Davison testified that Wassgren has been providing legal services to Davison and EquiAlt since EquiAlt's inception in 2011. Davison hired Wassgren to help execute the plan to raise investor funds through PPM.

58. Wassgren provided material assistance to EquiAlt by setting up the limited liability companies used to perpetrate the ponzi scheme, by drafting the offering documents shown to investors, by lending his name to the marketing materials shown to investors, and by enabling

Davison and Rybicki's gross misuse of investor funds, all while ignoring EquiAlt's financial statements.

59. In May of 2011, the Articles of Organization for EquiAlt, LLC and EquiAlt Fund, LLC were filed in Nevada with Wassgren listed as the organizer.

60. Once EquiAlt began raising money, Wassgren was listed as the Legal Services Provider for EquiAlt in their marketing materials. (See **Exhibit B**, p. 6; **Exhibit D**, p. 5.) Some of the marketing materials encouraged prospective investors to contact Wassgren, who is "independent from EquiAlt LLC and can give you some insight into the fund and its activities." (**Exhibit B**, p. 13.)

61. The uniform prospective purchaser questionnaire ("PPQ") instructs investors to return the PPQ to the same address listed for Wassgren in the marketing materials attached as Exhibit B. (**Exhibit H**.) Wassgren is also listed in the uniform subscription agreements provided to Plaintiff and all Wassgren Class members. Those subscription agreements state that all notices under the agreement shall be given to Wassgren as the representative of EquiAlt. (*See* **Exhibit E**, ¶ 6.5.)

62. Davison testified that he created the PPM with counsel, whom he identified as Wassgren, around 2011. The PPM for EquiAlt Fund, LLC, EquiAlt Fund II, LLC, and EquiAlt SIP, LLC were created for the purpose of, *inter alia*, splitting the EquiAlt offerings to avoid registration and qualification requirements of the federal and California Securities laws. In reality, the different funds were one integrated offering because they were part of a single plan of financing, they involved the issuance of the same class of security, they sold securities during overlapping times, the same type of consideration was received, and the sales were made for the same general purpose. (See **Exhibits I–K**.)

63. As an integrated offering, EquiAlt exceeded the number of non-accredited investors in the funds. (See **Exhibit L–M**.) Wassgren and EquiAlt failed to take reasonable steps to verify that the purchasers of the EquiAlt Securities were accredited investors. They did not require investors to produce IRS forms, bank or brokerage statements, credit report, or written

confirmation from a registered broker-dealer, a registered investment advisor, a licensed attorney, a CPA, or any other equivalent documentation.

64. EquiAlt provided different PPM to prospective investors, but each PPM had the same misleading statements. (See **Exhibit I**.) The PPM all stated that 90–95% of investor funds would be used to invest in real property, but according to the SEC, EquiAlt spent closer to one-third of investor funds on real estate purchases.

	Raised from Investors	Used to Purchase Property	Percentage
EquiAlt Fund, LLC	$110 million	$37.7 million	34%
EquiAlt Fund II, LLC	$39.6 million	$9.6 million	24%
EquiAlt SIP, LLC	$21.7 million	$8 million	37%
	$171 million	$55.3 million	32%

(See **Exhibit N**.[1])

65. The PPM failed to describe the amounts of fees and commissions that would be paid to Davison (the CEO) and Rybicki (the managing partner). Of the $170 million raised by EquiAlt, Davison and Rybicki were paid over $49 million in fees and commissions (29%). (*Ibid*.)

66. During the time that Wassgren was acting as the Legal Services Provider to EquiAlt, the EquiAlt principals were raiding the investor funds for their own purposes, including by enjoying "liquidity events." For example, in 2017, Davison and Rybicki paid themselves approximately $1.5 million each when they determined that the value of the assets in EquiAlt Fund, LLC exceeded the amounts owed on the debentures. Davison and EquiAlt quantified the value of the Funds' assets using the internet—including Zillow.com and the multiple listing service—rather than an independent third-party appraiser.

67. The PPM drafted by Wassgren also made misleading statements about the EquiAlt principals. The PPM makes no mention of Davison's personal bankruptcy, his lack of educational degrees, or his lack of educational background in accounting or securities regulation. The PPM also identify Diane Dutton, MBA, CPA—who never worked for EquiAlt—as EquiAlt's Chief Financial Officer. (See **Exhibits I–K**.)

[1] Exhibit N includes the Declaration of Mark Dee in support of Plaintiff Securities and Exchange Commission's Emergency Ex Parte Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief, *SEC v. Davison, et al*. (M.D. Fla, Feb. 11, 2020, No. 8:20cv-00325-MSS-AEP). This exhibit also includes several of Mr. Dee's attachments to his declaration.

