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.
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NON-PARTY PAUL WASSGREN'S MOTION TO ENJOIN
PARALLEL EQUIALT-RELATED ACTION

Non-Party Paul Wassgren respectfully makes a limited appearance in this action to move to enjoin "the Mar Case"—a putative class action recently removed to the United States District Court for the Northern District of California—pursuant to this Court's Order Granting Plaintiff's Emergency *Ex Parte* Motion for Appointment of Receiver (Doc. 11) (the "Receivership Order").

INTRODUCTION

This motion is part of an effort by Paul Wassgren ("Wassgren") to streamline multiple cases, brought in multiple fora, by multiple and interrelated plaintiffs, arising from Wassgren's provision of legal services to EquiAlt, LLC ("EquiAlt"). The goal of this effort is to avoid duplicative and wasteful parallel litigation that will needlessly consume resources of the defense, EquiAlt's investors, the Receiver, and the courts, and may undermine the Receiver's efforts to protect the investors.

Since July 2020, Wassgren has been sued in three cases that assert similar claims on behalf of EquiAlt or its investors. All three lawsuits assert essentially the same theory – that Wassgren assisted EquiAlt's principals in committing the misconduct alleged by the Securities and Exchange Commission ("SEC") in this action. The first suit to name Wassgren as a defendant is the "Gleinn Case,"[1] a putative class action on behalf of EquiAlt investors from California, Florida, Nevada, Colorado, and Arizona, which was filed in July 2020. The Gleinn Case is pending before this Court. ***See Exhibit A***, *Amended Complaint in the Gleinn Case.* The second suit, the "Mar Case,"[2] is a putative class action on behalf of EquiAlt investors from California. The Mar Case was originally filed in California Superior Court in March 2020 against an insurance agent, but the plaintiff expanded the case in September 2020—after the Gleinn Case was already pending—to add Wassgren as a defendant, asserting some of the same claims that had already been raised in the Gleinn Case. ***See Exhibit B***, *Amended Complaint in the Mar Case.* On November 2, 2020, Wassgren removed the Mar Case from California Superior Court to the United States District

[1] *Richard Gleinn, et al. v. Paul Wassgren, et al.,* Case No. 8:20-cv-01677-MSS-CPT (M.D. Fla.).

[2] *Robert G. Mar v. Benjamin Charles Mohr, et al.,* Case No. 20-CIV-1986 (Cal. Sup. Ct.).

Court for the Northern District of California.[3] The third case is the "Receiver's California Case,"[4] a lawsuit filed by the Receiver in September 2020 in the United States District Court for the Central District of California. ***See Exhibit C***, *Complaint in the Receiver's California Case.*[5]

These three actions are inextricably linked because they assert many of the same causes of action against Wassgren and seek to recover essentially the same damages for the benefit of the investors in EquiAlt securities. Courts rightly disfavor this type of duplicative, piecemeal litigation in multiple fora because it creates significant inefficiencies, wastes scarce judicial resources, squanders assets that could be set aside for settlement, risks inconsistent rulings, produces artificial complexities for discovery and motion practice, and serves no party's interests. Accordingly, Wassgren seeks to centralize EquiAlt-related litigation in this Court, which is best positioned to administer these cases efficiently, given its familiarity with the issues and its role in overseeing the receivership proceedings.[6] As a first step, Wassgren brings this motion, which focuses on the Mar Case.

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[3] *Robert G. Mar v. Benjamin Charles Mohr, et al.*, Case No. 3:20-cv-07719 (N.D. Cal.).

[4] *Burton W. Wiand, as Receiver on behalf of EquiAlt Fund LLC, et al. v. Paul R. Wassgren, et al.*, Case No. 2:20-cv-8849 (C.D. Cal.).

[5] The Receiver obtained this Court's permission to retain counsel for "purpose[s] of investigating and pursuing claims against law firms that provided services to EquiAlt and other Receivership entities." (Doc. 127).

[6] Only this Court can exercise supplemental federal subject matter jurisdiction over state law claims brought by the Receiver. Wassgren and other defendants therefore anticipate separately seeking to transfer the Receiver's California Case to this Court. Additionally, the engagement letter between Wassgren's current law firm, DLA Piper LLP (US), and EquiAlt contains a mandatory arbitration provision. DLA Piper and Wassgren will move to arbitrate the Receiver's California Case at the appropriate time. The filing of this motion is not intended to waive Wassgren's right to arbitrate the Receiver's California Case, or any other case, and Wassgren expressly reserves that right. Invocation of the mandatory arbitration provision will not completely remove the litigation from the court system, however, because the engagement letter between Wassgren's former law firm, Fox Rothschild, and EquiAlt did not contain an arbitration clause. The point for present purposes is that whatever litigation ensues in *court* should occur in *this* Court.

In the Mar Case, a group of EquiAlt investors who are California residents have sued an EquiAlt sales agent, Benjamin Charles Mohr, his agency, and Wassgren. *See generally Exhibit B.* The plaintiffs in the Mar Case describe their claims as "aris[ing] from a $170 million Ponzi scheme operated by EquiAlt, LLC," *Ex. B*, Mar Am. Compl. ¶ 1, and they seek "rescission of the purchase of EquiAlt Securities by Plaintiff and the Class." *Id.* at 21 - Prayer for Relief, ¶ 2. Plaintiffs in the Mar Case also seek "damages caused by Defendants' unlawful marketing and sales of unqualified EquiAlt Securities." *Ex. B*, Mar Am. Compl. ¶ 4. Although EquiAlt is an integral party to those purchase contracts, it is not currently a named party in the Mar Case.

By this motion, Wassgren asks this Court to enjoin the Mar Case. Prosecution and adjudication of the claims in the Mar Case necessarily will affect the Receiver, both by involving the Receiver in the Mar Case[7] and by potentially depriving the Receivership Estate[8] of recoveries that could benefit other EquiAlt investors and creditors. For instance, the Mar plaintiffs are attempting to lay claim to fees received by sales agent Benjamin Mohr despite the fact that the Receiver already has asserted that fees paid to EquiAlt's sales agents—including, specifically, fees paid to Mohr—belong to the Receivership Estate. (Doc. 102-3, at 10). The Mar Case, therefore, contravenes Paragraph 17 of the Receivership Order. (Doc. 11). Unless enjoined by this Court, the Mar Case will undermine this Court's ability to exercise appropriate supervision over the Receivership Estate, prevent an equitable recovery for all investors, and risk inconsistent rulings

[7] Wassgren simultaneously is filing a motion in this Court seeking permission under the injunction provision of the Receivership Order (Doc. 11, ¶17) to name EquiAlt as a required party in the Mar Case.

[8] The Court appointed Burton W. 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**").

and duplicative litigation.

BACKGROUND

On February 11, 2020, the SEC filed this action to halt an alleged ongoing fraud concerning several real estate investment funds. (Doc. 1, ¶ 1). The SEC's complaint alleges that Defendants EquiAlt, Brian Davison ("Davison"), and Barry Rybicki ("Rybicki") engaged in a Ponzi scheme raising more than $170 million from over 1,100 investors nationwide. (Doc. 1, ¶1; 138, ¶ 1). In particular, the complaint alleges that EquiAlt promised investors that substantially all of their money would be used to purchase real estate in distressed markets in the United States, and that their investments would yield generous returns. (*Id.*) Instead, EquiAlt, Davison, and Rybicki purportedly misappropriated millions in investor funds for their own personal use and benefit. (*Id.*) As alleged by the SEC, to accomplish this fraud, EquiAlt, Davison, and Rybicki relied on numerous unregistered sales agents to secure funds from investors and sell them the unregistered securities, primarily debentures. (Doc. 1, ¶ 3; Doc. 138, ¶ 3). On February 14, 2020, the Court appointed a Receiver over the Receivership Entities. (Doc. 11).

On July 1, 2020, this Court authorized the Receiver to retain counsel for the limited purpose of investigating and pursuing claims against any law firms that provided services to EquiAlt and other Receivership Entities. (Docs. 121, 127). The Receiver did so. On September 28, 2020, the Receiver filed suit against Wassgren and his former and current employers, Fox Rothschild LLP and DLA Piper LLP (US), respectively, in the United States District Court for the Central District of California. *See Exhibit C.*

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 sold Mar $100,000 in EquiAlt securities. Mar's initial complaint alleged 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 Wassgren as a defendant. *See generally Exhibit B.* The two putative classes for which Mar seeks certification are limited to EquiAlt investors who are California residents. *See Ex. B*, Mar Am. Compl. ¶ 76. On September 30, 2020, the defendants in the Mar Case—Mohr and his agency—filed a cross-complaint against Wassgren. Subsequently, on November 2, 2020, Wassgren removed the Mar Case to federal court. *See Robert G. Mar v. Benjamin Charles Mohr, et al.*, Case No. 3:20-cv-07719 (N.D. Cal.) (Doc. 1).

ARGUMENT

I. Wassgren May Seek to Enjoin the Mar Case Without Formal Intervention.

Because the Receivership Order is an equitable decree that binds persons seeking to prosecute actions involving the Receiver or that affect the Receivership Estate, Wassgren should be permitted to appear in this action for the limited purpose of moving to enjoin the Mar Case. *See, e.g., United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) (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); Order, *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 injunction over Receiver's objection without motion for intervention); *see generally SEC v. Torchia*, 922 F.3d 1307, 1316 (11th Cir. 2019) ("A district court has summary jurisdiction over receivership proceedings and may deviate from the Federal Rules of Civil Procedure in favor of exercising its 'broad powers and wide discretion to determine relief[.]'").[9] As set forth herein, Wassgren's

[9] To the extent formal intervention is necessary, Wassgren satisfies the requirements for both intervention as of right and permissive intervention under Rule 24. First, this motion is timely. It is being filed within eight weeks of Mar amending his complaint to add Wassgren as a defendant. *See Exhibit B.* Second, Wassgren is a party in interest given the Receiver's mandate to collect assets for purposes of restoring the

intentions for the Mar Case will advance the lawful and appropriate disposition of the Receivership Estate.

II. The Court Should Enjoin the Mar Case.

The Court's power to enjoin the Mar Case derives from at least two sources: (1) the All Writs Act, 28 U.S.C. § 1651; and (2) the inherent powers of an equity court to fashion appropriate relief and enforce its prior orders. *See SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 476 (S.D.N.Y. 2000).

A. This Court Has the Authority to Enjoin the Mar Case.

The All Writs Act empowers United States District Courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In allowing federal courts to protect their jurisdiction, the All Writs Act allows courts to "safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments." *Original Brooklyn Water Bagel Co. v. Bersin Bagel Grp., LLC*, 817 F.3d 719, 725 (11th Cir. 2016). A court may grant a writ under the All Writs Act

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investors and, at present, Wassgren and his law firm's assets are being sought in three lawsuits, including the Mar Case, for identical or related claims. *See, e.g., SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 477 (S.D.N.Y. 2000) (enjoining ancillary suit filed by bank customer against bank's insurers because "any payment to [the customer] would serve to reduce the total estate assets—specifically, insurance monies—available to other claimants"). Third, defending lawsuits in three different jurisdictions at the same time for similar causes of action necessarily implicates and jeopardizes any insurance proceeds available to cover defense costs or settlement amounts in any one of the cases. Fourth, given that the Receiver has not yet moved to enjoin the Mar Case, Wassgren's interests in this action, at present, are not being represented.

From the standpoint of permissive intervention, this action and the Mar Case share common questions of law and fact that will impact Wassgren's defenses in the Mar Case, including whether EquiAlt's debentures were exempt securities under Rule 506 of Regulation D of the Securities Act of 1933, whether any of the offering documents contained material misrepresentations, and whether EquiAlt's principals managed the Funds to perpetrate a Ponzi scheme. Wassgren has been sued for aiding and abetting EquiAlt's alleged fraud. If there is no fraud, there is no aiding and abetting. Ultimately, public policy favors a liberal construction of allowing intervention under Rule 24. *See, e.g., Arkansas Electric Energy Consumers v. Middle South Energy, Inc.*, 772 F.2d 401, 404 (8th Cir. 1985); *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). If necessary, intervention should be permitted for the limited purpose of addressing this motion and the relief requested.

whenever it is "calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it. . . ." *Adams v. United States*, 317 U.S. 269, 273 (1942).

Independent of the All Writs Act, the Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of that receivership is extremely broad. *See SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1343-44 (11th Cir. 2017) (citing *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion in such circumstances derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). "[A]ny action by a trial court in supervising an equity receivership is committed to [her] sound discretion and will not be disturbed unless there is a clear showing of abuse." *See Bendall v. Lancer Mgmt. Group, LLC*, 523 F. App'x 554, 557 (11th Cir. 2013).

B. The Court Should Enjoin the Mar Case to Protect this Court's Administration of the Receivership Estate.

This Court has authority under the All Writs Act to enjoin competing actions involving the Receivership in order to further the orderly and efficient administration of the Receivership Estate. The Mar Case is such a competing action.

A district court may enjoin a competing action under the All Writs Act where such action threatens the district court's unfettered administration of the Receivership Estate. *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 ("a federal court may enjoin actions in other jurisdictions that would undermine its ability to reach and resolve the merits of the dispute before it"). "[W]here a court has appointed a receiver and obtained jurisdiction over the receivership estate, as here, the power to stay competing actions falls within the court's inherent power to prevent interference with the administration of that estate." *Id.* at 477. The authority to enjoin competing actions is especially

important in cases such as receivership actions, which involve a limited *res* that must be distributed among multiple claimants. *See id*. In such cases, competing actions should be enjoined in order to prevent piecemeal litigation in favor of a more comprehensive resolution of the issues presented. *See id.* Accordingly, a district court presiding over an equity receivership in an SEC enforcement action has the power to stay competing actions. *See id.*; *SEC v. Nadel,* Case No. 8:09-cv-87-T-26TBM, 2009 WL 2868642, at *3 (M.D. Fla. Sept. 3, 2009).

The purpose of establishing a receivership is "to protect the estate property and ultimately return that property to the proper parties in interest." *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476. A receiver is vested with the duty and authority to marshal and preserve assets to effect an orderly, efficient, and equitable administration of the Receivership Estate. *Id.* at 476-77; *see also* 28 U.S.C. § 754 (noting that a receiver "appointed in any civil action or proceeding involving property . . . shall . . . be vested with complete jurisdiction and control of all such property with the right to take possession thereof"). Such efforts would be rendered meaningless if there were a "chaotic and uncontrolled scramble" for the same potential pool of funds and inconsistent judgments resulting from multiple cases across different jurisdictions based on the same underlying facts. *See, e.g.*, *SEC v. Parish,* Case No. 2:07–cv–00919–DCN, 2010 WL 8347143, at *7 (D. S.C. Feb. 10, 2010) (noting that a "race to the courthouse" by individual investors looking to pursue individual claims "will likely result in disparate outcomes, which would run counter to the goals of this receivership and would likely impair the Receiver's and, ultimately, this court's ability to fairly administer the receivership estate."); *cf. In re Atlas v. Dzikowski*, 222 B.R. 656, 659 (S.D. Fla. 1998) (observing that the automatic stay provision in bankruptcy is designed to prevent the "chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts").

These principles apply with full force here. As in *Credit Bancorp*, this Court's Receivership Order requires the Receiver to "take whatever actions are necessary for the protection of investors." (Doc. 11, Preamble at 2). This Court's Receivership Order expressly directs and empowers the Receiver to:

> Investigate the manner in which the affairs of the Corporate Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and *on behalf of the Corporate Defendants and Relief Defendants and their investors* and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships . . . which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated . . . *proceeds directly or indirectly traceable from investors[,]* or against any transfers of money *or other proceeds directly or indirectly traceable from investors* in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers, rescission and restitution, the collection of debts, *and such orders from this Court as may be necessary to enforce this Order[.]*

(Doc. 11, ¶ 2) (emphases added).

This Court authorized the Receiver to retain counsel for the limited purpose of investigating and pursuing claims against law firms that provided services to EquiAlt and other Receivership Entities. (Doc. 127). The Receiver did so and filed suit against Wassgren and his former and current employers, Fox Rothschild LLP and DLA Piper LLP (US), respectively, in the United States District Court for the Central District of California. *See Exhibit C.* Although Wassgren disputes any wrongdoing, any proceeds from a judgment or settlement in the Receiver's California Case would add significant value to the Receivership Estate for the benefit of all EquiAlt investors. The competing Mar Case, which seeks recovery for a subset of investors only—which, in fact, overlaps with the California class in the Gleinn Case—will undermine the Receiver's ability to secure such a recovery and risks depleting the Receivership Estate. *See, e.g., SEC v. Stanford Bank Int'l Ltd.,* 424 F. App'x 338, 341 (5th Cir. 2011) (holding that district court did not abuse its

discretion in refusing to lift stay to allow plaintiffs to prosecute ancillary litigation against financial advisors based on risk that such litigation could deplete the receivership estate and noting that at the time of the district court's decision it "had not yet ruled on whether the insurance proceeds of any insurance policies, which could pay for awards against the advisors, were property of the [receivership] estate").

The Mar Case and the Receiver's California Case target the same defendant, Wassgren, and thus the same assets held by that defendant and available for recovery by the Receiver. They also allege similar acts of wrongdoing by EquiAlt, its sales agents, and Wassgren. Wassgren has a strong interest, of course, in avoiding piecemeal litigation because it will impose unnecessary defense costs and could lead to inconsistent results. The Receiver should fully share that interest. Given the parallel lawsuits in multiple venues, a contrary ruling in the Mar Case related to any common questions of law or fact could adversely affect the Receiver's ability to successfully prosecute the Receiver's California Case and recover assets for the benefit of some of the same investors purportedly represented by the Mar plaintiffs.

The Receivership Order already has a built-in mechanism to protect the efficient and logical administration of the Receivership Estate and the Receiver's ability to meet his objectives. The Receivership Order states:

> During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this 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 Receiver or *which affect the property of the Corporate Defendants and Relief Defendants*.

(Doc. 11, ¶ 17) (emphases added). The Mar Case, with its claims against sales agents and Wassgren in a separate jurisdiction, but on behalf of only a limited class of investors, forces Wassgren to litigate the same claims in multiple courts. More importantly for present purposes, it

equally impairs the Receiver from fulfilling his duties to protect ***all*** investors and to preserve the value of the receivership in two ways. *First*, the sales agent fees purportedly are receivership assets. And, *second*, the Mar Case improperly favors Mar and the limited Mar putative classes over the claims of all other EquiAlt investors.