68. Davison testified that he worked extensively with Wassgren when the EquiAlt funds "interacted with each other." According to the SEC, the funds interacted with each other by comingling their proceeds. For example, on December 15, 2015, EquiAlt transferred $1.29 of proceeds raised from investors in EquiAlt Fund, LLC to the bank account of another fund, EquiAlt Fund III, LLC, for the purpose of paying off Fund III's investors. The companies and funds also interacted with each other when monies from one fund were used to purchase properties or to pay investors in the other funds. (See **Exhibit N**.)

69. Wassgren knew what he was doing. Wassgren brags that his lifelong passion is investing, and he made his first securities trade as a nine-year-old. At age fifteen, he carried a pager with real-time stock quotes, and by sixteen, he was trading in derivatives. Between Wassgren and Davison, only Wassgren knew the rules for securities, and Wassgren built the foundation upon which all EquiAlt investors were defrauded. Wassgren continued to provide legal services to EquiAlt through at least 2017 when he helped them set up two new funds, the Equialt Qualified Opportunity Zone Fund, LP and the EquiAlt Secured Income Portfolio REIT, Inc.

G. The SEC Action Against Equialt

70. On February 11, 2020, the Securities and Exchange Commission filed an emergency action against EquiAlt, LLC, its funds, Davison, and Rybicki in the United States District Court for the Middle District of Florida (the "SEC Action.")

71. According to the SEC, EquiAlt's offering documents represented that the funds would pool 90% of investor money to purchase distressed real estate, rent or flip the properties, and pay 8-10% returns to investors. In reality, EquiAlt was using only about half of investor money on real estate and misappropriating the other half.

72. The funds managed by EquiAlt—including EquiAlt Fund, LLC—have lost money every year since inception. EquiAlt's business is almost solely reliant on new investor money to funds its operations.

73. By December 2020, EquiAlt will owe investors over $167.3 million including $13.7 million in interest alone. As of the fall of 2019, they had less than $7 million in cash.

EquiAlt's primary assets are real property.

74. EquiAlt supposedly owns approximately 260 properties. EquiAlt records the property values in two ways: by "Best Value" and by "Market Value." Even using EquiAlt's Best Value, EquiAlt is operating from a position of negative equity with a portfolio worth $145 million. Using EquiAlt's Market Value, their real estate portfolio value is $78 million, leaving the company and funds $82 million short of obligations that will be owed to investors as of December 2020. (**Exhibit N**.)

75. On February 14, 2020, the District Court for the Middle District of Florida froze the assets of EquiAlt, LLC, its funds, Davison, and Rybicki, and appointed a Receiver to take possession of EquiAlt's assets and investigate the true value of losses suffered by Plaintiff Mar and the members of the Class.

VI. CLASS ALLEGATIONS

76. Plaintiff brings this action as a class action, pursuant to California Code of Civil Procedure § 382, on behalf of two Classes, the Mohr Class and the Wassgren Class (collectively, the "Class Members"), defined as follows:

> **Mohr Class**: All California residents who purchased, or who currently hold, EquiAlt securities obtained through a transaction effected by the Mohr Defendants between January 1, 2017 and the present.
>
> **Wassgren Class**: All California residents who purchased EquiAlt securities in this state between 2011 and 2019.

77. "EquiAlt Securities" shall mean debentures issued by EquiAlt, LLC; EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; or EA SIP, LLC.

78. Excluded from the definition of the Class Members are Defendants and any entity in which Defendants have a controlling interest, as well as their officers, directors, and employees, and defendant Mohr's heirs, successors, and assigns. Also excluded from the definition is EquiAlt, as well as their officers, directors, and employees, successors, and assigns.

79. This action is properly maintainable as a class action.

80. The Class Members is so numerous that joinder of all members is impractical, and the class action procedure is more practical, cost-effective, inclusive, and efficient than multiple lawsuits on the common questions of law and fact that unite the class. Plaintiff is informed and believes that the Mohr Class is between twenty and fifty California residents and entities and that the Wassgren Class is over one hundred California residents and entities. The exact number and identities of those investors can be readily ascertained from the records of the Mohr Defendants, the Wassgren Defendants, and the third-party records of EquiAlt and their unregistered California-based broker-dealers.

81. There are questions of law and fact which are common to the Class, including:

a. Whether the debentures issued by EquiAlt and their funds were securities within the definition of California Securities Laws.

b. Whether the Mohr Defendants were acting as broker-dealers by promoting the EquiAlt Securities.

c. Whether the Mohr Defendants were required to be licensed by the Commission.

d. Whether the Mohr Defendants were licensed by the Commission or exempt from licensure requirements.

e. Whether the EquiAlt securities were qualified or exempt from qualification under California Securities Laws.

f. Whether Defendants were engaged in a conspiracy with EquiAlt or aided and abetted EquiAlt's misconduct.

g. Whether the Mohr Defendants committed fraud.

h. Whether the Mohr Defendants made negligent misrepresentations to purchasers of the EquiAlt Securities.

i. Whether Wassgren provided material assistance to others in the commissions of violations of the California Securities Laws and whether they acted with an intent to deceive.

j. Whether the Class is entitled to damages due to Defendants' wrongful conduct.

82. The common questions, when compared to those requiring separate adjudication, are sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants.

83. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

84. The Claims of Plaintiff are typical of the claims of other members of the Class and Plaintiff has the same interests as the other members of the Class. Plaintiff will fairly and adequately represent the Class.

85. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

86. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. As the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impractical for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violations of Corporations Code § 25210
(Against all Defendants)

87. Plaintiff hereby incorporates all the foregoing paragraphs.

88. The debentures issued by EquiAlt Fund, LLC and purchased by Plaintiff and the Mohr Class members are securities within the meaning of the California Securities Law of 1968 ("CSL").

89. The Mohr Defendants were broker-dealers in the EquiAlt Securities pursuant to section 25004 of the CSL in that they were persons engaged in the business of effecting transactions in securities in this state for the account of others or for their own account.

90. The Mohr Defendants effected a transaction in, or induced, or attempted to induce, the purchase of EquiAlt Securities in this state by Plaintiff and the Class members.

91. The Mohr Defendants had not applied for and secured from the Commissioner on Business Oversight ("Commissioner") a certificate authorizing Defendants to act as a broker-dealer.

92. Wassgren provided material assistance to the Mohr Defendants, and he acted with an intent to deceive, by devising a plan to characterize unregistered broker-dealers like Mohr as "finders" despite their integral role in effecting the transaction and their receipt of transaction-based compensation.

93. The aforementioned acts of Defendants were done maliciously, oppressively, and with intent to defraud, and Plaintiff and the Class Members are entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

94. As a result of Defendants' wrongful conduct, Plaintiff and the Class members have suffered and continue to suffer economic losses and other general and specific damages.

SECOND CAUSE OF ACTION
Uniform Fraud and Deceit
(Against the Mohr Defendants)

95. Plaintiff hereby incorporates all the foregoing paragraphs.

96. The conduct of the Mohr Defendants and EquiAlt constitute a uniform fraud against Plaintiff and the members of the Class. The Mohr Defendants, directly or through their agents and employees, and through EquiAlt, made uniform false representations, concealments, and nondisclosures to Plaintiff and the members of the Class about: (a) the safety, quality, and merits of the EquiAlt Securities; (b) EquiAlt's past financial performance; and (c) EquiAlt's solvency, with the intent to defraud. The Mohr Defendants and EquiAlt intended to defraud Plaintiff and the Class members by concealing the true risk associated with the EquiAlt Securities.

97. Plaintiff and the Class members justifiably relied on the misrepresented uniform facts and were unaware of the concealed and/or suppressed facts and would not have acted as they did if they had known of the true concealed and/or suppressed facts. As a result, Plaintiff and the members of the Class sustained damages.

98. The Mohr Defendants, directly and indirectly, made the same misrepresentations and material omissions to Plaintiff and each member of the Class.

99. On information and belief, the Mohr Defendants and EquiAlt were aware of the true risk associated with the EquiAlt Securities.

100. As a result of the Mohr Defendants' wrongful conduct, Plaintiff and the Class members have suffered and continue to suffer economic losses and other general and specific damages.

101. The aforementioned acts of the Mohr Defendants were done maliciously, oppressively, and with intent to defraud, and Plaintiff and the Class members are entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

102. As a result of the Mohr Defendants' wrongful conduct, Plaintiff and the Class members have suffered and continue to suffer economic losses and other general and specific damages.

THIRD CAUSE OF ACTION
Common Intentional Misrepresentation (Against the Mohr Defendants)

103. Plaintiff hereby incorporates all the foregoing paragraphs.

104. The Mohr Defendants, directly or through their agents and employees, including EquiAlt, made false representations to Plaintiff Mar and the Class members about: (a) the safety, quality, and merits of the EquiAlt Securities; (b) EquiAlt's past financial performance; and (c) EquiAlt's solvency.

105. The Mohr Defendants knew the statements were false when they made them, or they made the representations recklessly and without regard for their truth.