1. Sales Agent Fees Are Potentially Receivership Assets.

The Receiver has the duty to investigate and pursue claims against entities who have "wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors[,] . . . provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers . . . ." (Doc 11, ¶ 2). The Receivership Order contemplates that the fees earned by the sales agents are within the purview of the Receivership Estate and that competing claims for those same funds must be enjoined. Specifically, in a prior proceeding, the Receiver asserted that EquiAlt's sales agents were holding the fraudulently transferred funds they received as fees in a constructive trust for the Receiver's benefit pending the return of those funds to the Receivership Estate. *See Steven J. Rubinstein, et al. v. EquiAlt, LLC, et al.*, Case No. 8:20-cv-448-T-02TGW (M.D. Fla. 2020) (Doc. 98) (the "Rubinstein Case")[10]; (SEC Doc. 102-3, at 10-12); *see Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 250-51 (2000) ("Whenever the legal title to property is obtained through means or under circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired . . . and a court of equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of

[10] On February 26, 2020, Steven J. Rubinstein filed a complaint in the U.S. District Court for the Middle District of Florida against EquiAlt and related entities. (Rubinstein Doc. 1). On April 8, 2020, plaintiff Rubinstein filed an amended complaint removing certain defendants from the original complaint and adding several persons who allegedly served as EquiAlt sales agents. (Rubinstein Doc. 51).

any subsequent holder . . . ."); *In re Fin. Fed. Title & Trust, Inc.*, 347 F.3d 880, 881, 890 (11th Cir. 2003) (imposing constructive trust on property purchased with Ponzi scheme proceeds).

Additionally, in the Rubinstein Case the Receiver claimed that his preliminary investigation uncovered financial records that indicated that EquiAlt sales agents received compensation for selling EquiAlt securities to investors. (Doc. 102-3, at 10). According to the Receiver, a typical sales agent fee payment allegedly occurred in the following manner:

- A sales agent secured funds from an investor;
- Those funds were transferred to an EquiAlt entity;
- EquiAlt transferred sales fees to an entity managed by Rybicki (primarily BR Support Services, LLC); and
- Rybicki facilitated the transfer of the fees (typically 6%) to individual sales agents who had made the sale, and Rybicki retained the remaining funds for himself.

(Doc. 102-3, at 10-11). The same general structure allegedly applied to almost all EquiAlt sales agents and, therefore, all of these transactions purportedly are recoverable under paragraph 2 of the Receivership Order.[11] (*Id.*)

Courts have acknowledged that disgorgement of sales fees related to selling unregistered securities is proper and that a receiver is the appropriate party to receive such disgorged funds. *See, e.g.*, *Cobalt MultiFamily Investors I, LLC v. Lisa Arden*, Case No. 06 Civ 6172, 2010 WL 3791040, at *3 (S.D.N.Y. Sept. 9, 2010) ("The salespeople are plainly not entitled to retain such commission payments, and the receiver appears to be a proper person to pursue those funds on behalf of the [receivership] estate, which in turn will presumably be held responsible for the

[11] In a prior filing in the Rubinstein Case, included as an exhibit in this action (Doc. 102-3, at 11), the Receiver took the position that transfers made from a Ponzi scheme are presumed to be fraudulent. *See Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014) ("[U]nder FUFTA's actual fraud provision, proof that a transfer was made in furtherance of a Ponzi scheme establishes actual intent to defraud under § 726.105(1)(a) without the need to consider the badges of fraud.").

ultimate reimbursement of the shareholders"), *adopted* 2010 WL 3790915 (S.D.N.Y. Sept. 28, 2010); *see also Hays v. Adam*, 512 F. Supp. 2d 1330, 1343 (N.D. Ga. 2007) ("[If] a receiver can recover Ponzi scheme profits from investors who have done nothing wrong, he would also be entitled to recover Ponzi scheme profits held by sales agents like the defendants, who illegally sold unregistered securities, and without whose efforts the scheme could not have occurred").

Given the plain language of the Receivership Order and case law holding that receivers may recover fees paid to sales agents for promoting unregistered securities, this Court may find that the damages sought by the putative classes in the Mar Case against defendant Mohr, a former EquiAlt sales agent—and John Does 1 through 25—are Receivership assets and, thus, protected from competing litigation by the injunction in the Receivership Order.[12] (Doc. 11, ¶ 17); *see Ex. B*, Mar Am. Compl. ¶¶ 2, 12-13, 15, 89 – 94; *see SEC v. Faulkner*, Case No. 3:16-cv-1735-D, 2018 WL 5279321, at *4 (N.D. Tex. Oct. 24, 2018) (staying ancillary litigation for disgorgement of fees paid to outside accountants of receivership entity because receiver considering similar action against accounting firm for disgorgement of professional fees).

2. Improper Preference to Mar and the Limited Mar Putative Classes.

In addition, any recoveries obtained in the Mar Case by way of judgment or settlement may result in a substantial benefit to individual investors. One of the primary purposes of a

[12] At least some of EquiAlt's sales agents entered into a Finder's Fee Agreement that contains an indemnification provision requiring EquiAlt Fund, LLC—one of the Receivership Entities—to "indemnify and hold harmless the Consultant [sales agent] from and against any and all claims by third parties and losses, damages, liabilities and costs relating thereto," with some exceptions. (Gleinn Doc. 13-2, Ex. I, at 115). To the extent that Mohr, the sales agent defendant in the Mar Case, also signed this Finder's Fee Agreement, the Receivership Entity may be required to indemnify defendant Mohr for Mar's claim of negligent misrepresentation (Count Four), if successful. *See Ex. B*, Mar Am. Compl. ¶¶ 111-117. EquiAlt's indemnification of defendant Mohr undoubtedly would implicate property held by the Receivership Estate, further justifying this request to enjoin the Mar Case. *See Bendall v. Lancer Mgmt. Group, LLC*, 523 F. App'x 554, 558 (11th Cir. 2013) (determining that board member of company in equity receivership "possessed a contingent claim for attorney's fees and legal costs under the indemnification provisions contained in [the company's] Articles of Association and PPM prior to the expiration of the claims bar date" and district court properly denied his claim for late filing).

receivership, however, is to equitably protect all investors waiting in line. *See Nadel*, 2009 WL 2868642, at *3. Favoring individual or small-group investor claims at the expense of other investors undermines this purpose and the jurisdiction of this Court to accomplish that objective. Allowing the Mar Case to continue would result in a preference to Mar and the Mar putative classes (composed exclusively of current and former California residents) at the expense of all other investors. That would not be appropriate. *See, e.g.*, *SEC v. George*, 426 F.3d 786, 799 (6th Cir. 2005) ("[E]quality is equity as between equally innocent investors") (internal quotation marks omitted); *see also Elliott*, 953 F.2d at 1570.

It is black letter law that the Receiver is in the unique position of acting for the benefit of ***all*** EquiAlt investors, including Mar and the limited putative class of California investors Mar seeks to represent—as well as all other investors who reside in other states—by distributing the limited *res* of the Receivership Estate equitably and fairly among multiple claimants. *See Parish*, 2010 WL 8347143, at *6 ("The primary purpose of the equitable receivership is the marshaling of the estate's assets *for the benefit of all the aggrieved investors* and other creditors of the receivership entities.") (emphasis added). By filing and prosecuting a separate case in a separate forum on behalf of himself and any class of investors based on the same underlying facts raised in this action, Mar is acting solely for his own benefit and the limited group of investors he seeks to represent in California. Mar is not entitled to and should not be allowed to circumvent this Court's established jurisdiction over the Receivership Estate and jump ahead of all other EquiAlt investors, depriving them of an equitable distribution of Receivership assets. *See Nadel*, 2009 WL 2868642, at *3. Enjoining the Mar Case is necessary to provide a fair and just outcome in this Receivership proceeding.

C. The Court Also Should Enjoin the Mar Case To Avoid Duplicative Efforts and the Risk of Inconsistent Rulings.

Separate suits by fragmented groups, individual investors, or other parties also hamper this Court's ability to adequately control this proceeding and thwart the Court's receivership jurisdiction, further favoring an injunction over the Mar Case. "Proceedings in other courts that involve the same facts . . . that could result in the issuance of an inconsistent judgment[] threaten the jurisdiction of the district court enough to warrant an injunction." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1104 (11th Cir. 2004). The Mar Case fits this criteria, as it involves the conduct of the Receivership Entities and seeks compensation from the same pool of potentially recoverable assets as the Receivership Estate. At the time Mar filed his complaint and amended complaint, he had "actual notice of this [Court's] Order" appointing a Receiver in this action.[13] (Doc. 11, ¶ 17). Indeed, a brief review of the introduction to Mar's amended complaint shows that it was inspired by this action. *See Ex. B*, Mar Am. Compl. ¶¶ 1 – 5. And, not surprisingly, the Mar Case includes many of the same legal theories for recovery as advanced by the Receiver here.[14]

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[13] Mar is fully aware of the Receiver's actions in support of the EquiAlt investors. *See Ex. B*, Mar Am. Compl. ¶¶ 4, 75 ("EquiAlt, LLC and its investment funds are now in Receivership" and the Court "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."). Indeed, Section G of Mar's amended complaint, entitled "The SEC Action Against Equialt," and footnote 1 citing to the SEC's complaint, reflect that Mar is using the proceedings in the SEC action as part of his litigation playbook. *Id*. at 12 n.1, 13 – 14. Mar even included exhibits from the SEC's filings as exhibits to his amended complaint. For example, he has included the Declaration of Mark Dee and several of the exhibits attached to Mark Dee's Declaration as *Exhibit N* to his amended complaint. *See Ex. B*, Mar Am. Compl. at 12. The Mark Dee Declaration is Exhibit 1 to the SEC's emergency *ex parte* motion filed almost seven months earlier. (SEC Doc. 7, Ex. 1).

[14] Both the SEC's complaint in this action and the Mar amended complaint allege that EquiAlt was involved in a "Ponzi scheme" (SEC ¶¶ 1, 39; Mar ¶ 1), that raised more than "$170 million" (SEC ¶¶ 1, 39; Mar ¶¶ 1, 65), from over "1,100 investors" (SEC ¶¶ 1, 39; Mar ¶ 2), by selling them "unregistered" or "unqualified" securities (SEC ¶ 3; Mar ¶¶ 3, 5, 122), in the form of fixed-rate debentures (SEC ¶ 3; Mar ¶¶ 1, 18), from four real estate investment funds (SEC ¶ 3; Mar ¶ 17), through the unlawful marketing activities (SEC ¶ 41; Mar ¶ 5), of various "unregistered sales agents" (SEC ¶¶ 3, 40; Mar ¶¶ 1 – 3, 121), who claimed the debentures were "safe," "low risk," and conservative (SEC ¶¶ 3, 40; Mar ¶¶ 3, 25, 33), and who impermissibly collected substantial undisclosed commissions from those sales (SEC ¶¶ 5, 50; Mar ¶¶ 1, 45, 121). Both the SEC and Mar allege that EquiAlt and its agents made material misrepresentations and

Allowing the Mar Case to proceed forward will result in duplicative discovery requests to the same parties and third parties on the same factual and legal issues, and it will open the door to inconsistent findings of fact and conclusions of law, a circumstance that strongly supports enjoining the Mar Case. *See, e.g.*, *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477 ("[B]ecause the factual and legal issues at issue in the [ancillary suit] will be raised in the action before this Court, allowing [the plaintiff] to pursue his claim . . . poses a clear risk of duplicative discovery and inconsistent rulings."). The Receiver undoubtedly will need to participate in the Mar Case—at the very least for purposes of discovery, if not as a necessary party—and doing so will consume resources of the Receivership Estate that otherwise need not be spent.

Parallel litigation also comes at a price. A fact of litigation is that parallel lawsuits in multiple jurisdictions waste finite resources. Every case places a demand not just on the parties, but on the judiciary, and requiring multiple courts to deal with the same issues pertaining to the same parties is simply not reasonable. It also squanders the parties' capital. Where, as here, a receiver is involved, these issues take on even greater importance, as forcing defendants to expend finite resources defending parallel litigation has the deleterious effect of diminishing the receivership's potential estate, thereby reducing settlement or judgment recoveries for investors.

Ultimately, enjoining the Mar Case is appropriate to avoid the confusion and frustration caused by conflicting rulings, duplicative discovery and motions practice, a waste of judicial and party resources, and, in the receivership context, depletion of the Receivership Estate. *See Credit Bancorp*, 93 F. Supp. 2d at 477.

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omissions to investors (SEC ¶¶ 3, 51, 56; Mar ¶¶ 1, 45, 96 - 98, 107) and the EquiAlt principals misappropriated millions in investor funds for their own personal use and benefit (SEC ¶ 1; Mar ¶¶ 1, 19), by purchasing "luxury automobiles," "fine jewelry," and "chartering private jets," among other expenditures. (SEC ¶ 2; Mar ¶ 1). As alleged by the SEC, and now Mar, EquiAlt does not presently have sufficient assets to pay the principal and interest owed to its investors. (SEC ¶¶ 6, 44; Mar ¶¶ 4, 73 - 74).

III. Concepts of Receivership Estate and the Receiver's Standing to File Suit Do Not Foreclose Enjoining the Mar Case.

As discussed above, on July 21, 2020, plaintiffs from Florida, Arizona, Colorado, and California filed a class action complaint in the Gleinn Case against Wassgren, Fox Rothschild LLP, and DLA Piper LLP (US), alleging various causes of action in connection with their representation of EquiAlt and EquiAlt's sale of fixed-rate debentures. The Gleinn Case is pending before this Court. On July 22, 2020, the plaintiffs in the Gleinn Case filed "Investor Plaintiffs Notice of Special Appearance and Motion for Confirmation of Unimpeded Right to Prosecute Investor Claims" in this action. (Doc. 145). The plaintiffs in the Gleinn Case were concerned that the Receivership Order (Doc. 11) might be interpreted to prevent the prosecution of their class action complaint, and they sought the Court's approval of their filing.

In their motion and at a July 31, 2020 hearing before this Court (Doc. 167), 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 injunction provision contained in this Court's Receivership Order. (Hearing Trans., at 11:15-23). At the hearing on the Gleinn Plaintiffs' motion, the Court ruled that:

> The Court will 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. The Court will deal on the merits in [the Gleinn] case with any challenge to the investor asserted rights under prevailing law.

(Tr. 12:22-24). In other words, this Court allowed the filing of the complaint in the Gleinn Case but deferred its decision on whether the plaintiffs in that case have stated any causes of action that they "own" or may pursue.

The Eleventh Circuit's decision in *Isaiah* does not preclude the relief sought here. In *Isaiah*, a state-court receiver sought to recover funds that were fraudulently diverted from the

receivership entities in connection with a Ponzi scheme. *Isaiah*, 960 F.3d at 1300. The receiver there filed a complaint to recover diverted funds and collect damages from JPMorgan Chase Bank for its alleged aiding and abetting of various torts. *Id*. After the case was removed to federal court, the district court dismissed the complaint. *Id.* The Eleventh Circuit affirmed, finding that the receiver failed to state a claim under the Florida Uniform Fraudulent Transfer Act and did not have standing to bring aiding and abetting claims against the bank. *Id.*

In *dicta*, the Eleventh Circuit noted that the receiver's mandate pursuant to the order in that case was to marshal and safeguard the property of the receivership entities, not to represent the defrauded investors. *Id.* at 1310. The Eleventh Circuit observed:

> While collecting damages from third parties may indirectly benefit the defrauded investors and other creditors of the Receivership Entities—e.g., by enlarging the "pie" from which the creditors may ultimately recover—the receiver does not pursue such actions on behalf of the creditors because he does not represent those creditors. In fact, the receivership order contemplates that any creditors of the Receivership Entities would have to file claims against the Entities—i.e., against [the receiver]—in order to secure their slice of the pie.

Id. These remarks do not alter the appropriate outcome of the present motion.

Here, in contrast to *Isaiah*, Wassgren is not seeking to prohibit any investors from asserting their claims. Rather, he seeks only to ensure that duplicative proceedings are not conducted in multiple fora before the Receiver has even carried out its duties and recovered funds to distribute to investors. This Court's Receivership Order explicitly authorizes the Receiver to "take whatever actions are necessary for the *protection of investors*" and "institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants *and their investors* . . . ." (Doc. 11 at 2, 3) (emphases added). The mere fact that certain causes of action may belong to the investors, and not to the Receiver or Receivership Entities, does not warrant the Mar Case proceeding forward simultaneously with this action when such ancillary

litigation involving a subset of investors in another jurisdiction potentially threatens an equitable recovery for all investors.

The SEC has secured an injunction and established a receivership specifically to marshal all of EquiAlt's assets in an effort to make its investors whole. (*See* Doc. 11). The Receiver will ensure the equitable distribution of the Receivership Estate to all EquiAlt investors. (*Id.* at 1-2). Competing actions by subgroups of investors who seek to prioritize their own recovery threaten the efficient administration of the Receivership Estate, impair the Receiver's ability to recover assets from third parties, and necessarily embroil the Receiver in ancillary litigation as a party or target of discovery, thereby dissipating the assets of the Receivership Estate. *See Credit Bancorp*, 93 F. Supp. 2d at 476. The Receiver should be allowed to carry out its duties free from competing actions of individual investors. The *Isaiah* opinion does not stand in the way of that principle or the requested relief.

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 supports the relief requested.

CONCLUSION

For the foregoing reasons, Wassgren respectfully requests this Court to enjoin the Mar Case and grant such further relief as appropriate.

Dated: November 5, 2020

Respectfully submitted,

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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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RICHARD GLEINN and PHYLLIS GLEINN, CARY TOONE, JOHN CELLI and MARIA CELLI, EVA MEIER, GEORGIA MURPHY, STEVEN J. RUBINSTEIN and TRACEY F. RUBINSTEIN, as trustees for THE RUBINSTEIN FAMILY LIVING TRUST DATED 6/25/2010, BERTRAM D. GREENBERG, as trustee for the Greenberg Family Trust, BRUCE R. AND GERALDINE MARY HANNEN, ROBERT COBLEIGH, RORY O'NEAL AND MARCIA O'NEAL, and SEAN O'NEAL, as trustee for THE O'NEAL FAMILY TRUST DATED 4/6/2004, individually and on behalf of others similarly situated,

Plaintiffs,

vs.

PAUL WASSGREN, an individual; DLA PIPER (US), a limited liability partnership; and FOX ROTHSCHILD LLP, a limited liability partnership,

Defendants.