106. The Mohr Defendants intended that Plaintiff and the Class members would rely on the representations.

107. Plaintiff and the Class members justifiably relied on the false statements and misrepresentations of fact and, as a result, sustained damages.

108. The Mohr Defendants, directly and indirectly, made substantially similar misrepresentations to Plaintiff and each member of the Class.

109. The aforementioned acts of the Mohr Defendants were done maliciously, oppressively, and with intent to defraud, and Plaintiff and the Class members are entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

110. As a result of the Mohr Defendants' wrongful conduct, Plaintiff and the Class members have suffered and continue to suffer economic losses and other general and specific damages.

FOURTH CAUSE OF ACTION
Common Negligent Misrepresentation (Against the Mohr Defendants)

111. Plaintiff hereby incorporates all the foregoing paragraphs.

112. The Mohr Defendants, directly or through their agents and employees, including through EquiAlt, made false representations to Plaintiff Mar and the Class members about: (a) the safety, quality, and merits of the EquiAlt Securities; (b) EquiAlt's past financial performance; and (c) EquiAlt's solvency.

113. The Mohr Defendants had no reasonable grounds for believing that the representations were true when Defendants made them.

114. The Mohr Defendants intended that Plaintiff and the Class members would rely on the representations.

115. Plaintiff and the Class members justifiably relied on the false statements and misrepresentations of fact and, as a result, sustained damages.

116. The Mohr Defendants, directly and indirectly, made substantially similar misrepresentations to Plaintiff and each member of the Class.

117. As a result of the Mohr Defendants' wrongful conduct, Plaintiff and the Class Members have suffered and continue to suffer economic losses and other general and specific damages.

FIFTH CAUSE OF ACTION
Violations of Corporations Code § 25110
(Against Wassgren)

118. Plaintiff hereby incorporates all the foregoing paragraphs.

119. The debentures issued by EquiAlt and purchased by Plaintiff and the Class Members are securities within the meaning of the California Securities Law of 1968.

120. The debentures were sold in this state in an issuer transaction, they were subject to qualification, they were not qualified, and they were not exempt from qualification.

121. The EquiAlt securities were not exempt from qualification because the total number of non-accredited investors in the integrated offering exceeds 35, they were offered for sale in a general solicitation, they were sold without the required disclosure of financial information, and they were sold by unregistered broker-dealers being paid 10–14% commissions in transaction-based fees.

122. Wassgren knew that the EquiAlt securities were unqualified and not exempt from qualification. Wassgren played a material, facilitating role in the sale of the unqualified EquiAlt securities, and he intended to induce reliance on the knowing misrepresentations and omissions contained in the Offering documents that he drafted. Wassgren had full knowledge of the false and misleading nature of the Offering Documents, and he intended that the investors would read and rely on such knowingly false and misleading statements in determining whether to purchase the EquiAlt securities.

123. The aforementioned acts of Defendants were done maliciously, oppressively, and with intent to defraud, and Plaintiff and the Class Members are entitled to punitive and exemplary damages in an amount to be shown according to proof at the time of trial.

124. As a result of Defendants' wrongful conduct, Plaintiff and the members of the Wassgren Class have suffered and continue to suffer economic losses and other general and specific damages.

WHEREFORE, Plaintiffs pray for relief as set forth below.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in favor of him and the

Class on every claim for relief set forth above as follows:

1. Declaring this action to be a proper class action and certifying Plaintiff as the Class Representative;

2. For rescission of the purchase of EquiAlt Securities by Plaintiff and the Class;

3. For return of the consideration paid for the securities by Plaintiff and the Class, plus interest at the legal rate;

4. For reasonable attorney's fees and costs;

5. For an award of compensatory damages to Plaintiff and the Class against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon.

6. An award of punitive damages and restitution where available;

7. Such further and additional relief as the Court deems proper.

Dated: September 10, 2020

COTCHETT, PITRE & McCARTHY, LLP

By: _____
DONALD J. MAGILLIGAN
Attorneys for Plaintiff

VII. JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Dated: September 10, 2020

COTCHETT, PITRE & McCARTHY, LLP

By: _____
DONALD J. MAGILLIGAN
Attorneys for Plaintiff

EXHIBIT E to *MAR*
Amended Complaint

SUBSCRIPTION AGREEMENT

FOR

EQUIALT FUND, LLC

A Nevada limited liability company

THIS SUBSCRIPTION AGREEMENT (the "Agreement") is made by and among EquiAlt Fund, LLC, a Nevada limited liability company (the "Company"), and the individuals and/or entities purchasing the securities hereunder (individually, a "Subscriber" and collectively, the Subscribers").

WHEREAS, the Company desires to issue up to a maximum of One Hundred Million (100,000,000) units of Class A membership interest (the "Maximum Offering") to certain Accredited Investors, as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Act")

WHEREAS, each Subscriber has been furnished with an executive summary of this offering, a copy of the Company's operating agreement, an accredited investor questionnaire, this Agreement and the Risk Factors incorporated into the Agreement, as such may have been amended or supplemented from time to time (collectively, the "Offering Documents"); and

WHEREAS, the Subscriber desires to purchase that number of units set forth on the signature page hereof on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual representations and covenants set forth herein, the parties agree as follows:

1. Purchase and Sale of Units.

1.1. Purchase of Units. Subject to the terms and conditions of this Agreement, the Subscribers agree to purchase at the Closings that number of units up to an aggregate of One Hundred Million (1,000,000) units of Class A membership interest at a purchase price of Ten Dollars ($10.00) per unit, as may be subscribed to by the Subscribers in this offering. The Units issued to the Subscribers pursuant to this Agreement (including counterpart versions hereof) shall be referred to herein as the "Units".

1.2. Company reservation of Rights to Terminate or Deny. The Company reserves the right to refuse all or part of any or all subscriptions. Furthermore, no Subscription Agreement shall be effective until accepted and executed by the Company and the Company shall have the right, in its sole discretion, for any reason or for no reason, to refuse any potential Subscribers.

2. Closing and Delivery.

2.1. Initial Closing Date. The initial purchase and sale of the Units shall take place at such time and place as the Company determines (the "Initial Closing"). At the Initial Closing, the Company shall deliver to each Subscriber a certificate representing the Units to be purchased in the Closing by the Subscriber. The purchase price for the Units is payable by check or wire transfer payable to the Company or its designee in an amount equal to the applicable purchase price per unit multiplied by the number of Units being purchased by such Subscriber. Each Subscriber hereby authorizes and directs the Company to deliver the Units to be issued to the Subscriber pursuant to this Agreement directly to the Subscriber at the residential or business address indicated on the signature page hereto.

2.2. Subsequent Closings. The Company may conduct subsequent closings on an interim basis (each referred to as a "Closing"), until the Maximum Offering amount has been reached (subject to increase in the event of oversubscription of the offering). All such sales shall be made on the terms and conditions set forth in this Agreement. Any Units sold pursuant to this Section 2.2 shall be deemed to be "Units" and any Subscribers thereof shall be deemed to be "Subscribers" for all purposes under this Agreement.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Subscribers that:

3.1. Organization, Good Standing and Qualification. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business or properties.

3.2. Authorization. All action on the part of the Company, and its managers, necessary for the authorization, execution and delivery of this Agreement and the issuance of the Units, the performance of all obligations of the Company hereunder and there under has been taken or will be taken prior to the Closing, and this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms.

3.3. Valid Issuance of Units. (A) The Units, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein or therein, will be duly and validly issued and fully-paid and non-assessable. Based in part upon the representations of the Subscribers in this Agreement and subject to the completion of the filings referenced below, the Units will be issued in compliance with all applicable federal and state securities laws.
(B) The Units, are or as of the Initial Closing will be, duly and validly authorized and issued, fully-paid, and were or will be issued in compliance with all applicable federal and state laws.

3.4. Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local government authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except for the Federal and State Securities Law Filings to be made by the Company as necessary.

3.5. Litigation. There is no action, suit, proceeding or investigation pending or currently threatened against the Company that questions the validity of the Agreement, or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby, or that might result, either individually or in the aggregate, in any material adverse changes in the assets, condition, affairs or prospects of the Company, financially or otherwise, or any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate.

3.6. Compliance with Other Instruments. The Company is not in violation or default of any provisions of its Articles of Organization or Operating Agreement or of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound or, to its knowledge, of any provision of federal or state statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Agreement, and the consummation of the transactions contemplated hereby, will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company.

3.7. Disclosure. The forward-looking statements, including financial projections, contained in the Offering Documents were prepared in good faith; however, the Company does not warrant that such statements will ultimately become true. In addition to the foregoing, the Company restates as if rewritten herein the Risk Factors attached hereto as Schedule I as if fully rewritten herein and the following:
(A) *No Independent Studies*. The determination of the Company's capital requirements and the intended use of proceeds from this Offering is based solely upon information developed by the Company. No independent studies with regard to feasibility, management, or marketing have been conducted by any third parties in determining the Company's capital requirements or requirements.
(B) *Structure of the Offering*. The Units are being sold through the Company without commissions. The Offering is being conducted on a "best efforts" basis.