Case No. **8:20-cv-01677-VMC-CPT**

JURY DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Richard Gleinn; Phyllis Gleinn; Cary Toone, John Celli; Maria Celli; Eva Meier; Georgia Murphy; Steven J. Rubinstein and Tracey F. Rubinstein, as trustees for The Rubinstein Family Living Trust Dated 6/25/2010; Bertram D. Greenberg, as trustee for the Greenberg Family Trust; Bruce R. Hannen; Geraldine Mary Hannen; Robert Cobleigh; Rory O'Neal; Marcia O'Neal; and Sean O'Neal, as trustee for The O'Neal Family Trust Dated 4/6/2004, as amended (collectively, "Plaintiffs") allege the following claims for their complaint against Defendants Paul Wassgren ("Wassgren"), DLA Piper (US) ("DLA Piper") and Fox Rothschild LLP ("Fox

Rothschild") (collectively, "Defendants"). Plaintiffs allege the following on information and belief, except as to those allegations that specifically pertain to the named Plaintiffs, which are alleged on personal knowledge.

INTRODUCTION

1. Plaintiffs bring this class action against the Defendants to obtain rescission, damages, and/or other relief on behalf of themselves and hundreds of other investors who collectively have lost millions of dollars in a Ponzi scheme orchestrated and perpetrated by the principals of EquiAlt, a private real estate investment firm based in Florida. The Ponzi scheme, which involved the unlawful sale of unregistered securities ("the EquiAlt Securities") combined with fraudulent misrepresentations, was carried out by the managers of EquiAlt acting in concert with Wassgren, a partner at the Fox Rothschild law firm and, later, a partner at the DLA Piper law firm.

2. EquiAlt and its promoters could not have perpetuated the massive fraudulent Ponzi scheme without the active assistance and participation of their lawyers. This class action is brought on behalf of the EquiAlt investors in (1) Florida, (2) California, (3) Arizona, (4) Colorado, and (5) Nevada seeking to hold accountable Wassgren, Fox Rothschild, and DLA Piper—the lawyers who knowingly aided and abetted the fraudulent scheme.

3. Over time, EquiAlt and Wassgren, through integrated offerings of unregistered securities, raised more than $170 million from at least 1,100 investors located in various states, including investors residing in Florida, California, Arizona, Colorado and Nevada. A large percentage of the EquiAlt investors are elderly and many of them invested their life savings in the unregistered EquiAlt Securities.

4. On February 11, 2020, the Securities and Exchange Commission ("SEC") in the Middle District of Florida filed an enforcement action against EquiAlt, the EquiAlt investment funds, and the EquiAlt promoters, Brian Davison (Chief Executive Officer) and Barry Rybicki (Managing Director), seeking injunctive and other relief (the "SEC Action"). The complaint in the SEC Action charges that those defendants operated EquiAlt as a Ponzi scheme and committed multiple violations of the Federal securities laws:

> The Commission brings this emergency action to halt an ongoing fraud conducted by EquiAlt LLC, a private real estate investment company. Beginning in 2011, to the present, Defendants EquiAlt, Brian Davison and Barry Rybicki conducted a Ponzi scheme raising more than $170 million from over 1,000 investors nationwide, many of them elderly, through fraudulent unregistered securities offerings. Defendants promised investors that substantially all of their money would be used to purchase real estate in distressed markets in the United States and their investments would yield generous returns. Instead, EquiAlt, Davison and Rybicki misappropriated millions in investor funds for their own personal use and benefit.

Complaint for Injunctive and Other Relief and Demand for Jury Trial, ¶ 1, copy attached as **Exhibit A.**

5. Three days after the SEC filed the SEC Action, EquiAlt was placed into a liquidating receivership. On May 8, 2020, the EquiAlt Receiver ("The Receiver") filed its first quarterly report, a copy of which is attached as **Exhibit B** ("the Receiver's Report"). The Receiver's Report includes extensive findings regarding the operations of the EquiAlt Ponzi scheme. In particular, the Receiver reported:

> These [EquiAlt] investments were sold without registration with either state or federal regulatory agencies. The offerings were purportedly made pursuant to federal exemptions from registration under the provisions of the Securities Act of 1933 provided in Regulation D. However, none of the first four [EquiAlt] Funds qualified for a Regulation D exemption or any other exemption from registration. The offerings appear to be one continuous fraudulent offering of unregistered securities. The lack of any exemption was clear to the perpetrators from the language contained in offering documents delivered to investors.

Ex. B at 14.

PARTIES AND NON-PARTY ACTORS

PLAINTIFFS

6. Plaintiffs Richard and Phyllis Gleinn are individuals and spouses, who reside and are domiciled in Sumter County, Florida. The Gleinns are investors in EquiAlt Securities.

7. Plaintiff Cary Toone is an individual who resides and is domiciled in the State of Arizona. Toone is an investor in EquiAlt Securities.

8. Plaintiffs John and Maria Celli are individuals and spouses who reside and are domiciled in the State of Arizona. The Cellis are investors in EquiAlt Securities.

9. Plaintiff Steven J. and Tracey F. Rubinstein are individuals and spouses who reside and are domiciled in the State of Arizona. The Rubinsteins are trustees of the Rubinstein Family Living Trust Dated 6/25/2010, which invested in EquiAlt. The Rubinsteins, via their trust, are investors in EquiAlt Securities.

10. Plaintiff Eva Meier is an individual who resides and is domiciled in San Diego, California. Meier is an investor in EquiAlt Securities.

11. Plaintiff Georgia Murphy is an individual who resides and is domiciled in San Diego, California. Meier is an investor in EquiAlt Securities.

12. Plaintiff Greenberg is the trustee of the Greenberg Family Trust, a revocable trust. Plaintiff Bert Greenberg is, and was at all material times, who resides and is domiciled in Santa Clara County, California. Greenberg is an investor in EquiAlt Securities.

13. Plaintiffs Bruce R. Hannen and Geraldine Mary Hannen are spouses and individuals who reside and are domiciled in the state of Colorado. The Hannens are investors in EquiAlt Securities.

14. Plaintiffs Rory and Marcia O'Neal are individuals and spouses who reside and are domiciled in the State of Nevada. The O'Neals are investors in EquiAlt Securities.

15. Plaintiff Sean O'Neal is the trustee of the O'Neal Family Trust. Plaintiff Sean O'Neal is an individual who resides and is domiciled in the State of Nevada. O'Neal is an investor in EquiAlt Securities.

16. Plaintiff Robert Cobleigh is an individual who resides and is domiciled in the State of California. Cobleigh is an investor in EquiAlt Securities.

DEFENDANTS

17. Defendant DLA Piper is a Maryland limited liability partnership operating as a law firm with its principal place of business at 6225 Smith Avenue, Baltimore, MD 21209. DLA Piper is thus a citizen of Maryland. DLA Piper does business in Florida at 200 South Biscayne Boulevard, Suite 2500, Miami, Florida.

18. Defendant Fox Rothschild is a Pennsylvania limited liability partnership operating as a law firm with its principal place of business located at 2000 Market St, 20th Floor, Philadelphia, PA, 19103. Fox Rothschild is thus a citizen of Pennsylvania. Fox Rothschild does business in Florida at One Biscayne Tower, 2 South Biscayne Blvd., Suite 2750, Miami Florida.

19. Fox Rothschild and DLA Piper served as EquiAlt's legal counsel in connection with the offer and sale of the EquiAlt Securities

20. Defendant Wassgren is an individual who resides and is domiciled in the State of California. Wassgren is thus a citizen of California. Wassgren is an attorney who has been a partner at DLA Piper since 2017. Prior to his affiliation with DLA Piper, Wassgren was a partner at Fox Rothschild. At all times relevant to the allegations of this complaint, Wassgren was acting within

the course and scope of his employment with Fox Rothschild and his later employment with DLA Piper.

OTHER NON-PARTY ACTORS

21. Non-defendant EquiAlt LLC ("EquiAlt") is a Nevada limited liability company that engaged in the offer and sale of the EquiAlt Securities to investors in several states, including Florida.

22. Non-defendant Brian Davison ("Davison") is the former CEO of EquiAlt.

23. Non-defendant Barry Rybicki (Rybicki") is a Managing Director of EquiAlt.

24. Non-defendants EquiAlt Fund LLC ("Fund 1"); EquiAlt Fund II, LLC ("Fund 2"), EquiAlt Fund III, LLC ("Fund 3") and EA SIP LLC ("Fund 4") (collectively, the "Funds") are investment funds formed by Non-Defendants Davison and Rybicki to raise monies from investors through the sale of the EquiAlt Securities.

25. Non-Defendants EquiAlt, the Funds, Davison, and Rybicki are hereinafter referred to collectively as the "Non-Defendant Promoters."

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA") codified as 28 U.S.C. § 1332(d)(2). The matter in controversy exceeds $5,000,000, in the aggregate, exclusive of interest and costs; each alleged class will have 100 or more members, and minimal diversity exists.

27. This Court has personal jurisdiction over each Defendant because each Defendant was involved in the marketing and sale of the EquiAlt Securities issued from EquiAlt headquarters in Tampa, Florida. Defendants have purposefully availed themselves of the laws of the State of Florida and have established minimum contacts with the State of Florida. The Court also has

personal jurisdiction under Fla. Stat. §§ 48.193(1)(a)(1) over the Defendants because they operate, conduct, engage in, or carrying on a business or business venture in this state or having an office or agency in this state. Both Fox Rothschild and DLA Piper transact substantial business in Florida, including from a DLA office in Miami, Florida, and Fox Rothschild offices in Miami and West Palm Beach, Florida. Defendants market, promote, distribute, and render their services in Florida, causing Defendants to incur both obligations and liabilities in Florida. Further, the Court has personal jurisdiction over Wassgren under Fla. Stat. § 48.193(1)(a)(2).

28. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. In addition, the SEC Action was filed in this district.

GENERAL ALLEGATIONS

A. Background of the EquiAlt Ponzi Scheme

29. EquiAlt was formed in 2011 by its Chief Executive Officer Davison and its Managing Director Rybicki (collectively, the "Managers"). EquiAlt represented to its investors in offering documents that substantially all of their invested funds would be used to purchase, rehabilitate and sell for profit single-family properties located in distressed markets throughout the United States, thereby generating generous returns of 8–12% for the investors. Instead, EquiAlt, Davison, and Rybicki with the active assistance of Defendants perpetrated an illegal Ponzi scheme by which they fraudulently misappropriated millions of dollars for their own personal benefit from the offer and sale of unregistered securities in violation of the federal and state securities laws, through a network of unlicensed sales agents located in Florida, California, Arizona, Colorado, and Nevada, and other states.

30. According to the Declaration of Mark Dee filed in the SEC action, EquiAlt morphed into a Ponzi scheme soon after its inception in 2011. A copy of the Declaration of Mark

Dee (the "Dee Declaration") is attached as **Exhibit C.** Mr. Dee, a Senior Accountant for the SEC, attested that Davison and Rybicki misappropriated millions of dollars for their own personal benefit, misused investor funds for purposes inconsistent with the Private Placement Memorandums used to offer and sell the EquiAlt Securities ("PPMS"), and saddled the Funds with financial losses stemming from excessive fees, bonuses and payments to insiders and affiliated entities. These excessive misappropriated fees rendered EquiAlt insolvent and unable to pay the amounts due to investors other than by raising new investor funds as part of the resulting Ponzi scheme. In short order the proceeds received by the Funds from property sales and loan receipts were inadequate to pay the high payments due to investors under the unregistered EquiAlt Securities, which obligated the Funds to pay interest to investors at rates ranging from 8% to 12%. Consequently, EquiAlt systematically diverted monies from one Fund to another and used investment proceeds raised from new investors to make the interest payments due to existing investors.

31. EquiAlt conducted its business affairs and perpetrated an illegal and fraudulent Ponzi scheme through a series of limited liability companies ("LLCs") controlled by Davison and Rybicki. EquiAlt itself was formed as a Nevada LLC to manage a series of real estate investment funds that issued and sold to investors unregistered securities styled as fixed-interest debentures. The unregistered EquiAlt Securities were issued by the Funds. Another LLC operated by Rybicki, BR Support Services LLC ("BR Services"), was formed in Arizona to recruit, oversee and pay commissions to the unlicensed sales agents who marketed and sold the unregistered EquiAlt Securities to unsuspecting investors.

32. Shortly after EquiAlt was formed in 2011, Davison and Rybicki began to aggressively promote sales of the EquiAlt Securities issued by Fund 1 through a network of

unlicensed sales agents located in Florida, California, Arizona, Nevada, and other states. Davison managed EquiAlt's financing and day-to-day operations, including the acquisition and development of properties owned by the Funds. Rybicki solicited and oversaw the activities of the unlicensed sales agents, communicated with investors and raised monies from investors.

33. Over time, Rybicki recruited approximately 19 sales agents through BR Services. Participating sales agents would submit to BR Services certain documentation and the investors' funds, which BR Services would transmit to EquiAlt. When the investors' funds were received, EquiAlt would disburse funds to BR Service equal to 12% of the invested amounts and BR Services in turn would pay commissions to the agents equal to 6% or more of the invested amounts. For example, the following chart from the Receiver's Report lists sales commissions paid to the sales agents recruited by Rybicki:

Sales Agent Name	**Total Paid**
Agents Insurance Sales / Barry Wilken	$ (240,159.33)
American Financial Security / Ron Stevenson / Barbara Stevenson	(1,712,750.95)
Barry Neal	(119,037.20)
Ben Mohr	(113,578.00)
Bobby Armijo / Joseph Financial Inc.	(1,100,042.65)
Dale Tenhulzen / Live Wealthy Institute	(1,484,531.29)
Elliot Financial Group / Todd Elliot	(805,662.68)
Family Tree Estate Planning / Jason Wooten	(3,749,783.61)
GIA, LLC / Edgar Lozano	(278,807.24)
Greg Talbot	(260,941.89)
J. Prickett Agency / Joe Prickett	(187,374.57)
James Gray / Seek Insurance Services	(405,286.75)
John Friedrichsen	(327,681.69)
Lifeline Innovations / John Marques	(822,318.06)

Patrick Runninger	(293,599.53)
Sterling Group	(478,562.12)
The Bertucci Group LLC / Leonardo LLC / Leonardo Bertucci	(139,950.00)
Tony Spooner / Rokay Unlimited, LLC	(622,169.05)
Wellington Financial, LLC / Jason Jodway	(48,000.00)
TOTAL	**$ (13,190,236.61)**

As the foregoing chart shows, the EquiAlt sales agents collected more than $13 million in commissions from sales of the EquiAlt Securities to investors.

34. Rybicki selected agents who had existing clients with whom they had pre-existing confidential fiduciary relationships of trust and confidence. The sales agents, who were largely unlicensed insurance producers and financial advisors, provided investment advice concerning the EquiAlt Securities, counseling their clients that the debentures were conservative, safe investments providing healthy investment returns with little or no investment risk. The sales agents purported to conduct sufficient analysis to confirm that prospective investors possessed the knowledge and expertise in financial and business matters and the capability to evaluate the merits and risks associated with the EquiAlt Securities. Rather than doing so, however, the EquiAlt sales agents improperly endorsed the EquiAlt Securities as low risk investments and affirmatively encouraged and exhorted their largely unsophisticated clients to invest their life savings and retirement assets in the risky unregistered securities.

35. A majority of the investors who purchased the unregistered securities issued by the Funds were non-accredited, meaning that their net worth was less than $1 million, their individual income was less than $200,000 in each of the two most recent years (or $300,000 in joint income with their spouse), or they failed to meet the other requirements of 17 CFR § 230.501. In addition,

to be accredited, purchasers must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment. Under Regulation D, the safe harbor exemption from registration is forfeited if the issuer sells its unregistered securities to more than 35 non-accredited purchasers. When the EquiAlt Securities offerings by the Funds are aggregated, it is clear that EquiAlt had more than 35 non-accredited purchasers because the Form D for the Fund 1 offering discloses 31 non-accredited purchasers and the Form D for Fund II discloses 10 non-accredited purchasers, for a total of at least 41 non-accredited purchasers of EquiAlt Securities.

B. Defendants' Active Participation and Assistance in the Offer and Sale of the Unregistered EquiAlt Securities

36. As a partner at Fox Rothschild and later as a partner at DLA Piper, Wassgren served as legal counsel for EquiAlt who advised and assisted EquiAlt on numerous matters, including compliance with applicable Federal and State securities laws. In a recent podcast, Wassgren described EquiAlt as "a long-time client of mine."[1] DLA Piper's website notes that Wassgren represented EquiAlt in connection with "[f]und and REIT formations, including a series of private [securities] offerings."[2] According to the DLA Piper website, Wassgren "practices at the intersection of corporate law, real estate and securities."[3] Despite his youthful age, therefore, Wassgren is a highly sophisticated securities lawyer, well-versed in the stringent federal and state law provisions regulating the offer and sale of securities to investors in California, Arizona, Florida, Colorado and Nevada including in particular the prohibitions against public offerings of unqualified or unregistered securities through unlicensed brokers and sales agents.

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[1] https://podcasts.apple.com/kw/podcast/paul-wassgren-from-youngest-bond-trader-ever-to-oz/id1460212490?i=1000438104456 (last visited June 15, 2020)

[2] https://www.dlapiper.com/en/us/people/w/wassgren-paul/ (last visited June 15, 2020).

[3] *Id.*

37. Wassgren represented EquiAlt for several years as a partner at Fox Rothschild. Wassgren brought EquiAlt with him as a client when he joined DLA Piper as a partner in 2017. Wassgren had primary responsibility for the EquiAlt engagements of Fox Rothschild and DLA Piper. As recently as 2018, and after defending the Arizona investigation into EquiAlt's operations described below, Wassgren led a team of DLA Piper attorneys assisting EquiAlt in the formation and offering of $500 million fund to purchase and develop properties within Qualified Opportunity Zones.

38. Over the years, Fox Rothschild and DLA Piper collected hundreds of thousands of dollars in fees from EquiAlt and its affiliates from EquiAlt and the Funds.

39. Wassgren was deeply involved with EquiAlt and the Funds from their very inception. In his deposition taken in the SEC investigation leading up to the SEC Action, EquiAlt CEO Davison described Wassgren's instrumental role as architect of the EquiAlt business organizations:

> Q: The second full paragraph on page 3 states … "As the CEO and founder, Mr. Davison … actively works with EquiAlt outside legal and financial advisors to develop and implement strategic ling-term planning for the company…." Is that an accurate description of your responsibilities at EquiAlt?
>
> ***
>
> A: … I just would like to clarify that my definition of financial advisors is directly related to my job position, which would be Denver, a staff CPA with great experience, ***my legal counsel, Paul Wassgren, I deal with quite extensively when the companies interact with each other that he's built for me,*** to make sure I'm good on that. But other than that, I would say that paragraph is generally accurate, yes.