4. Representations and Warranties of the Subscribers. Each Subscriber hereby severally and not jointly represents and warrants to the Company that:

4.1. Risk. The Subscriber recognizes that the purchase of the Units involves a high degree of risk in that (i) the Company has limited operation history; (ii) an investment in the Company is highly speculative, and only investors who can afford the loss of their entire investment should consider investing in the Company and the Units; (iii) the Subscriber

may not be able to liquidate his, her or its investment; and (iv) transferability of the Units is extremely limited.

4.2. Accredited Investor. The Subscriber represents that the Subscriber is an officer, director or equivalent of the Company, and /or is an "Accredited Investor," as such term is defined in Rule 501 of Regulation D promulgated under the Act, and that the Subscriber is able to bear the economic risk of an investment in the Units.

4.3. Investment Experience. The Subscriber hereby acknowledges and represents that the Subscriber has prior investment experience, including investment in non-listed and unregistered securities, or the Subscriber has employed the services of an investment advisor, attorney and/or accountant ro read all of the documents furnished or made available by the Company both to the Subscriber and to all other prospective investors in the Units and to evaluate the merits and risks of such an investment on the Subscriber's behalf.

4.4. Due Diligence. The Subscriber hereby acknowledges receipt and careful review of the Offering Documents, as supplemented and amended, and the attachments and exhibits thereto all of which constitute an integral part of the Offering Documents, and hereby represents that the Subscriber has been furnished by the Company during the course of this transaction with all information regarding the Company which the Subscriber has requested or desired to know, has been afforded the opportunity to ask questions of and receive answers from duly authorized managers, officers or other representatives of the Company concerning the terms and conditions of the offering and has received an additional information which Subscriber has requested.

4.5. Protection of Interests; Exempt Offering. The Subscriber hereby represents that the Subscriber either by reason of the Subscriber's business or financial experience or the business or financial experience of the Subscriber's professional advisors (who are unaffiliated with and who are not compensated by the Company or any affiliate of the Company, directly or indirectly) has the capacity to protect the Subscriber's own interests in connection with the transaction contemplated hereby. The Subscriber hereby acknowledges that the offering has not been reviewed by the United States Securities and Exchange Commission (the "SEC") because of the Company's representations that this is intended to be exempt from the registration requirements of Section 5 of the Act. The Subscriber agrees that the Subscriber will not sell or otherwise transfer the Units unless they are registered under the Act or unless an exemption from such registration is available.

4.6. Investment Intent. The Subscriber understands that the Units have not been registered under the Act by reason of a claimed exemption under the provisions of the Act which depends, in part, upon the Subscriber's investment intention. In this connection, the Subscriber hereby represents that the Subscriber is purchasing the Units for the Subscriber's own account for investment and not with a view toward the resale or distribution to others. The Subscriber, if an entity, was not formed for the purpose of purchasing the Units.

4.7. Restricted Securities. The Subscriber understands that there currently is no public market for any of the Units and that even if there were, Rule 144 promulgated under the Act requires, among other conditions, a one-year holding period prior to the resale (in limited amounts) of securities acquired in a non-public offering without having to

satisfy the registration requirements under the Act. The Subscriber understands and hereby acknowledges that the Company I under no obligation to register the Units under the Act or any state securities or "blue sky" laws. The Subscriber consents that the Company may, if it desires, permit the transfer of the Units out of the Subscriber's name only when the Subscriber's request for transfer is accompanied by an opinion of counsel reasonably satisfactory to the Company that neither the sale nor the proposed transfer results in a violation of the Act or any applicable state "blue sky" laws (collectively, the "Securities Laws"). The Subscriber agrees to hold the Company and is members, manager, officers, employees, controlling persons and agents and their respective heirs, representatives, successors and assigns harmless and to indemnify them against all liabilities, cost and expenses incurred by them as a result of any misrepresentation made by the Subscriber contained in this Agreement or any sale or distribution by the Subscriber in violation of the Securities Laws. The Subscriber understands and agrees that in addition to restrictions on transfer imposed by applicable Securities Laws, the transfer of the Units will be restricted by the terms of this Agreement.

4.8. Legends. The Subscriber consents to the placement of a legend on any certificate or other document evidencing the Units that such Units have not been registered under the Act or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in the Agreement. The Subscriber is aware that the Company will make a notation in its appropriate records with respect to the restrictions on the transferability of such Units and may place additional legends to such effect on Subscriber's unit certificate(s).

4.9. Rejection. The Subscriber understands that the Company will review this Agreement and that the Company reserves the unrestricted right to reject or limit any subscription and to close the offering to the Subscriber at any time.