Deposition of Brian Davison, excerpt attached as **Exhibit D**, at 21 (emphasis added).

40. While a partner at Fox Rothschild and later, as a partner at DLA Piper, Wassgren prepared and filed with the Nevada Secretary of State the Articles of Organization for each of the

Funds, listing himself as the "Organizer" and "Registered Agent" for the Funds. Wassgren also drafted the PPMs used by EquiAlt to solicit sales of its unregistered and nonqualified securities. As Davison testified to the SEC:

> Q: And who developed the concept of raising money for these investment funds through private placement memorandums?
>
> A: That's me.
>
> ***
>
> Q: Okay. So who contacted the law firm to help generate those private placement memorandums?
>
> A: I do.
>
> Q: Okay. It was you?
>
> A: It was me.
>
> ***
>
> Q: And which law firm, and which attorney, and when?
>
> A: So the individual is Paul Wassgren.
>
> ***
>
> Q: Fox Rothschild? Does that sound familiar?
>
> A: He was at Fox Rothschild.
>
> Q: Which firm is he at now?
>
> A: I believe he's with DLA Piper.

Ex. D at 26–27**.** Copies of PPMs drafted by Wassgren for each of the Funds are attached as **Composite Exhibit E**.

41. Indeed, Wassgren drafted the EquiAlt PPMs from the very beginning of its existence. As Davison testified in his deposition that "[g]enerally speaking, on a transactional basis, I created documents like these [PPMs] with counsel about the time period of 2000—I'm

sorry—2011, private placement memorandum generally." Pl. Mot. for TRO, Exh. 4, Davison Tr. at 92. **Exhibit D** at 92.

42. Wassgren also drafted the Subscription Agreements, the EquiAlt Securities, and the Prospective Purchaser Questionnaires ("Investor Questionnaires") used to attest that the investors were "accredited," a requirement for the securities to be exempt from registration as a "private offering" under Rule 506(b) of SEC Regulation D ("Regulation D"). An exemplar Investor Questionnaire is attached as **Exhibit F**. As drafted, the Investor Questionnaires were addressed to Fox Rothschild or DLA Piper, such that prospective investor was directed to complete the questionnaire and send the signed document to the Defendants' offices. Through their receipt of such Investor Questionnaires, and otherwise, Defendants kept themselves informed of the number and level of financial sophistication of the prospective investors to whom the EquiAlt Securities were being offered and sold.

43. The PPMs and other offering documents prepared by Wassgren contained numerous false and misleading statements and concealed or omitted material information about the use of investors' funds and the risks associated with the Funds. Among other material misrepresentations, the PPMs prepared by Wassgren:

- Falsely stated that "[t]his Offering is being made pursuant to the private offering exemption of Section 4(2) of the [Securities] Act and/or Regulation D promulgated under the Act;"
- Falsely stated that "[t]his Offering is also being made in strict compliance with the applicable state securities laws;"
- Falsely stated that "[u]nder no circumstances will the Company admit more than thirty-five (35) non-accredited Investors as computed under Rule 501 of Regulation D promulgated under the [Securities] Act;"
- Falsely stated that "[t]he Company may utilize the services of one or more registered broker/dealers" to sell the unregistered securities;
- Falsely overstated the percentage of investor funds that would be used to invest

in properties;

- Misleadingly omitted to disclose that millions of dollars would be used to pay undisclosed fees and bonuses to EquiAlt and its principals;
- Misleadingly omitted to disclose that EquiAlt would pocket "discount fees" rather than passing on to the Funds purported savings from listed sale prices; and
- Misleadingly omitted to disclose that monies would be transferred from one Fund to another to pay interest due to investors and failed to adequately disclose that commissions would be paid to unlicensed sales agents.
- Misleadingly omitted to disclose that Davison and Rybicki had both filed bankruptcy proceedings during the years prior to the formation of EquiAlt

44. Although the PPMs made partial disclosures that Davison and Rybicki would be compensated through management fees and undefined "substantial compensation and benefits" these disclosures were misleading half-truths because the PPMs also assured the prospective investors that the Company "does not anticipate significant operating costs" and the projected sources and uses of cash failed to disclose the exorbitant amounts misappropriated and diverted by Davison and Rybicki. More importantly, the PPMs failed to disclose that, as Davison and Rybicki knew and intended, the exorbitant amounts that they stripped from the EquiAlt Funds quickly rendered the funds insolvent and incapable of paying the amounts due to investors other than with funds raised from new investors through the Ponzi platform.

45. In addition to drafting and providing information for the PPMs, Wassgren and the law firm Defendants consented to the inclusion of their names in the PPMs and the associated offering materials incorporated in the PPMs. As just noted, while Wassgren was a partner at Fox Rothschild, the Investor Questionnaires attached as exhibits to the PPMs named the law firm and directed the investors to mail the completed questionnaires to the law firm's offices in Nevada. When Wassgren moved to DLA Piper in 2017, the Investor Questionnaires were changed to name DLA Piper and set forth the new law firm's mailing address in California. The PPMs also stated

that: (a) the securities were offered "subject to … [the] approval of counsel;" (b) the fund's "counsel will review certain documents" used to effectuate the real estate transactions by which the Funds intended to acquire properties; (c) the Fund "will rely on the opinion of … its legal counsel with respect to its classification as a limited liability company for Federal income tax purposes;" and (d) the securities could not be transferred unless, among other things, "in the opinion of counsel to the company, registration is not required…." These statements concerning the legal advice to be obtained from EquiAlt's counsel all referred to Wassgren and the law firm Defendants.

46. Wassgren and the law firm Defendants furthermore prepared false and misleading marketing materials distributed to prospective investors and knowingly allowed EquiAlt to use their names and professional reputations in the marketing materials. While Wassgren was a partner at Fox Rothschild, EquiAlt marketing brochures (an example of which is attached as **Exhibit G**) prominently featured Wassgren and Fox Rothschild as the investment firm's legal counsel, thereby providing comfort to prospective investors that EquiAlt was a legitimate, financially sound investment firm that complied with all applicable regulatory and legal requirements. When Wassgren subsequently became a partner at DLA Piper, the EquiAlt marketing brochure (an example of which is attached as **Exhibit H**) was changed to reflect that Wassgren and DLA Piper served as legal counsel for EquiAlt. Both EquiAlt marketing brochures invited prospective investors to contact Defendants directly, identifying them as "independent" professionals who offered to give the investors "insight into the fund and its activities." *Id.*[4]

[4] DLA Piper through numerous press releases also touted to the public the law firm's involvement and major role in assisting EquiAlt, but has since removed these specific website announcements:

> DLA Piper advises EquiAlt on the formation and offering of its
> ...www.dlapiper.com › news › 2018/11 › dla-piper-advises-EquiAlt-on-q...

47. Wassgren knew the representations in the PPMs that the EquiAlt Securities were exempt from registration under the federal securities laws pursuant to Regulation D and were made "in strict compliance with the applicable state securities laws" were false and misleading. Among other things, Wassgren knew that: (a) EquiAlt intended to sell and did in fact sell its securities to more than 35 non-accredited investors through the Funds, which were all part of a single integrated offering; (b) EquiAlt engaged directly and through its agents in general solicitations and advertising to market its unregistered securities; (c) EquiAlt made commission payments to its unlicensed sales agents not disclosed in its SEC filings claiming the Reg D exemption from registration; and (d) EquiAlt would and did fail to provide investors with information and disclosures required by Regulation D, including audited financial statements.

Nov 15, 2018 – DLA Piper represented EquiAlt LLC, in the formation and offering of their recently formed EquiAlt Qualified Opportunity Zone Fund, LP that ...

Paul Wassgren | People | DLA Piper Global Law Firmwww.dlapiper.com › people › wassgren-paul

DLA Piper represented EquiAlt LLC, in the formation and offering of their recently formed EquiAlt Qualified Opportunity Zone Fund, LP that purchases and ...

https://www.leopardsolutions.com/hotspot/ListSummaryDetails.aspx?categoryid=0&month=11&year=2018

DLA Piper advises EquiAlt on the formation and offering of its US$500 million Qualified Opportunity Zone fund

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48. Aware that EquiAlt failed to qualify for its claimed registration exemption yet was offering and selling the unregistered securities using unlicensed sales agents, Wassgren knew that his clients were engaged in multiple ongoing violations of the applicable federal and state securities laws.

49. Wassgren also actively assisted EquiAlt's ongoing securities law violations by developing a stratagem to mischaracterize the sales agents as mere "Consultants" being paid "finders fees" as a subterfuge to facilitate the offer and sale of the EquiAlt Securities by unlicensed dealers. In furtherance of this unlawful contrivance, Wassgren drafted a so-called "Finder's Fee Agreement" between the applicable investment fund and the unlicensed sales agents, a copy of which is attached as **Exhibit I**. The Finder's Fee Agreement drafted by Wassgren acknowledged that the fund would "compensate" the sales agents for "introducing the Company [fund] to Investors who may be interested in considering a potential investment in the Company." *Id.* at 1. Although Wassgren was-well aware that the sales agents would be providing investment advice to their current and prospective clients (to whom they owed fiduciary duties), Wassgren drafted the Finder's Fee Agreement to falsely represent that each agent would not "make representations concerning the terms, conditions or provision of any possible investment" in the EquiAlt Funds. *Id.* at 2.

50. Recognizing that the contemplated activities of the EquiAlt sales agents contravened both Federal and State securities laws, Wassgren drafted the Finder's Fee Agreement to provide for indemnification of both the EquiAlt fund and the agent against losses incurred by either of them arising from the "Consultant's failure to register as a broker-dealer with the Securities and Exchange Act of 1934, or as required by applicable state law or Consultant's violation of state or federal securities laws and regulations." *Id.* at 3. Acknowledging Wassgren's

contemplated continued participation in the ongoing securities law violations, the Finder's Fee Agreement provided that any notices required under the agreement, including notice of claims arising from securities laws violations, were to be provided to Wassgren himself on behalf of the EquiAlt Funds. *Id.* at 5.

51. Rather than disclosing the ongoing securities violations or withdrawing from further representation (as required by the applicable ethical rules), Wassgren instead assisted EquiAlt in its attempt to conceal those violations. To that end, as alleged more fully below, Wassgren orchestrated the creation of multiple purportedly separate investment funds in an attempt to conceal the number of unaccredited investors to whom the unregistered securities were sold. Wassgren also assisted in the preparation of materially false SEC filings which—to conceal EquiAlt's ongoing securities law violations—intentionally understated the number of non-accredited EquiAlt Fund investors and misrepresented the nature and amount of commissions paid to the unlicensed sales agents.

52. The all-encompassing involvement of Wassgren and the law firm Defendants in the affairs and business operations of EquiAlt was recently described by Rybicki in filings with this Court. As Rybicki has avowed, attorney Wassgren provided advice and input on virtually all aspects of EquiAlt's operations, including preparation of the false and misleading PPMs and marketing materials used to induce investors into purchasing the EquiAlt securities, compliance with the applicable securities laws and the payment of commissions to unlicensed sales agents:

> Mr. Davison and Mr. Wassgren … drafted and had authority over the PPMs. EquiAlt retained the services of Paul Wassgren in virtually all aspects of EquiAlt's business operations and entrusted him with ensuring EquiAlt complied with securities laws … Mr. Wassgren prepared EquiAlt's marketing materials to investors aware of the purpose for which these materials would be disseminated and used, vetted and participated in approving EquiAlt's PPMs; and provided legal advice to EquiAlt as to the legality of paying commissions to unregistered sales agents for the sale of debentures. … Mr. Rybicki directed sales agents to speak

with Mr. Wassgren when they had questions regarding the legal requirements for selling EquiAlt Funds.

[ECF No. 152 at 19–20]

53. In sum, Wassgren (a) was knowing participant in the ongoing illegal sales of securities by the Non-Defendant Promoters, (b) played a substantial role in inducing the illegal sales, and (c) lent substantial assistance to an ongoing scheme to defraud. Wassgren knew or should have known that under the standards of the legal profession, "[A] lawyer has an obligation not knowingly to participate in any violation by the client of the securities laws." ABA Statement of Policy on Lawyer Responses to Auditor Requests for Information.[5] In these circumstances, Wassgren was professionally obligated to terminate its representation to avoid covering-up and assisting the ongoing (and past) fraud perpetrated by the Non-Defendant Promoters. He did not do so.

54. Not only that, but Wassgren's actions in assistance to and in concert with the Non-Defendant Promoters went far beyond his role as legal counsel to EquiAlt. Wassgren even went so far as to affirmatively provide legal advice to potential and existing ***sales agents***, falsely assuring them that EquiAlt complied with all applicable securities laws and that the unlicensed agents could lawfully sell the EquiAlt unregistered and unqualified securities.

55. Wassgren spoke directly with many of the unlicensed broker-dealer sales agents to provide them with false assurances that EquiAlt complied with all securities laws and that the agents could lawfully offer and sell the EquiAlt Securities, even though they were not registered.

[5] *See also In re Am. Cont'l Corp./Lincoln Sav. and Loan Secur. Litig.*, 794 F. Supp. 1424, 1452 (D. Ariz. 1992) ("An attorney may not continue to provide services to corporate clients when the attorney knows the client is engaged in a course of conduct designed to deceive others, and where it is obvious that the attorney's compliant legal services may be a substantial factor in permitting the deceit to continue.").

For example, attorney Wassgren told sales agent Dale Tenhulzen that Wassgren "wrote the PPM" and explained how Tenhulzen would be compensated for selling EquiAlt Securities. Attorney Wassgren advised Tenhulzen that he did not need a license to legally sell and get paid for the sale of the EquiAlt Securities. [ECF No. 152-2 at 27-30]

56. Another EquiAlt sales agent, John Friedrichsen, received the same advice from attorney Wassgren. When he first began selling the EquiAlt Securities, Rybicki told him that Wassgren had advised that the sales agents did not need to be registered to sell EquiAlt Funds. [ECF No.152-4, ¶ 8]. After Davison and Wassgren created EquiAlt's REIT Fund, Mr. Friedrichsen wondered whether he could receive commissions for selling the REIT Fund and, at Mr. Rybicki's suggestion, called Mr. Wassgren to inquire. *Id.*, ¶ 10. During the call, Mr. Wassgren, who "knew I [Friedrichsen] was a sales agent for EquiAlt Funds… explained that financial agents needed to acquire a Series 7 license to sell debentures for the REIT Fund." *Id.*, ¶ 11.

57. Yet Attorney Wassgren knew the EquiAlt Securities did not qualify for a public offering exemption under federal or state law. Wassgren also knew that the sales agents selling the EquiAlt Securities were not registered as dealers or salespersons under federal and state securities laws. Nonetheless, in furtherance of the ongoing Ponzi scheme, Wassgren personally, systematically, affirmatively, and falsely represented to the sales agents that they could lawfully sell the unregistered EquiAlt Securities—never disclosing that EquiAlt and the agents were violating the federal and state securities laws by selling unregistered securities and by selling investments for EquiAlt without registering as a securities dealer.

58. In addition to actively assisting EquiAlt and the Non-Defendant Promoters by drafting false offering documents, preparing organizational documents for the Funds and for other entities in which properties were held, advising and assisting EquiAlt's efforts to avoid registration

under the applicable securities laws and providing false assurances to the sales agents, CEO Davison has testified that Wassgren actively assisted him in developing and implementing strategic long-term planning for EquiAlt, again assistance beyond the scope of the routine rendition of legal services.

C. The EquiAlt Securities Are Non-Exempt Unregistered/Unqualified Securities

59. The EquiAlt Securities are securities within the meaning of the Securities Act of 1933 ("the Federal Act"), which unless exempt must be registered before being offered or sold in the United States. 15 U.S.C. §77e.

60. The EquiAlt Securities are likewise securities under the Florida Securities and Investor Protection Act (the "FSIPA"), which unless exempt must be qualified before being offered or sold in Florida unless they are exempt from registration under the Federal Act. § 517.07, Fla. Stat.

61. The EquiAlt Securities are likewise securities under the California Securities Law of 1968 ("CSL"), which unless exempt must be qualified before being offered or sold in California unless they are exempt from registration under the Federal Act. Cal. Corp. Code §25102(o).

62. The EquiAlt Securities are likewise securities under the Arizona Securities Act ("ASA"), which unless exempt must be qualified before being offered or sold in Arizona unless they are exempt from registration under the Federal Act. § 44-1841, Ariz. Stat.

63. The EquiAlt Securities are likewise securities under the Colorado Securities Act ("CSA"), which unless exempt must be qualified before being offered or sold in Colorado unless they are exempt from registration under the Federal Act. C.R.S. § 11-51-201.

64. The EquiAlt Securities are likewise securities under the Nevada Securities Act ("NSA"), which unless exempt must be qualified before being offered or sold in Nevada unless they are exempt from registration under the Federal Act. NRS 90.295 and 90.460.

65. Defendants prepared the PPMs for the EquiAlt Securities, which acknowledged them as "securities," and which described the raised funds as being used to purchase, improve, lease and sell single-family properties in distressed real estate markets in the U.S. and to participate in "opportunistic loan transactions" in the United States.

66. Recognizing that the EquiAlt Securities are securities within the meaning of the Federal Act and the FISPA, the CSL, the ASA, and the NSA, Defendants provided legal advice to, drafted documents for, and otherwise actively assisted EquiAlt in falsely claiming an exemption from registration as a "private offering" under Rule 506(b) of SEC Regulation D ("Rule 506").

67. Rule 506(b) is considered a "safe harbor" under Section 4(a)(2) of the Federal Act. It provides objective standards that a company can rely on to meet the requirements of the Section 4(a)(2) exemption. Companies conducting an offering that qualifies under Rule 506(b) can raise an unlimited amount of money and can sell securities to an unlimited number of accredited investors.

68. An offering under Rule 506(b) is, however, subject to the following requirements:

- no general solicitation or advertising to market the securities may be conducted; and
- securities may not be sold to more than 35 non-accredited investors (all non-accredited investors, either alone or with a purchaser representative, must meet the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment).

Furthermore, as a general condition to a Rule 506(b) exemption, all non-accredited investors must be given specific information relating to the offeror's financial condition. 17 C.F.R. § 230.502(b).

69. Defendants advised EquiAlt with respect to the required filings with the SEC to claim an exemption from registration under Regulation D. Defendants therefore had actual knowledge of the requirements EquiAlt was required to follow in order to exempt the offer and

sale of the EquiAlt Securities from the registration requirements under the Federal and State securities statutes.