4.10. Address. The Subscriber hereby represents that the address of the Subscriber furnished by the Subscriber on the signature page hereof is the Subscriber's principal residence.

4.11. Authority. The Subscriber represents that he or she has full power and authority to execute and deliver this Agreement and to purchase the Units. This Agreement constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.

5. Limitations on Transfer.

5.1. Company Right of First Refusal. The Subscribers shall not assign, encumber or dispose of any interest in any of the Units except in compliance with applicable state and federal laws.

6. Miscellaneous.

6.1. Survival of Representations and Warranties. The warranties, representations and covenants of the Company contained in or made pursuant to this Agreement shall

survive the execution and delivery of this Agreement and the Closing for a period of one (1) year following the last Closing.

6.2. Governing Law. NOTWITHSTANDING THE PLACE WHERE THIS AGREEMENT MAY BE EXECUTED BY ANY OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE THAT ALL THE TERMS AND PROVISIONS HEREOF SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

6.3. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.4. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5. Notices. (A) All notices, request, demand and other communications under this Agreement or in connection herewith shall be given to or made upon the respective parties as follows: if to the Subscribers, to the addresses set forth on the signature page hereto, or, if to the Company, to EquiAlt Fund, LLC, c/o Duane Morris LLP, Attn: Paul R. Wassgren, 100 N. City Parkway, Suite 1560, Las Vegas, Nevada 89106. (B) All notices, requests, demands and other communications given or made in accordance with the provisions of the Agreement shall be in writing, and shall be sent by certified or registered, return receipt requested, or by overnight courier or telecopy (facsimile) with confirmation of receipt, and shall be deemed to be given or made when receipt is so confirmed. (C) Any party may, by written notice to the other, alter its address or respondent and such notice shall be considered to have been given ten (10) days after the airmailing, telexing or telecopying thereof.

6.6. Brokers. (A) Each Subscriber severally represents and warrants that it has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. Each Subscriber hereby severally agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Subscriber hereunder. The Company will pay finder's fees only in compliance with applicable law. (B) The Company agrees to indemnify and hold harmless the Subscribers from and against all fees, commissions or other payment owing by the Company to any other person or firm acting on behalf of the Company hereunder.

6.7. Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

6.8. Third Parties. Nothing in the Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement.

6.9. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and Subscribers holding a majority in interest of the Units purchased in the offering.

6.10. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.11. Entire Agreement. This Agreement and the other Offering Documents constitute the entire agreement between the parties hereto pertaining to the subject matter herof, and any and all other written or oral agreements existing between the parties hereto are expressly canceled.

(Signature page follows.)

This Subscription Agreement has been executed as of the date last set forth below.

NUMBER OF UNITS: 10,000

at $10.00 PER UNIT

FOR THE AGGREGATE PURCHASE PRICE: $100,000.00

SUBSCRIBER: ROBERT MAR

Print or Type Name of Subscriber: ROBERT MAR

Signature: _____ Second Signature if Jointly: _____

Title of Signatory: _____

If jointly, subscribed manner in which Title to be held: _____

Address: [redacted]

Telephone: [redacted]

Facsimile: _____

Tax I.D. #: [redacted]

Dated: _____

This Subscription Agreement is agreed to and accepted as of: 06-13-18

EQUIALT FUND , LLC

a Nevada limited liability company

By: EquiAlt, LLC

a Nevada limited liability company

its Manager

By: _____

EquiAlt, its Manager

IRA SERVICES TRUST CO. CFBO:

Print or Type Name of Subscriber: ROBERT MAR

Signature: _____ Second Signature if Jointly: _____

Title of Signatory: ~~Gary R Shumm, VP IRA Services Trust Company~~

If jointly, subscribed manner in which Title to be held: _____ [redacted]

~~Address:~~ [redacted]

IRA Services Trust Company
Cust. FBO: ROBERT MAR
IRA [redacted]
PO Box 7080, San Carlos CA 94070
(650) 593-2221 (TIN: 26-2627205) *

Telephone: [redacted]

Facsimile: _____

~~Tax I.D. #:~~ [redacted] *

Dated: 7/9/2018

This Subscription Agreement is agreed to and accepted as of: 06-13-18

EQUIALT FUND , LLC

a Nevada limited liability company

By: EquiAlt, LLC

a Nevada limited liability company

its Manager

By: _____

EquiAlt, its Manager

EXHIBIT F to *MAR*
Amended Complaint

Robert G. Mar

EquiAlt Growth Acct. #4369-6808-8806

EQUIALT

SUMMARY OF TERMS

This document dated July 12 _2018 will serve as a summary to the PPM Agreement.

Amount of Investment: $100,000.00 - (IRA).

Annual Rate: 10.00%

Payment requested: GROWTH

Term: 48 months

Receipt of funds date: July 12, 2018

Signed and mutually agreed by:

Barry M. Rybicki
EquiAlt Fund LLC

Robert Mar
(IRA Services Trust Co.
Acct. # IRA 774078)

PRIVATE PLACEMENT MEMORANDUM

EQUIALT FUND, LLC

EXHIBIT A

FORM OF DEBENTURE

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE, AND IS ISSUED IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR RE-SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

10% DEBENTURE

$100,000.00 **July 12, 2018**

FOR VALUE RECEIVED, the undersigned, EquiAlt Fund LLC, a Nevada limited liability company having an address of 10161 Park Run Drive, Suite 150, Las Vegas, NV 89145 ("Maker"), promises to pay to the order of IRA Services Trust Company FBO Robert G. Mar Traditional IRA having an address of P.O. Box 7080, San Carlos, CA. 94070-7080("Holder"), the principal sum of One Hundred Thousand and 00/100 Dollars ($100,000.00) (the "Principal Amount"), together with interest on the unpaid Principal Amount thereof computed from the date hereof (the "Commencement Date"), at the rates provided herein, on the Maturity Date defined in Section 1 hereof.

1. Maturity. The Principal Amount and any unpaid interest due under this debenture (the "Debenture") shall be due and payable in July 2022 (the "Maturity Date").

2. Interest Rate and Payments. Interest hereunder shall accrue as follows:

(a) From the Commencement Date, interest shall accrue on the unpaid Principal Amount at the rate of Ten and 00/100 percent (10%) per annum.

3. Prepayment. This Debenture may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Maker shall not be entitled, by virtue of any prepayment or otherwise, to a refund of interest,

any other fees, points, charges and the like paid by Maker to Holder in connection with his Debenture.

4. Waiver. Maker hereby waives all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Maker further waives trial by jury. No extension of time for payment of this Debenture or any installment hereof, no alteration, amendment or waiver of any provision of this Debenture and no release or substitution of any collateral securing Maker's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker under this Debenture.

5. Default and Remedies. At the election of the holder of this Debenture, all payments due hereunder may be accelerated, and this Debenture shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Maker fails to pay on or before the date due, any amount payable hereunder; (2) Maker fails to perform or observe any other term or provision of this Debenture with respect to payment; or (3) Maker fails to perform or observe any other term or provision of this Debenture, which default is not cured within sixty (60) days of receipt of written notice. In addition to the rights and remedies provided herein, the holder of this Debenture may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

Any forbearance by the holder of this Debenture in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Debenture or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Debenture. The acceptance by the holder of this Debenture of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Debenture to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

6. Assignment of Debenture. If this Debenture is transferred in any manner by Holder, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof, provided, however, that any assignment by Holder must comply with applicable Federal and state securities laws, and Maker shall be entitled to demand an opinion of counsel opining that any transfer will comply with said laws.

7. Waiver of Offset. By its acceptance of Holder's funds and execution of this Debenture, Maker acknowledges, agrees and confirms that, as of the time of signing, it has no defense, offset or counterclaim for any occurrence in relation to this Loan.

8. Acceptable Currency. All payments of principal and interest hereunder are payable in lawful money of the United States of America.

9. Joint and Several Obligations. If more than one person signs this Debenture, each person signs as a Maker, unless otherwise stated and shall be fully, jointly, severally and personally obligated to keep all of the promises made in this Debenture, including the promise to pay all sums due and owing.

10. Miscellaneous. This Debenture shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns. This Debenture shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted. This Debenture shall be exclusively governed by the laws of the State of Nevada without regard to choice of law consideration. Maker hereby irrevocably consents to the jurisdiction of the courts of the State of Nevada and of any federal court located in Nevada in connection with any action or proceeding arising out of or relating to this Debenture. This Debenture may not be changed or terminated except upon the prior written agreement of the Holder. A determination that any portion of this Debenture is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Debenture to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

11. Jury Waiver. **MAKER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY MAKER OR THE HOLDER OF THIS DEBENTURE ON OR WITH RESPECT TO THIS DEBENTURE OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. MAKER AND HOLDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. MAKER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, MAKER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. MAKER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS DEBENTURE AND THAT HOLDER WOULD NOT EXTEND CREDIT TO MAKER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS DEBENTURE.**

[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF, the Maker has executed this Debenture on the date first above written.

MAKER:

EquiAlt Fund LLC
a Nevada limited liability company

By: EquiAlt LLC
a Nevada limited liability company
its Manager

By: _____
Name: Barry M Rybicki
Title: Managing Director