70. However, through their active involvement in the documentation, offering and sales of the EquiAlt Securities, their interactions with EquiAlt and its principals and its interactions with the EquiAlt sales agents and securities regulators, Defendants knew that the EquiAlt Securities were in fact offered and sold in non-compliance with the requirements of Regulation D.

71. First, Defendants knew that investments in the EquiAlt Securities were being solicited through general solicitations and advertisements, including: (a) newspaper ads such as in the attached **Exhibit J**, and (b) group presentations such as the slideshow attached as **Exhibit K** ; and (c) sales brochures such as the attached **Exhibits G** and **H**. Defendants also knew that in-house employees at EquiAlt were soliciting investments from the general public through cold-calling campaigns, social media, websites, in-person meetings, and info-dinners.

72. Second, Defendants drafted the subscription materials to be completed by potential investors to confirm the accredited or non-accredited status of the potential investors. Defendants drafted those subscription materials for completion and return directly to their offices for review by Wassgren, and thereby received direct reports of the number, age, geographic location, and financial sophistication of the investors to whom the EquiAlt Securities were being offered and sold. Defendants thus knew that many of the investors had indicated they were unaccredited or unsophisticated in that they lacked knowledge and expertise in financial or business matters, were not capable of evaluating the merits and risks of the investment, and were not otherwise capable of bearing the economic risks of the investment. Defendants also knew that far more than the maximum permitted number of the unaccredited investors had been sold the EquiAlt Securities, a prohibition which they attempted to circumvent through the creation of purportedly distinct Funds.

73. Third, Defendants knew that EquiAlt has not satisfied the general condition that the offerors supply all non-accredited investors with the EquiAlt financial reports and information required under Rule 502(b).

74. Fourth, Defendants aware of, and knowingly permitted, EquiAlt's promotion of Wassgren, DLA Piper, and Fox Rothschild as legal counsel who could vouch for EquiAlt and the legality of the unregistered offer and sale of EquiAlt Securities. For example, EquiAlt's general solicitation materials not only identified DLA Piper or Fox Rothschild as its attorney in connection with EquiAlt's offering, but furthermore supplied the address and phone number for their California offices, and explicitly told investors that Defendants would vouch for the legality of EquiAlt's securities offering and its use of the funds raised through it:

- **Can I contact EquiAlt's CPA or Attorney?** Absolutely, both are independent from EquiAlt LLC and can give you some insight into the fund and its activities.

Ex. G; **Ex. H.**

75. Defendants continued to permit EquiAlt to promote Wassgren and DLA Piper as "independent" legal counsel who investors could contact to obtain information about the EquiAlt Funds and their activities as the Ponzi scheme unfolded, even during the SEC investigation in 2019. **Exhibit L**.

76. Defendants thus agreed to actively assist in the offer and sale of the EquiAlt Securities in order to generate fees and enhance their professional reputation. Indeed, DLA Piper specifically touted its relationship with EquiAlt in other online posts, press releases, and tweets. *See supra*, ¶ 41 n.4 (collectively, the "DLA-EquiAlt Posts").

77. Fifth, Defendants also knew that the EquiAlt Securities were being offered and sold in California, Arizona, Florida, Colorado, Nevada and elsewhere by unlicensed securities broker-

dealers and sales agents who were paid commissions by EquiAlt to do so. But Defendants further knew those commissions were not reported in EquiAlt's SEC filings.

78. Sixth, Defendants actively assisted the offer and sale of the EquiAlt Securities by unlicensed securities broker-dealers and sales agents by assuring them that such sales complied with the operative securities laws.

D. Defendants Intended to Deceive the EquiAlt Investors

79. In addition to their active participation in the fraudulent scheme by drafting misleading offering documents used to induce investors to purchase the EquiAlt Securities, forming the Funds used to perpetrate the Ponzi scheme, providing false assurances to sales agents and investors and assisting in the ongoing affairs of EquiAlt, Defendants actively assisted EquiAlt and its principals in concealing the ongoing securities law violations from the investors, the SEC and state regulators. These actions were all undertaken to deceive EquiAlt's existing and prospective investors into believing that the sale of unregistered securities by the Funds complied with the securities laws, which Defendants knew was an outright lie, and to conceal that the falsity of the representation in the PPMs that the offerings were "being made in strict compliance with the applicable state securities laws."

1. Wassgren Orchestrates Formation of Multiple Funds and False SEC Filings to Conceal EquiAlt's Ongoing Securities Violations

80. To qualify for an exemption from registration under Regulation D, issuers must file a submission known as a "Form D" electronically with the SEC no later than 15 days after they first sell securities to the investing public. Form D is a brief notice that includes certain specified details concerning the issuing company's promoters, the total offering amount, commissions paid to agents, the existence of non-accredited investors and similar information.

81. A person who willfully fails to file a Form D or who willfully makes a false statement in a registration statement is guilty of a felony under the Federal securities laws. *See* 15 USC § 77x. Also, under 17 CFR § 239.500(a)(3(i), an issuer must file an amendment to a previously filed Form D to correct any material errors in any previously filed Form D.

82. In furtherance of the ongoing fraudulent scheme, Wassgren drafted, reviewed and/or approved numerous Form Ds signed by Davison and submitted to the SEC on behalf of the EquiAlt Funds in order to claim the benefit of an exemption from registration under Regulation D. See **Exhibit Y**. As alleged in the following paragraphs, Wassgren helped orchestrate a pattern of falsified Form D filings with the SEC calculated to paper over and conceal that the EquiAlt Securities did not qualify for an exemption under Regulation D and, accordingly, from its inception EquiAlt was illegally selling unregistered securities using unlicensed sales agents in violation of the federal and state securities laws.

83. Acting on behalf of EquiAlt, Attorney Wassgren filed the articles of organization for Fund 1 with the Nevada Secretary of State on May 23, 2011. Two months later, on July 19, 2011, EquiAlt Fund 1 filed its initial Form D with the SEC attesting that the securities to be issued by the fund were exempt from registration under Regulation D and that the total offering amount for Fund 1 was $50 million. The initial Form D for Fund 1 also attested that: (a) the first sale of securities issued by the fund had yet to occur; (b) the fund paid no commissions or finders' fees associated with sales of its securities; (c) no amount of the gross proceeds of the offering has been or is proposed to be used for payments to executive officers, directors or promoters; and (d) Brian Davison was the sole related person associated with the fund. By signing the Form D, Davison attested that "[e]ach Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person."

84. The foregoing attestations in the Fund 1 Form D filing with the SEC were false when made. Contrary to those attestations, the first sale of securities issued by Fund 1 were made in January 2011, months before the Form D was filed with the SEC, Fund 1 had paid commissions to unlicensed sales agents, and, in addition to Davison, Rybicki was a related person associated with Fund 1. Furthermore, although the Fund 1 Form D (and all other subsequent Form D filings) attested that no portion of the offering proceeds would be paid to any related persons, in reality EquiAlt paid Davison and Rybicki tens of millions of dollars raised through the securities offerings through undisclosed due diligence fees, management fees, success fees, auction fees, underwriting fees purchase discount fees, bonuses and outright improper cash distributions.

85. Wassgren, who actively assisted in the preparation and filing of the Form D, knew that these attestations in the Fund 1 initial Form D filing were false. Among other things, Wassgren knew that proceeds from the sales of securities issued by Fund 1 were being paid as commissions to unlicensed sales agents in contravention of applicable state and federal securities laws. In fact, Wassgren advised the EquiAlt managers to mischaracterize the unlicensed sales agents as "consultants" and to likewise mischaracterize the commission payments as "finders fees." Wassgren knew that the EquiAlt sales agents were unlicensed sales agents who could not possibly qualify as "finders" or mere "consultants" because, among other things, they received transaction-based compensation, provided financial and suitability advice to prospective investors, actively located and solicited prospective investors and distributed PPMs and Subscription Agreements to prospective investors. As a consequence, Wassgren knew that, from the inception of Fund 1, EquiAlt was operating in violation of federal and state securities laws, exposing EquiAlt to civil and criminal penalties, investor claims for rescission, and inexorable ineligibility to participate in further Regulation D exempt offerings.

86. The Form D also falsely attested that no portion of the offering proceeds would be paid to any of the executive officers or promoters of the fund when, in fact, the EquiAlt managers intended to and did divert millions of dollars of the offering proceeds to themselves.

87. As a result of its aggressive solicitation of elderly and unsophisticated investors with limited assets and modest income, EquiAlt soon sold fixed rate debentures issued by Fund 1 to far more than 35 unaccredited and unsophisticated investors, thereby forfeiting its claimed registration exemption under Regulation D. EquiAlt further forfeited its registration exemption by soliciting investments from the general public through cold call solicitations, seminar presentations, media advertisements, websites and social media campaigns. As alleged above, Wassgren knew that EquiAlt had exceeded the limit on sales of unregistered securities issued by Fund 1 to unaccredited investors because the Investor Questionnaires were addressed and sent to Fox Rothschild and to DLA Piper.

88. Knowing that the securities issued by Fund 1 were not exempt from registration because, among other things, the sales to unaccredited investors greatly exceeded the numerical limit permitted by Regulation D and other requirements for the claimed registration exemption, Wassgren hatched a scheme to paper over and conceal the ongoing securities law violations. Based on the advice and with the active and knowing assistance of Wassgren, EquiAlt formed a new investment fund known as EquiAlt Fund II LLC (Fund 2) on April 24, 2013. Wassgren prepared and filed the Articles of Organization for Fund 2 with the Nevada Secretary of State. Fund 2 began selling unregistered securities on May 2, 2013, approximately one week after Fund 2 was formed. However, Fund 2 did not file the required Form D with the SEC until March 31, 2016, nearly three years later. This late-filed Form D was untimely, as Regulation D requires that the necessary notice be filed no later than 15 days after the securities are first sold by the issuer. In the Form D for Fund

2, CEO Davison attested that the securities issued by Fund 2 were exempt from registration under Regulation D.

89. The Fund 2 Form D attested that the total offering amount for the fund was $20 million and that, as of the filing date, Fund 2 had issued $6 million of unregistered securities to 88 investors. The Form D notice also attested that securities in the offering had been sold to 10 unaccredited investors. The initial Form D for Fund 2 further attested that no sales commissions had been paid to any agents and estimated that $250,000 in "Finders' Fees" had been paid in connection with the unregistered securities issued by Fund 2. The Form D filing attested that no portion of the offering proceeds would be paid to Davison, who was identified as the only any executive officer, director and promotor of Fund 2.

90. The foregoing attestations in the initial Form D notice for Fund 2 were false in many material respects. Contrary to the representations in the Form D filing, Fund 2 already had sold unregistered securities to far more than 10 unaccredited investors, the fund had paid commissions to its sales agents, those commissions did not qualify as "Finders' Fees," the amount of those commissions was far greater than $250,000 (as sales commissions ranged from 10–12% of the amounts paid by investors), and Davison was not the sole promoter of the fund. Wassgren knew that these attestations in the Form D notice were false and that accordingly the securities issued by Fund 2 were not exempt from registration under the applicable federal and state securities laws.

91. Moreover, as Wassgren knew, the scheme to split unaccredited investors between Fund 1 and Fund 2 was wholly ineffective to salvage the claimed registration exemption because the unregistered securities were being sold as part of an ongoing, integrated single offering. Among other things, the offerings were part of a single plan of financing, involved issuance of the same

class of security, were made at or about the same time, involved the same type of consideration and were made for the same general purpose. Furthermore, the safe harbor allowed by 17 CFR § 230.502 was not available because the offerings were not made more than six months apart with no offers of the same or similar securities being made in between. Thus, even if the number of unaccredited investors reported for Fund 1 and Fund 2 in the Form D filings were correct (which they were not), Wassgren knew there were at least 41 unaccredited investors in the single integrated offering (31 unaccredited investors in Fund 1 and 10 unaccredited investors in Fund 2), once again confirming that the funds were illegally selling unregistered securities using unlicensed sales agents in violation of the federal and state securities laws.

92. Wassgren was well aware that the integrated serial funds that he advised EquiAlt to form in an attempt to deceive investors into believing that the Funds complied with the federal and state securities laws exposed EquiAlt and its managers to criminal prosecution and civil actions by investors. As Wassgren himself wrote in a 2016 article:

> [M]any developers may still need to turn to other forms of equity. In addition to crowdfunding, issuers may raise capital through more established exemptions such as Rule 506(b) and Rule 506(c). It is critical, however, that such developers or project sponsors seek the advice of securities counsel to ensure each offering complies fully with the associated rules and to prevent integration among multiple offerings, which could render each of them ineffective and, therefore, produce an illegal offering. As I have often counseled clients over the years, no one looks good in an orange jumpsuit. Even if criminal prosecutions for securities law violations are rare, they are best avoided, along with the associated civil actions brought by investors when securities laws have not been strictly followed.

P. Wassgren, "Thinking About Crowdfunding Your Next Syndicated Deal" (February 17, 2016) available at https://dailyproperties.com/real-estate-crowdfunding-rules-regulations/

93. The pattern of false Form D filings by CEO Davison, all made with the knowledge and active assistance of Wassgren, continued over the following years. Fund 2 filed an amended Form D notice on April 26, 2016, less than a month after its initial Form D was filed. The amended

Form D for Fund 2 contained the same false statements as its initial Form D, but eliminated the language contained in the initial notice disclosing that Fund 2 sales agents were actively soliciting sales from investors residing in Arizona, California, Colorado, Massachusetts, Nevada and Utah. Davison amended the Fund 2 Form D in an attempt to withdraw the issuer's admission that sales agents were actively soliciting investors in the fund, which was inconsistent with Wassgren's attempt to evade the securities law violations by falsely characterizing the unlicensed sales agents as "consultants" receiving only "finders' fees."

94. The Fund 2 Form D filing with the SEC was amended again on August 31, 2017 based on advice from attorney Wassgren. According to this new filing, since the prior amendment on April 26, 2017 Fund 2 had sold an additional $15 million of unregistered securities to an additional 121 investors. Yet, according to the new amended Form D, none of these additional investors was non-accredited and Fund D had paid no additional "finder's fees" for any of the new sales. As Wassgren had to know, these representations in the new amended Form D were patently false. Nonetheless, Davison with the approval of Wassgren once again falsely attested when signing that the contents of the Form D notice were true and correct.

95. Wassgren arranged for the formation of another Nevada LLC, known as EquiAlt Fund III, on June 26, 2013. Although no Form D was ever filed for this short-lived fund, EquiAlt sold approximately $2.6 million of unregistered securities in it between July 2013 and December 2015. EquiAlt began to wind down this fund during 2015, when it transferred its properties to Funds 1 and 2, in exchange for payments from Funds 1 and 2 of $1.63 million. This fund was formally closed in June of 2016, using funds diverted from Funds 1 and 2 to redeem its obligations to remaining investors.

96. On January 20, 2016, EquiAlt formed another Nevada LLC, named EA SIP LLC (Fund 4). EquiAlt began raising capital through the issuance of unregistered EquiAlt Securities by Fund 4 in April 2016. With the knowledge and active assistance of Wassgren, Fund 4 filed an initial Form D on August 5, 2016 for an offering in the total amount of $25 million. Like all the Funds' prior SEC filings, the Fund 4 Form D contained a series of false attestations. Although Fund 4 began selling EquiAlt Securities and paying sales agent commissions four or five months earlier, its Form D represented that the first sale of unregistered securities had yet to occur, that there were no Fund 4 investors and that no commissions or finder's fees had been paid to agents. And, as with the other Form D filings, the initial Form D filed with the SEC for Fund 4 failed to disclose that Rybicki was a related person. Nonetheless, Davison falsely attested when signing that the contents of the Form D notice were true and correct.

97. As alleged more fully below, in 2019 the SEC commenced an investigation of EquiAlt and its affiliated entities, including the Funds. DLA Piper attorneys, including Wassgren, represented EquiAlt and its managers in connection with the SEC investigation. Realizing that the jig was up, Wassgren assisted in the preparation of yet another amended Form D notice for Fund 1. By this point, according to the amended Form D, Fund 1 had raised funds from 1,089 investors totaling $103 million. The newly amended Form D belatedly disclosed that Rybicki was a related person for Fund 1 (as he always had been), and now disclosed that Fund 1 had paid "finders' fees" totaling $12,300,000.

2. *Wassgren Derails Arizona's Investigation into EquiAlt's Operations*

98. The SEC investigation was not the first fended off by Wassgren.

99. In early 2013, the Arizona Securities Division ("ASD") had commenced an investigation into potential securities law violations by EquiAlt and its managers, including EquiAlt's illegal sales of unregistered securities. The ASD was investigating whether the EquiAlt

Securities were investment contracts, and hence securities requiring registration, rather than mere fixed-interest promissory notes.

100. As part of the ASD investigation regulatory authorities sought documents and testimony from EquiAlt, Rybicki and various sales agents. EquiAlt and Rybicki were represented in the investigation by Fox Rothschild attorneys Wassgren and Ernest Badway. Thus, on January 30, 2013, attorney Ernest Badway informed the ASD that Fox Rothschild was "representing both Mr. Rybicki and EquiAlt Fund" and that documents would be produced in response to outstanding subpoenas on February 27, 2013. *See* Email from Badway to Millecam dated Jan. 30, 2013, attached as **Exhibit M.** Arrangements were thereafter made for Davison to be examined under oath on March 27, 2013 and for Rybicki to be examined by the ASD the following day.

101. On March 26, 2013, at 1:43 PM, Rybicki sent an email to Fox Rothschild attorneys Badway and Wassgren marked "**Importance:** High." *See* March 26, 2013 Email Chain, attached as **Exhibit N**. Rybicki indicated that he had just spoken to a client and that Davison "wanted me to send the following information:"

> [ASD] Securities officer (Dee Morin) stated to the client that "we (Equialt) should be giving the client a deed of trust on every investment" if not than [sic] ***this is a violation.***
>
> My issue with this is that I am going to be taking a lot of client phone calls in regard to this question. Can you clarify that this is accurate for what we are doing and how to answer this? Also if this is incorrect is there any way of getting a hold of this officer and explaining how this line of questioning and subsequent accusation is not acceptable?

Id. (emphasis added). Thus, Wassgren and the other Fox Rothschild attorney representing EquiAlt were on actual notice that, in the view of the Arizona Securities Division, the EquiAlt "Debentures" were, in reality, unregistered securities rather than traditional debt instruments, given the lack of any deed of trust or other collateral arrangement; and, that the issuance or sale of the unregistered securities was a violation of the Arizona Securities Act. Wassgren already knew,

of course, that the EquiAlt "Debentures" qualified as unregistered securities; that the Equialt "Debentures" had been sold by unlicensed sales agents; and also knew that none of the investors had been offered or given deeds of trust to collateralize their investments.

102. Davison and Rybicki, concerned that Rybicki was "going to taking a lot of client phone calls in regard to this question" by the securities regulators, frantically asked Wassgren whether the ASD's conclusion was "accurate" and sought advice concerning "how [they should] answer this" accusation. *Id.* Wassgren replied to Rybicki's email within 30 minutes, stating that he had discussed Rybicki's concerns with Ernest Badway, and that they had developed the following messaging for the investors:

> Ernie and I spoke briefly, and ***suggest that you advise your investors that the State of Arizona does not understand the deal structure***. Perhaps they will after we complete the examinations under oath.
>
> To be clear, the offering that we set up is an unsecured debt or promissory note offering. The company is offering a fixed return to all investors. This debt obligation is not secured by a deed of trust.
>
> ***If your investors are in doubt, please feel free to mention that the company is represented by a national law firm that timely filed the securities exemption required under Arizona law.***

Id. (emphasis added). As Wassgren recommended, Rybicki passed the message crafted by Wassgren on to EquiAlt sales agents and as well to its investors.

103. Wassgren's statements, made as part of his continuing, active assistance in EquiAlt's ongoing securities laws violations, falsely represented that the EquiAlt Securities were mere fixed rate promissory notes, when he knew that the EquiAlt debentures in actuality were unregistered securities. Moreover, Wassgren's representations that the EquiAlt Securities were exempt from registration based on timely filed securities exemptions were patently false for the reasons alleged above. Wassgren knew and intended that these false representations would be conveyed to the investors to assuage their concerns about the legality of the EquiAlt offerings, and

even encouraged Rybicki to comfort investors that EquiAlt was represented by the "national law firm" of Fox Rothschild.

104. Wassgren thereafter continued to assist EquiAlt in furtherance of the ongoing Ponzi scheme. From 2016, Wassgren prepared and filed Articles of Organization in Florida for no less than 15 different limited liability companies formed by EquiAlt to acquire and hold properties purchased using investor funds.

105. In addition, during 2018 Wassgren represented EquiAlt in the formation of a Real Estate Investment Trust known as the EquiAlt Secured Income Portfolio REIT (the "REIT"), a new entity into which EquiAlt intended to funnel existing investors holding EquiAlt Securities. DLA Piper was paid at nearly $500,00 in legal fees to form the new REIT directly from the bank account containing funds raised from the investors in the other Funds. The draft promotional materials for the REIT, attached as **Exhibit O**, identified "DLA Piper a renowned global law firm as our counsel."

106. EquiAlt intended to raise funds for the REIT using unlicensed sales agents who were to receive substantial commissions for locating and securing new and existing investors. The offering documents for the REIT, once again prepared by Wassgren, contained misrepresentations and omitted material facts, comparable to those infecting the offering documents Wassgren prepared for the Funds.

107. In reality, the REIT was formed with the active assistance and based on the advice of Wassgren, in an attempt to sanitize the securities laws violations associated with the prior offerings. Thus, $4.8 million of the $5.9 million raised for the REIT resulted from redemptions of EquiAlt Securities held by existing investors reinvesting in the REIT. And, as the SEC was closing

in on the EquiAlt Ponzi scheme, Wassgren and other DLA attorneys were counseling Davison to terminate and convert the REIT into a private partnership. [ECF No. 164-3, Ex. 2].

108. Also, in 2018, Wassgren assisted the EquiAlt managers in forming yet another entity in furtherance of the fraudulent Ponzi scheme. The new fund, organized as a Qualified Opportunity Zone (the "QOZ") offering, purportedly would provide investors willing to hold for 10 years with a non-taxable compounded return of 6%. Once again, with the knowledge of Wassgren, Rybicki reached out to the network of unlicensed sales agents who were used to market and sell the EquiAlt unregistered securities. Also, like the REIT, the offering materials drafted by Wassgren for the QOZ were riddled with material misrepresentations and omissions concerning Davison and Rybicki, the ongoing securities laws violations (both the prior violations and those associated with the QOZ) and the financial failure of the EquiAlt Funds being operated as an ongoing Ponzi scheme.

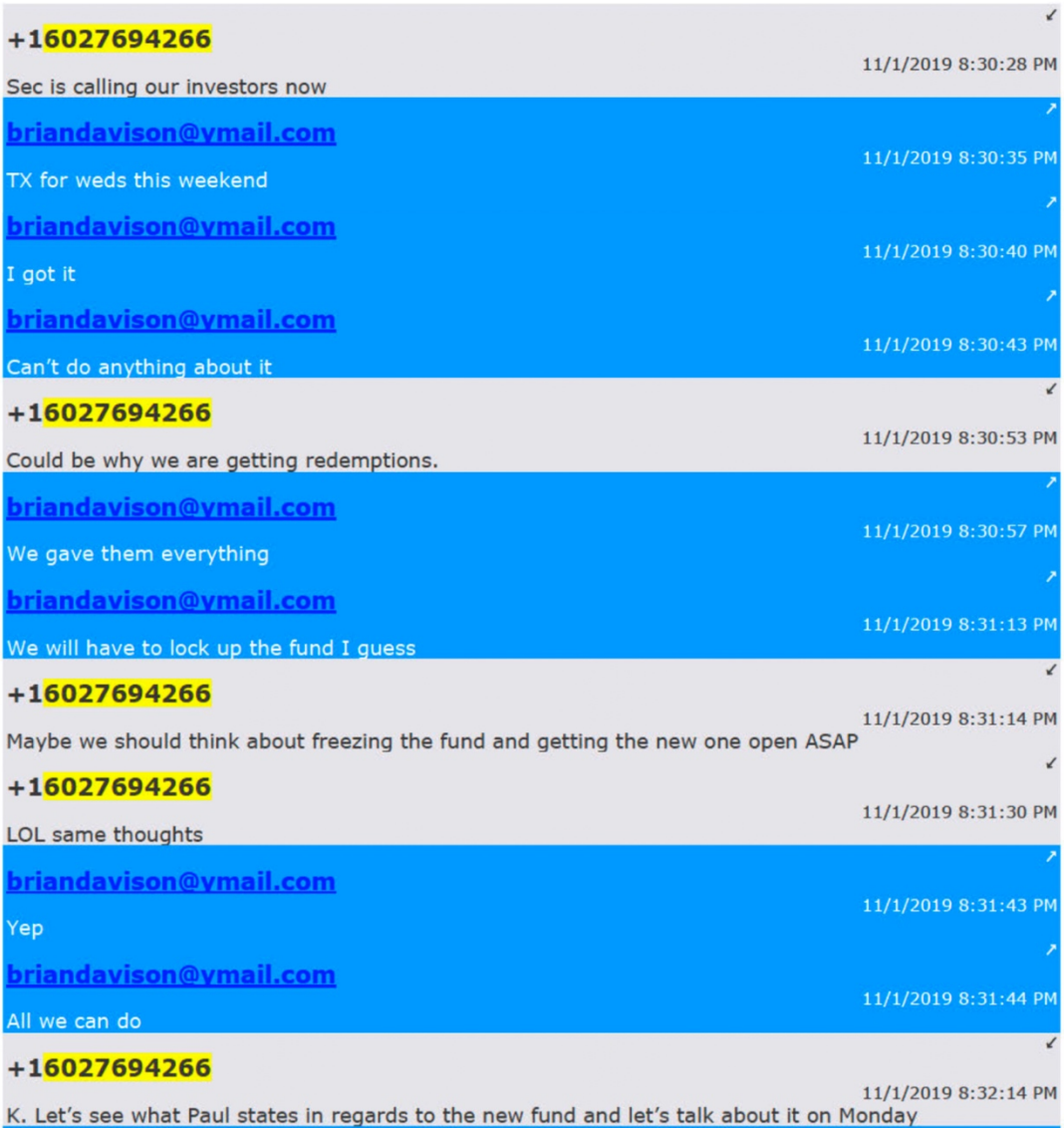
109. Indeed, Wassgren and DLA Piper continued to assist EquiAlt in connection with the REIT and QOZ offerings, which were designed to raise additional funds from investors to allow Davison and Rybicki to perpetuate the ongoing Ponzi scheme, even as the SEC investigation was proceeding and at the same time the SEC was securing its injunction against EquiAlt. [ECF No. 164-3 at 2].

E. The SEC Finally Shuts Down EquiAlt's Illegal Securities Sales

110. By the Spring of 2019, at the latest, the SEC commenced an investigation into the activities of EquiAlt, the Funds, Davison, and Rybicki styled as "In the Matter of Certain Unregistered Securities Transactions." As part of the investigation, the SEC issued subpoenas to the EquiAlt entities, Davison, and Rybicki, conducted on-site inspections at the EquiAlt offices and, in August of 2019, the SEC issued subpoenas for documents and testimony to various sales agents.

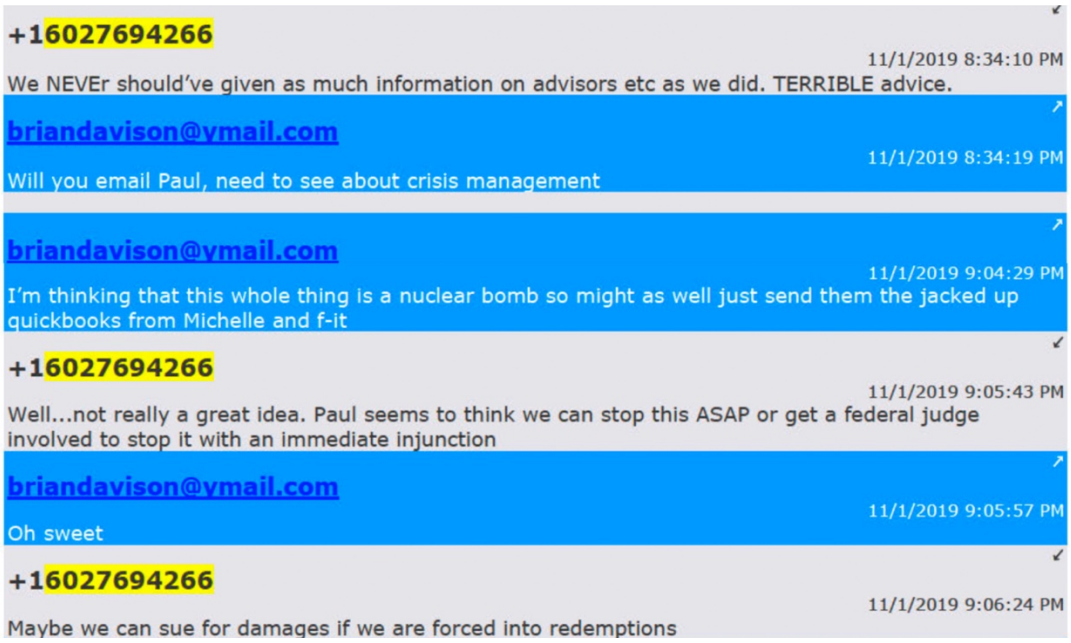
111. Notwithstanding the fact that Wassgren and other DLA Piper lawyers were material witnesses to the underlying securities law violations, DLA Piper continued to represent EquiAlt, the EquiAlt Funds, Davison and Rybicki in the SEC investigation, with DLA Piper attorney Jessica Masella serving as lead counsel. In early September 2019, Rybicki sent emails to various sales agents who had received SEC subpoenas, recommending that they retain a single lawyer to represent them "so we don't have any issues with multiple representatives while going through this" SEC investigation. *See* Email from Rybicki dated Sept. 6, 2019, attached as **Exhibit P**. Rybicki recommended, based on the advice of DLA Piper, that the agents retain attorney Amy Lester and told them that EquiAlt would "do our best to help with your cost for this but we really need to know how many Advisors have been or will be receiving a subpoena before we can commit to a dollar amount etc." *Id.*

112. By November of 2019, the SEC had secured documents and other information through the ongoing investigation and was reaching out to investors. Davison and Rybicki were frantic that the SEC proceedings would cause a run on the bank as additional investors demanded redemptions. With input and advice from Wassgren, they considered closing Fund I and moving money into the REIT that Wassgren was forming for them. The following exchange of text messages between Davison and Rybicki confirms Wassgren's deep involvement in the scheme to close the fund that was the subject of ongoing SEC scrutiny and use the REIT (which was to be a registered entity) as a mechanism to sanitize the rampant prior securities law violations and to perpetuate the Ponzi scheme:



[ECF No. 164-1 at 23-24]

113. Lamenting the fact that DLA Piper had turned over too much information to the SEC concerning EquiAlt's use of unlicensed sales agents, Davison and Rybicki turned to Wassgren for "crisis management" and with the hope that he could obtain an injunction to thwart the ongoing SEC investigation:



[ECF No. 164-1 at 24-25]

114. Davison and Rybicki further lamented that investors were "taking calls from the SEC and then blowing us or the advisors up!" [ECF No. 164-1 at 27]. Davison and Rybicki voiced their frustrations that DLA Piper "should have controlled this [the SEC investigation] better from the start." Davison and Rybicki blamed EquiAlt's registration violations on Wassgren and confirmed that the DLA lawyers had gained knowledge of EquiAlt's accounting and finances. *Id.*

115. On February 11, 2020, the SEC commenced the SEC Action against EquiAlt and others to, among other things, halt the ongoing sale of the EquiAlt Securities, through which EquiAlt had by that time raised over $170 million from Plaintiffs and some 1,100 other investors nationwide, through the efforts of numerous unlicensed sales agents. *See* **Ex. A.**

116. The EquiAlt Securities purchased by Plaintiffs are now worthless.

117. Shortly after the SEC complaint against EquiAlt was unsealed and the SEC's allegations made public, DLA Piper scrubbed the DLA-EquiAlt Posts from its website.

F. The Non-Defendants Sales Agents Owed Plaintiffs Fiduciary Duties

118. Although the EquiAlt sales agents were not registered with the SEC or the Financial Regulatory Authority (FINRA) to sell securities, they have the same fiduciary duties as any FINRA registered financial advisor, broker or other SEC or state registered investment advisor.

119. EquiAlt solicited and sold EquiAlt unregistered securities through EquiAlt authorized sales agents, who acted as *de facto* investment advisors or brokers or financial advisors.

120. Each of the EquiAlt sales agents that sold EquiAlt Securities to the Plaintiffs were: (1) engaged in the business of effecting transactions in securities for the account of others, (2) received transaction-based commissions, (3) provided advice and recommendations as to investment in EquiAlt Securities, (4) actively solicited investments in EquiAlt Securities, and (5) held themselves out as investment advisors, so their mere failure to register as a "broker" or "investment advisor" does not excuse them from the fiduciary and other duties which attach to such activities. Indeed, under Fla. Stat. 517.021 (14(a)), it defines an "investment advisor" as "any person who receives compensation, ... and engages for all or part of her or his time, ... in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities"), and similarly, under the SEC Act, 15 U.S.C. § 78c(a)(4), it defines "broker" to be "any person who engaged in the business of effecting transactions in securities for the account of others".

121. Here, each of the EquiAlt sales agents who sold EquiAlt Securities received transaction based commissions.

122. Further, the EquiAlt sales agents actively found investors, provided advice or valuation as to the merit of the EquiAlt investment, and received a commission on each sale.

123. EquiAlt and its sales agents obtained the trust and confidence of the Plaintiffs by purporting to have superior knowledge and expertise in the EquiAlt investments, and, in each instance, in essence advised the Plaintiffs that their investment was backed by real estate, was a safe or secure fixed income investment, and that EquiAlt had a successful track record. The sales agents also gave out EquiAlt brochures to investors which stated that investors could contact EquiAlt's attorney and that it is "independent from EquiAlt LLC and can give you some insight into the fund and its activities." *See, e.g.,* Exs. G & H.

124. Based on the totality of above information that was disseminated by EquiAlt and its sales agents, their representations of expertise or superior knowledge in EquiAlt investments and the purported safety of the EquiAlt investments, EquiAlt and its financial advisors gained the trust and confidence from the Plaintiffs, and that trust and confidence was reposed in EquiAlt and its financial advisors. This trust and confidence obtained from the Plaintiffs by EquiAlt sales agents and EquiAlt employees created a fiduciary duty owed to the Plaintiffs.

125. EquiAlt and the EquiAlt financial advisors breached their fiduciary duty to the Plaintiffs via their misconduct, more particularly described throughout this complaint, including, but not limited to:

a. Failing to disclose that the EquiAlt Securities were not exempt from registration;

b. Failing to disclose that the EquiAlt Securities were being sold in violation of state and federal securities registration laws;

c. Failing to disclose that EquiAlt Securities were sold via misrepresentations and omissions of material facts as described in this complaint;

d. Failing to disclose that the EquiAlt Securities were sold by unlicensed sales agents, aka investment advisors or brokers, who were required by law to be licensed in order to sell EquiAlt Securities;

e. Failing to disclose that EquiAlt was being operated as a Ponzi scheme, where later investors' monies were being used to pay interest returns and principal to earlier investors;

f. Failing to disclose that EquiAlt's net income, without new investor money, was insufficient to pay its obligations as they came due in the ordinary course of their business;

g. Failing to disclose that there were regulatory inquiries from regulators who were investigating the legality of the sale of EquiAlt Securities;

h. Failing to adequately investigate the EquiAlt operations and investments, such as failing to obtain audited financial statements to confirm the viability of the EquiAlt investments;

i. Failing to fully explain the risks of the EquiAlt Securities that were part of a Ponzi scheme;

j. Failing to study the EquiAlt investments so as to be adequately informed as to its nature, price and financial prognosis;

k. Failing to refrain from self-dealing in that the EquiAlt advisors knew that they did not have verifiable, audited financial information, but yet touted the EquiAlt investments as fully secured by real estate, in order to earn a large commission on each sale;

l. Failing to contact their state securities regulator, FINRA or the SEC to confirm whether they could legally sell EquiAlt Securities without a license;

m. Failing to contact their state securities regulator or the SEC to confirm whether EquiAlt Securities could be sold without registration or a proper exemption from registration; and

n. Failing to obtain a securities license or registration as a broker-dealer before selling EquiAlt Securities.

G. APPLICATION OF THE DISCOVERY RULE, THE FRAUDULENT CONCEALMENT DOCTRINE AND EQUITABLE TOLLING

126. Plaintiffs and the class members had no reason to suspect they had sustained injuries caused by Defendants' wrongful conduct alleged herein until the SEC filed its complaint on February 11, 2020, or later and, despite reasonable investigation, Plaintiffs were unaware until then of a factual basis for the causes of action alleged herein. Plaintiffs and the class members likewise did not and could not reasonably have discovered the alleged breaches of fiduciary duties, misrepresentations and corresponding securities violations and fraud until the SEC filed its complaint, at the earliest.

127. As alleged above, the EquiAlt marketing brochures, sales solicitation documents, PPMs and subscription agreements all made false representations and failed to disclose material information concerning the safety and liquidity of the EquiAlt Securities, the risks associated with investments in the EquiAlt Securities, EquiAlt's compliance with the securities laws, the experience and qualifications of EquiAlt management and the quality and values of the real estate previously acquired and to be acquired by the EquiAlt Funds.

128. EquiAlt and Defendants never disclosed or suggested to Plaintiffs and the class members that EquiAlt and the EquiAlt funds were being operated as part of a massive Ponzi scheme or that the EquiAlt managers were diverting millions of dollars in EquiAlt assets for their own personal gain. Nor did EquiAlt or Defendants disclose to the investors that properties and assets were being transferred between and among the EquiAlt Funds in furtherance of the ongoing Ponzi scheme and breaches of fiduciary duties.

129. Despite their periodic inquiries and efforts to monitor the status of their investments in the EquiAlt Securities, Plaintiffs and the class members lacked any ability to discover the true financial condition of the EquiAlt Funds or the profligate way EquiAlt was being managed and operated. EquiAlt provided no audited or unaudited financial statements to the investors, distributed no written reports describing or summarizing EquiAlt's operations or financial condition, nor did EquiAlt provide any specific information concerning the properties supposedly acquired, appraisals or appraised values of the properties, details concerning the acquisition or sales of the properties supposedly bought and sold by the EquiAlt Funds or any comparable information. To the contrary, all information concerning EquiAlt's operations, financial condition, profits and losses, intra-fund transfers, payments to management and the status of the properties acquired by the EquiAlt Funds and EquiAlt's securities law violations was and remained in the exclusive possession and control of EquiAlt management and/or Defendants.

130. There was simply no possible avenue for Plaintiffs or the class members to pursue or obtain the information necessary for them to discover the wrongdoing alleged herein until the SEC filed its complaint revealing the Ponzi scheme, at the earliest.

131. In addition, Plaintiffs and the class members could not reasonably have discovered the wrongdoing earlier due to the active, ongoing fraudulent concealment of the true facts by EquiAlt and the Defendants. Indeed, in addition to the fraudulent misrepresentations by EquiAlt management, Defendants made affirmative false representations to the investors in the PPMs and other documents drafted by Defendants concerning EquiAlt's compliance with the federal and state securities laws.

132. Under the fraudulent concealment and equitable tolling doctrines applicable to the claims alleged herein, the limitations periods applicable to the claims asserted in this action were

tolled through February 11, 2020, at the earliest, based on the active deception of EquiAlt and the Defendants in concealing Plaintiffs' causes of action.

PLAINTIFF-SPECIFIC ALLEGATIONS

Plaintiffs Richard and Phyllis Gleinn

133. Plaintiffs Richard and Phyllis Gleinn are husband and wife who reside in Sumter County, Florida. The Gleinns invested $50,000 in 2016, which investment matured in 2019. On April 11, 2019, Andre Sears reached out to the Gleinns to solicit them to reinvest with EquiAlt. At or about that time, between April 11, 2019 and April 25, 2019, they were again solicited to "renew" and "add to" their EquiAlt investment. The Gleinns invested $150,000 in EquiAlt Fund II on or about April 25, 2019 and sent their funds to EquiAlt on or about May 1, 2019. The Gleinn's EquiAlt investment contract is attached hereto as **Exhibit Q.**

Plaintiff Cary Toone

134. Plaintiff Cary Toone is a resident of Gilbert, Arizona. Following a solicitation by an unlicensed EquiAlt sales agent, Toone purchased $30,000 of Fund 2 on September 26, 2019 and $60,000 of EquiAlt Fund LLC for his IRA on April 8, 2019. Toone's EquiAlt investment contracts are appended hereto as **Exhibit R.** Toone is not an accredited investor.

Plaintiffs John and Maria Celli

135. Plaintiffs John and Maria Celli are husband and wife who reside in Prescott, Arizona and invested $50,000 in EquiAlt Securities on August 7, 2019. The Celli's EquiAlt investment contract is appended hereto as **Exhibit S.**

Plaintiff Eva Meier

136. Plaintiff Eva Meier is a resident of San Diego County, California and initially solicited to invest $100,000 from her IRA into EquiAlt Fund LLC and made the first investment

in or about September 29, 2017. In or about January 6, 2020, Meier invested additional monies with EquiAlt. On or about January 6, 2020, Meier invested $73,229.81 in EquiAlt Fund II from her beneficiary IRA account, an additional $74,716 in EquiAlt Fund II from her SEP IRA. Meier's EquiAlt investment contract is appended hereto as **Exhibit T.**

Plaintiff Georgia Murphy

137. Plaintiff Georgia Murphy funded that $250,000 investment in or about December 21, 2016. Later, in or about January 30, 2018, Murphy was solicited by Armijo to transfer $150,000 from her EquiAlt Fund LLC investment and roll that into the EquiAlt Secured Income Portfolio. Murphy's EquiAlt investment contract is appended hereto as **Exhibit U.**

Plaintiffs Steven and Tracey Rubinstein

138. Plaintiffs Steven and Tracey Rubinstein are husband and wife, and serve as co-trustees of the Rubinstein Family Trust dated 6/25/2010. On January 31, 2020, the Rubinsteins purchased a $75,000 investment with Fund 2, at an annual rate of 8.00%, with a 48-month term. The Rubinstein's investment contract is appended hereto as **Exhibit V.**

Plaintiff Bertram D. Greenberg

139. Plaintiff Greenberg was on April 3, 2018, sold a $50,000 investment in Fund 1 at his home in Santa Clara County, California. Plaintiff Greenberg was 89 years of age at the time of the offer and sale of the EquiAlt Debenture. Greenberg's EquiAlt investment contract is appended hereto as **Exhibit W.**

Plaintiffs Bruce R. and Geraldine Hannen

140. Plaintiffs Bruce R. and Geraldine Mary Hannen are spouses who were introduced to EquiAlt and the EquiAlt Debentures by unlicensed EquiAlt employees Andre Sears and Maria-Antonia Sears d/b/a The Picasso Group. On July 26, 2016, the Hannens purchased their first

EquiAlt Debenture, making a $200,000 investment with EquiAlt Fund II, at an annual rate of 9.25%, with a 36-month term. On July 13, 2019, and at the end of the 36-month term, the Hannens renewed their EquiAlt investment, purchasing an EquiAlt Debentures for $200,000 with EquiAlt Fund II, at an annual rate of 9.00%, with a 36-month term. The Hannens' investment contracts are appended hereto as **Exhibit X**.

Plaintiffs Rory O'Neal and Marcia O'Neal

141. Plaintiffs Rory and Marcia O'Neal are husband and wife who reside in Reno County, Nevada and who were introduced to EquiAlt and the EquiAlt Debentures by Bobby Armijo of Joseph Financial. On August 21, 2017, the O'Neals invested $200,000 from Marcia O'Neal's IRA in EquiAlt Fund 1 through the acquisition of a debenture security with an annual interest rate of 12%, with a 36-month term. Then, on January 18, 2018, Marcia O'Neal transferred the $200,000 investment from Fund 1 to Fund 4. In exchange, Marcia O'Neal received Stock Certificate Number 16, with a floor rate of 7% annually with bonus dividend paid in first quarter of the following year and quarterly payments to being in January 2019 and every quarter thereafter. On October 26, 2017, the O'Neals invested $50,000 from Rory O'Neal's IRA in EquiAlt Fund 1 through the acquisition of a debenture security with a 12% interest rate and a 36-month term. On January 18, 2018, Rory O'Neal transferred the $50,000 investment from Fund 1 to Fund 4. In exchange, Marcia O'Neal received Stock Certificate Number 17, with a floor rate of 7% annually with bonus dividend paid in first quarter of the following year and quarterly payments to being in January 2019 and every quarter thereafter. On The O'Neals' investment contracts are appended hereto as **Exhibit Z**.

Plaintiff Sean O'Neal

142. Plaintiff Sean O'Neal resides in Reno County, Nevada and was introduced to EquiAlt and the EquiAlt Debentures by Bobby Armijo of Joseph Financial.. On or about December 8, 2016, Sean O'Neal invested $1,000,000 as trustee of The O'Neal Family Trust Dated April 6, 2004, as amended, in Fund 1, with a 10% annual interest rate and a 36-month term. On or about October 3, 2017, Sean O'Neal invested $1,000,000 as trustee of The O'Neal Family Trust Dated April 6, 2004, as amended, in Fund 1, with a 12% annual interest rate and a 36-month term. On or about October 18, 2017, Sean O'Neal invested $1,000,000 as trustee of The O'Neal Family Trust Dated April 6, 2004, as amended, in Fund 1, with a 12% annual interest rate and a 36-month term. On January 18, 2018, Sean O'Neal transferred a $1,000,000 investment from Fund 1 to Fund 4. In exchange, Sean O'Neal received Stock certificate number 22, with a with a floor rate of 7% annually with bonus dividend paid in first quarter of the following year and quarterly payments to being in April 2019 and every quarter thereafter. On May 15, 2018, Sean O'Neal transferred a $2,000,000 investment from Fund 1 to Fund 4. In exchange, Sean O'Neal received Stock certificates number 5, with a with a floor rate of 7% annually with bonus dividend paid in first quarter of the following year and quarterly payments to being in April 2019 and every quarter thereafter. O'Neal's investment contracts are appended hereto as **Exhibit AA**.

Plaintiff Robert Cobleigh

143. Plaintiff Robert Cobleigh resides in El Centro, California. On September 20, 2019, Robert Cobleigh invested $270,000 of his savings in EquiAlt Fund 2, purchasing a debenture with a 48-month term and 8.00% interest. Two months later, Cobleigh invested another $250,000 in EquiAlt Fund 1, purchasing a debenture with a 48-month term and 8.00% interest. Cobleigh's investment contracts are appended hereto as **Exhibit BB**.

CLASS ALLEGATIONS

144. Plaintiffs bring assert their claims on behalf of themselves and the following four classes of similarly situated investors in Florida, California, Arizona, Colorado, and Nevada:

> **The Florida Class**: All persons who purchased an EquiAlt Security: (a) while they were a resident of Florida; or (b) from or through agent or other seller operating in or from Florida.
>
> **The California Class**: All persons who purchased an EquiAlt Security: (a) while they were a resident of California; or (b) from or through agent or other seller operating in or from California.
>
> **The California Elder Subclass**: All California residents who were at least 65 years of age when sold an EquiAlt Security.
>
> **The Arizona Class**: All persons who purchased an EquiAlt Security: (a) while they were a resident of Arizona; or (b) from or through agent or other seller operating in or from Arizona.
>
> **The Colorado Class**: All persons who purchased an EquiAlt Security: (a) while they were a resident of Colorado; or (b) from or through agent or other seller operating in or from Colorado.
>
> **The Nevada Class:** All persons who purchased an EquiAlt Security: (a) while they were a resident of Nevada; or (b) from or through agent or other seller operating in or from Nevada.

(collectively, "the Classes"). Excluded from the Classes are Defendants and EquiAlt, their officers, directors and employees, any broker-dealer or sales agent who sold an EquiAlt Security to any member of the Classes, and any member of the Classes who has initiated individual litigation against the Defendants predicated on the same facts alleged herein.

145. ***Size of Classes:*** EquiAlt Securities were sold to approximately 1,100 investors nationwide, with hundreds of investors located in Florida, California, Arizona, Colorado, and Nevada. Because there are hundreds of members of each of the Classes described in the foregoing paragraph, joinder of all members is impracticable. The identities and addresses of the members of these Classes can be readily ascertained from business records maintained by EquiAlt.

146. ***Adequacy of Representation*:** Plaintiffs are willing and prepared to serve the Court and the proposed Classes in a representative capacity. Plaintiffs will fairly and adequately protect the interests of the Classes and have no interests that are adverse to, or which materially and irreconcilably conflict with, the interests of the other members of the Classes. The self-interests of Plaintiffs are co-extensive with and not antagonistic to those of absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members. Plaintiffs have engaged the services of counsel indicated below who are experienced in complex class litigation and life insurance matters, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and the putative Class members.

147. ***The Commonality of Questions of the Law and Fact***: The claims of Plaintiffs and putative Class Members involve common questions of law and fact., including

a. Whether the EquiAlt Securities constituted "securities" with the meaning of the Federal securities statutes;

b. Whether the EquiAlt Securities were exempt from registration under the federal securities statutes;

c. Whether the EquiAlt Securities constituted "securities" with the meaning of the pertinent State securities statutes;

d. Whether the EquiAlt Securities were exempt from registration under the pertinent State securities statutes;

e. Whether the sale of the EquiAlt Securities though the Funds constituted an integrated offering;

f. Whether EquiAlt intended to sell and did in fact sell its securities to more than 35 non-accredited investors through the Funds;

g. Whether EquiAlt engaged directly and through its agents in general solicitations and advertising to market its unregistered securities;

h. Whether EquiAlt made commission payments to its unlicensed sales agents not disclosed in its SEC filings claiming the Reg D exemption from registration;

i. Whether EquiAlt would and did fail to provide investors with information and disclosures required by Regulation D, including audited financial statements;

j. Whether the EquiAlt PPMs contained materially false and misleading statements;

k. Whether the EquiAlt Form D filings contained materially false and misleading statements;

l. Whether Defendants were knowing participants in the ongoing illegal sales of securities by EquiAlt and the Non-Defendant Promoters;

m. Whether Defendants played a substantial role in inducing the illegal sales of EquiAlt Securities;

n. Whether Defendants lent substantial assistance to an ongoing scheme to defraud Plaintiffs and the other members of the Classes;

o. Whether Defendants were professionally obligated to terminate their representation of EquiAlt to avoid covering-up and assisting the ongoing (and past) fraud perpetrated by it and the Non-Defendant Promoters;

p. Whether Defendants' actions constitute primary violations of the pertinent State securities statutes;

q. Whether Defendants' actions constitute secondary violations of the pertinent State securities statutes;

r. Whether Defendants' actions constitute aiding and abetting of violations of the pertinent State securities statutes;

s. Whether Defendants' actions constitute aiding and abetting fraud;

t. Whether Defendants' actions constitute aiding and abetting breach of fiduciary duty;

u. Whether Defendants' actions constitute civil conspiracy;

v. Whether Defendants' actions constitute statutory Elder Abuse under California law;

w. Whether Defendants' actions constitute a violation of any prong of California's unfair Competition Law;

x. Whether Plaintiffs and members the Classes have been damaged, and if so, are eligible for and entitled to compensatory and punitive damages;

y. Whether EquiAlt sales agents were required to be licensed under state or federal securities laws;

z. Whether EquiAlt was operating as an unlicensed broker-dealer; and

aa. Whether Plaintiffs and Members of the Classes are entitled to other, equitable relief.

148. ***Typicality of the Claims or Defenses of the Class Representatives***: Plaintiffs' claims and defenses are typical of the claims and defenses of the putative Class Members.

149. ***Rule 23(b)(3)***: This action is appropriate as a class action pursuant to Federal Rule of Civil Procedure 23 (b)(3). The common questions of law and fact listed above predominate over any individualized questions. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, for the following reasons:

a. Given the age of Class Members, many of whom are elderly and have limited resources, the complexity of the issues involved in this action and the expense of litigating the claims, few, if any, Class Members could afford to seek legal redress individually for the wrongs that Defendants have committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

b. Once Defendants' liability has been adjudicated respecting the EquiAlt Securities, claims of all Class Members can be determined by the Court;

c. This action will ensure an orderly and expeditious administration of the Class's claims and foster economies of time, effort, and expense, and ensure uniformity of decisions; and

d. This action does not present any undue difficulties that would impede its management by the Court as a class action.

A class action is thus superior to other available means for the fair and efficient adjudication of this controversy.

150. ***Nature of Notice to the Proposed Classes.*** The names and addresses of all Class Members are contained in the business records maintained by Defendant and are readily available to Defendant. The Class Members are readily and objectively identifiable. Plaintiffs contemplate that notice will be provided to Class Members by e-mail, mail, and published notice.

CLAIMS FOR RELIEF

THE FLORIDA CLAIMS

COUNT I

Aiding and Abetting Fraud
(Individually and on behalf of the Florida Class)

151. Plaintiffs Gleinn repeat and re-allege the allegations contained in paragraphs 1–150 above, as if fully set forth herein.

152. EquiAlt and its sales agents, consistent with the brochures, told Plaintiffs words to the effect that that their investment was backed by real estate, was a safe or secure fixed income investment, and that EquiAlt had a successful track record. The sales agents also gave out EquiAlt brochures to investors which stated that investors could contact EquiAlt's attorney and that it is "independent from EquiAlt LLC and can give you some insight into the fund and its activities.

153. EquiAlt and the EquiAlt financial advisors made misrepresentations and omitted material facts to the Plaintiffs via their misconduct.

154. The Defendants substantially assisted or encouraged the wrongdoing that constituted the Ponzi scheme fraud conducted EquiAlt and its unlicensed sales agents; further, Defendants had knowledge of such fraud, because they actively participated in the making the sale by their actions or by stepping outside of their normal role as attorneys providing routine legal advice, under the totality of the events as more fully described in this complaint.

155. Defendants stepped out of their normal role as attorneys and participated in the fraud, by participating in the creation of documents which contain clear misstatements and omit material facts that should have been disclosed to the Plaintiffs, and by other actions described in this complaint.

156. Defendants' aiding and abetting the EquiAlt fraud caused damages to the Plaintiffs in the amount of their lost investments, believed to be $170 million dollars, less interest payments.

COUNT II

Aiding and Abetting Breach of Fiduciary Duty (Individually and on behalf of the Florida Class)

157. Plaintiffs Gleinns repeat and re-allege the allegations contained in paragraphs 1–150 above, as if fully set forth herein.

158. As alleged above, EquiAlt and the EquiAlt sales agents breached their fiduciary duties to the Plaintiffs.

159. The Defendants substantially assisted or encouraged the wrongdoing that constituted the breach of fiduciary duty owed by the EquiAlt and its sales agents; further, Defendants had knowledge of such breach, because they actively participated in the making the sale by their actions or by stepping outside of their normal role as attorneys providing routine legal advice, under the totality of the events as more fully described in this complaint.

160. Defendants' aiding and abetting the breach of fiduciary duty cannot be excused by a "see no evil, hear no evil" approach, as that would otherwise encourage attorneys to aid clients in fraud by willful blindness.

161. Defendants' aiding and abetting the breach of fiduciary duty caused damages to the Plaintiffs in the amount of their lost investments, believed to be $170 million dollars, less interest payments.

COUNT III

Civil Conspiracy
(Individually and on behalf of the Florida Class)

162. Plaintiffs Gleinn repeat and re-allege the allegations contained in paragraphs 1–150 above, as if fully set forth herein.

163. EquiAlt and its sales agents, consistent with the brochures, told Plaintiffs that their investment was backed by real estate, was a safe or secure fixed income investment, and that EquiAlt had a successful track record. The sales agents also gave out EquiAlt brochures to investors. The sales agents also gave out EquiAlt brochures to investors which stated that investors could contact EquiAlt's attorney and that it is "independent from EquiAlt LLC and can give you some insight into the fund and its activities."

164. EquiAlt's CEO entered into one or more agreements with Defendants to create various private placements to raise money for EquiAlt. That agreement included the drafting of indentures, finder fee contracts, subscription agreements and Private Placement Memoranda for each of the offerings.

165. Defendants engaged in unlawful acts with EquiAlt, namely, the misrepresentation of EquiAlt private placements as properly exempt under the securities laws, and the use of unlicensed sales agents, which Defendants knew were not allowed to sell private placements without a proper securities license with state and federal regulators.

166. The Defendants' conspiracy substantially assisted or encouraged the wrongdoing that constituted the Ponzi scheme fraud conducted by EquiAlt and its unlicensed sales agents; further, Defendants had knowledge of such fraud, because they actively participated in the making the sale by their actions or by stepping outside of their normal role as attorneys providing routine legal advice, under the totality of the events as more fully described in this complaint.

167. Defendants' conspiracy with EquiAlt to evade the securities laws with respect to registration, exemption from registration and the use of unlicensed sales agents caused damages to the Plaintiffs.

168. Defendants conspiracy with EquiAlt to commit fraud cannot be excused by a "see no evil, hear no evil" approach, as that would otherwise encourage attorneys to aid clients in fraud by willful blindness. Plaintiffs allege that the Defendants had actual knowledge, which can be inferred from the totality of the circumstances of the events plead in this complaint. Plaintiffs lack access to the very discovery materials which would illuminate the Defendants' state of mind. But participants in a fraud do not affirmatively declare to the world that they are engaged in the perpetration of a fraud. Intent to commit fraud is to be divined from surrounding circumstances, and in this case, the Plaintiffs plead that the Defendants stepped out of their normal role as attorneys and participated in the fraud, by participating in the creation of documents which contain clear misstatements and omit material facts that should have been disclosed to the Plaintiffs, and by other actions described in this complaint.

169. Defendants' conspiracy with EquiAlt to commit fraud caused damages to the Plaintiffs in the amount of their lost investments, believed to be $170 million dollars, less interest payments.

THE CALIFORNIA CLAIMS

COUNT IV

Violations of the CSL
(Individually and on behalf of the California Class)

170. Plaintiffs Murphy, Meier, Greenberg, and Cobleigh repeat and re-allege the allegations contained in paragraphs 1–150 above, as if fully set forth herein.

171. California Corp. Code § 25110 prohibits the offer or sale by any person in California of securities that are not qualified through registration. California Corp. Code § 25503 affords a statutory cause of action to victimized investors for violations of Section 25110. Finally, California Corp. Code § 25504.1 extends liability under Section 25503 to any person who materially assists in a violation of Section 25110 and makes them jointly and severally liable with any other person liable under Section 25503.

172. EquiAlt with Defendants' material assistance offered and sold the EquiAlt Securities in California without being properly registered or qualified for offer or sale either with any federal or California regulator.

173. Plaintiffs contend that secondary liability for materially assisting a strict liability violation of the qualification requirements of Section 25110 does not require proof that Defendants intended "to deceive or defraud." However, Plaintiffs in the alternative contend that even if so, Defendants' knowledge of and participation in EquiAlt's non-compliance with the CSL establishes their intent to deceive investors regarding the purported exemption of the EquiAlt Securities from the qualification and licensing requirements of the CSL.

174. California Corp. Code § 25210(b) provides:

> No person shall, … on behalf of an issuer, effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless [a licensed] broker-dealer and agent have complied with any rules as the commissioner may adopt for the qualification and employment of those agents.

175. Defendants breached Section 25210(b) by encouraging Lifeline and other broker-dealers and agents to offer and sell the EquiAlt Securities despite the fact that (a) such securities were not qualified under the CSL and (b) such broker-dealers and agents were not licensed under the CSL.

176. California Corp. Code § 25501.5 affords a statutory cause of action to victimized investors for violations of Section 25210(b).

177. California Corp. Code § 25401 prohibits fraud in the offer or sale by any person in California of securities. California Corp. Code § 25501 affords a statutory cause of action to victimized investors for violations of Section 25401. Finally, California Corp. Code § 25504.1 extends liability under Section 25503 to any person who materially assists in a violation of Section 25401 with the intent to deceive or defraud, and makes them jointly and severally liable with any other person liable under Section 25503.

178. EquiAlt, with Defendants' material assistance, offered and sold the EquiAlt Securities in California by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

179. Defendants are accordingly joint and severally liable to Plaintiffs for rescissionary damages under Cal. Corp. Code. § 25504.1.

180. Plaintiffs hereby conditionally tender their EquiAlt Securities in accordance with Cal. Corp. Code § 25503.

COUNT V

Aiding and Abetting Breach of Fiduciary Duty (Individually and on behalf of the California Class)

181. Plaintiffs Murphy, Meier, Greenberg and Cobleigh repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

182. Based on (a) their respective sales agent's assumption of the role of a securities broker advising Plaintiffs about their retirement and investment decisions and (b) the confidential relationship the agent engendered in completing Plaintiffs' applications, transmitting them and

Plaintiffs' funds to EquiAlt for investment, those sales agents owed Plaintiffs fiduciary duties of loyalty and full disclosure, which were breached by their receipt of commissions in connection unlawful offer and sale to Plaintiffs of unqualified securities through unlicensed broker-dealers and sales agents.

183. Defendants had actual knowledge of the breaches of such fiduciary duties by the sales agent and the other unlicensed broker-dealers EquiAlt utilized to solicit investment in the EquiAlt Securities, rendered substantial assistance or encouragement to the breaches, and their conduct was a substantial factor in causing harm to Plaintiff.

184. Defendants acted with the specific intent to facilitate the wrongful conduct by EquiAlt and its broker-dealers and sales agents, particularly in connect with its efforts to deter regulatory investigations by the SEC and the State of Arizona.

185. Defendants are therefore liable for common law aiding and abetting the breach of fiduciary duties.

COUNT VI

Aiding and Abetting Fraud and Deceit
(Individually and on behalf of the California Class)

186. Plaintiffs Murphy, Meier, Greenberg and Cobleigh repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

187. The Non-Defendant Promoters made uniform false representations and concealed or failed to disclose material facts concerning the Funds' compliance with the Federal and State securities laws, the safety and risks of the EquiAlt Securities and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors.

188. Plaintiffs and the members of the California Class justifiably relied on the foregoing false representations and material omissions, were unaware of the falsity of the representations or

the material omissions and would not have invested in the EquiAlt Securities had they known the true facts. As a consequence, Plaintiffs and the members of the California Class sustained damages.

189. Defendants had actual knowledge of some or all of the false statements and material omissions used to solicit investment in the EquiAlt Securities, rendered substantial assistance or encouragement to the fraudulent conduct, and their conduct was a substantial factor in causing harm to Plaintiffs and the members of the California Class.

190. Defendants acted with the specific intent to facilitate the foregoing wrongful conduct.

191. Defendants are therefore liable for common law aiding and abetting the fraud and deceit committed by the Non-Defendant Promotors.

192. The foregoing actions by Defendants were done maliciously, oppressively, and with intent to defraud, thereby entitling Plaintiffs and members of the California Class to punitive and exemplary damages.

COUNT VII

Financial Abuse under the Elder Abuse Act (Individually and on behalf of the California Subclass)

193. Plaintiffs Greenberg and Cobleigh repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

194. This cause of action is brought under California's Welfare and Institutions Code § 15610, et seq.

195. As alleged above, Plaintiff Greenberg was 89 years or older at all times relevant to this claim. Plaintiff Cobleigh was 80 years old at the time of this claim.

196. California's Elder Abuse Act, Cal. Welf. & Ins. Code § 15610.07, affords a cause of action to person over 65 years of age to recover for "financial abuse."

197. Financial abuse is in turn defined as follows:

> "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
>
> 1. Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
>
> 2. Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
>
> ***

California Welf. & Ins. Code § 15610.30(a).

198. A person takes property "for a wrongful use" when he, she or it knew or should have known its conduct was likely to be harmful to the elder. Welf. & Ins. Code § 15610.30(b).

199. The sale of unregistered securities by unlicensed broker-dealers and agents is specifically prohibited in California, for the very reason that it is conduct likely to be harmful to the investor.

200. Through the sale to Plaintiffs Greenberg and Cobleigh of unqualified securities through unlicensed brokers and agents, Defendants engaged in conduct that took, appropriated, obtained and retained Plaintiffs Greenberg's personal property ($50,000 in cash) and Plaintiff Cobleigh's personal property ($520,000) for a wrongful use in violation of Section 15610.30(a)(1).

201. Alternatively, through their participation in the offer and sale to Plaintiffs Greenberg and Cobleigh of unqualified securities through unlicensed brokers and agents, Defendants at a minimum assisted in conduct that took, appropriated, obtained and retained Plaintiff Greenberg's personal property ($50,000 in cash) and Plaintiff Cobleigh's personal property ($520,000) for a wrongful use in violation of § 15610.30(a)(2).

202. Defendants are accordingly liable to Plaintiff for "compensatory damages and all other remedies otherwise provided by law," including reasonable attorney fees and costs. Welf. & Ins. Code § 15657.5(a).

COUNT VIII

Violation of Unfair Competition Law Business & Professions Code § 17200, et seq.
(Individually and on behalf of the California Class)

203. Plaintiffs Murphy, Meier, Greenberg and Cobleigh repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

204. California's Unfair Competition Law, Business & Professions Code §§ 17200 *et seq*. (the "UCL") prohibits acts of unlawful and unfair competition, including any "unlawful, unfair or fraudulent business act or practice," any "unfair, deceptive, untrue or misleading advertising" and any act prohibited by Business & Profession Code §17500.

205. Defendants have committed business acts and practices that violate the UCL by aiding and abetting the breaches of fiduciary duties, fraudulent and unfair conduct and unlawful conduct. Defendants' conduct as alleged above constitutes unlawful competition in that, for the reasons set forth above, said acts and practices violate the Corporations Code.

206. The conduct of Defendants as alleged above also constitutes unfair competition in that, for the reasons set forth above, the acts and practices offend public policy and are unethical, oppressive, and unscrupulous, and are substantially injurious to the public.

207. Defendants' conduct was a proximate cause of the injuries to Plaintiffs and the California Class alleged herein, and it caused and continues to cause substantial injury to Plaintiffs and the members of the California Class. By reason of the foregoing, Defendants should be required to pay restitution to Plaintiffs and members of the California Class.

THE ARIZONA CLAIMS

COUNT IX
Violation of A.R.S. § 44-1841
(Individually and on behalf of the Arizona Class)

208. Plaintiffs Rubinstein, Toone, and Celli, repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

209. The investments sold by the Non-Promotor Defendants were securities as defined by the Arizona Securities Act ("the ASA").

210. The sale of non-exempt unregistered securities in Arizona is prohibited by A.R.S. § 44-1841.

211. Section 44–2001(A) creates a private cause of action for rescission or damages for violations of § 44–1841.

212. The ASA extends civil liability beyond the immediate parties to the sale, to all persons "who made, participated in or induced the unlawful sale or purchase." A.R.S. § 44–2003(A).

213. Defendants "participated in or induced" the unlawful sale of unregistered EquiAlt Securities, by encouraging their offer and sale, among other things preparing the offering documents designed to unlawfully solicit purchasers of the unregistered EquiAlt Securities knowing they were not exempt from registration under the federal and State securities laws, and deterring state regulators from terminating the offering in Arizona.

214. Defendants are thus jointly and severally liable to Plaintiffs under A.R.S. § 44-2003(A), to the same extent as the Non-Promoter Defendants for the unlawful sale and violations of A.R.S. § 44-1841.

215. Plaintiffs accordingly demand rescission with interest and attorneys' fees as provided in A.R.S. § 44-2001(A).

216. Subject to the recovery of full relief, Plaintiffs tender to Defendants all consideration received in connection with the securities that Plaintiffs purchased and offer to do any other acts necessary for rescission under the common law or A.R.S. § 44-2001(A).

COUNT X

Violation of A.R.S. §44-1842
(Individually and on behalf of the Arizona Class)

217. Plaintiffs Rubinstein, Toone, and Celli, repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

218. The investments sold by the Non-Promotor Defendants were securities as defined by the ASA.

219. The sale of securities in Arizona by an unregistered dealer is prohibited by A.R.S. § 44-1842.

220. Section 44–2001(A) creates a private cause of action for rescission or damages for violations of § 44–1842.

221. The ASA extends civil liability beyond the immediate parties to the sale, to all persons "who made, participated in or induced the unlawful sale or purchase." A.R.S. § 44–2003(A).

222. Defendants "participated in or induced" the unlawful sale of EquiAlt Securities by unregistered dealers, by encouraging such sales in Arizona, by among other things covering for the Non-Defendant Promoters' use of the Non-Defendants sales agents to solicit purchasers of the EquiAlt Securities in Arizona.

223. Defendants are thus jointly and severally liable to Plaintiffs under A.R.S. § 44-2003(A), to the same extent as the Non-Promoter Defendants for the unlawful sale and violations of A.R.S. § 44-1842.

224. Plaintiffs accordingly demand rescission with interest and attorneys' fees as provided in A.R.S. § 44-2001(A).

225. Subject to the recovery of full relief, Plaintiffs tender to Defendants all consideration received in connection with the securities that Plaintiffs purchased and offer to do any other acts necessary for rescission under the common law or A.R.S. § 44-2001(A).

COUNT XI

Violation of A.R.S. §§ 44-1991(A)
(Individually and on behalf of the Arizona Class)

226. Plaintiffs Rubinstein, Toone, and Celli, repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

227. The investments sold by the Non-Promotor Defendants were securities as defined by the ASA.

228. Under the ASA, it is unlawful to (1) "[e]mploy any device, scheme or artifice to defraud[;]" (2) "[m]ake any untrue statement of material fact, or omit to state any material act necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading[;]" or to (3) "[e]ngage in any transaction, practice or course of business which operates or would operate as a fraud or deceit." A.R.S. § 44-1991(A).

229. Section 44–2001(A) creates a private cause of action for rescission or damages for violations of § 44–1991(A). The ASA extends civil liability beyond the immediate parties to the sale, to all persons "who made, participated in or induced the unlawful sale or purchase." A.R.S. § 44–2003(A).

230. The Non-Promoter Defendants conducted a massive Ponzi scheme raising more than $170 million from over 1,000 investors nationwide, many of them elderly, through the fraudulent sale of unregistered securities. The scheme was perpetuated through material misrepresentations and omissions concerning the Funds' compliance with the federal and State securities laws, the safety and risks of the EquiAlt Securities, and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors, causing Plaintiffs' damages. In particular, the Non-Defendant Promotors in the PPM made the following materially false misrepresentations and omissions, among others:

a. Falsely stated that "[t]his Offering is being made pursuant to the private offering exemption of Section 4(2) of the [Securities] Act and/or Regulation D promulgated under the Act;"

b. Falsely stated that "[t]his Offering is also being made in strict compliance with the applicable state securities laws;"

c. Falsely stated that "[u]nder no circumstances will the Company admit more than thirty-five (35) non-accredited Investors as computed under Rule 501 of Regulation D promulgated under the [Securities] Act;"

d. Falsely stated that "[t]he Company may utilize the services of one or more registered broker/dealers" to sell the unregistered EquiAlt Securities;

e. Falsely overstated the percentage of investor funds that would be used to invest in properties;

f. Misleadingly omitted to disclose that millions of dollars would be used to pay undisclosed fees and bonuses to EquiAlt and its principals;

g. Misleadingly omitted to disclose that EquiAlt would pocket "discount fees" rather than passing on to the Funds purported savings from listed sale prices;

h. Misleadingly omitted to disclose that monies would be transferred from one Fund to another to pay interest due to investors and failed to adequately disclose that commissions would be paid to unlicensed sales agents; and

i. Misleadingly omitted to disclose that Davison and Rybicki had both filed bankruptcy proceedings during the years prior to the formation of EquiAlt.

231. Defendants "participated in or induced" the unlawful sale of EquiAlt Securities, by encouraging their offer and sale in Arizona, by among other things preparing the offering documents designed to unlawfully solicit purchasers of the unregistered EquiAlt Securities, by adding a patina of legitimacy to the otherwise unlawful operation, and by concealing the lack of any exemption to registration under either the federal or State securities laws, all of which enabled the scheme to unfold to the detriment of Plaintiffs and the Arizona Class.

232. Defendants acted with the specific intent to facilitate the Non-Defendant Promoters' foregoing wrongful conduct, and knowingly or recklessly misrepresented or omitted facts regarding the need to register the securities that rendered their statements, representations, and documents materially false or misleading.

233. Defendants are thus jointly and severally liable to Plaintiffs within the meaning of A.R.S. § 44-2003(A), to the same extent as the Non-Promoter Defendants for the unlawful sale and violations of A.R.S. § 44-1991(A).

234. Plaintiffs accordingly demand rescission with interest and attorneys' fees as provided in A.R.S. § 44-2001(A).

235. Subject to the recovery of full relief, Plaintiffs tender to Defendants all consideration received in connection with the securities that Plaintiffs purchased and offer to do any other acts necessary for rescission under the common law or A.R.S. § 44-2001(A).

COUNT XII

Aiding and Abetting Fraud
(Individually and on behalf of the Arizona Class)

236. Plaintiffs Rubinstein, Toone, and Celli, repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

237. The Non-Defendant Promoters made uniform and materially false representations and concealed or failed to disclose material facts concerning the Funds' compliance with the federal and State securities laws, the safety and risks of the EquiAlt Securities, the use of funds raised through the EquiAlt Securities, and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors, causing Plaintiffs' damages.

238. In particular, the Non-Defendant Promotors in the PPM made the following materially false misrepresentations and omissions, among others:

a. Falsely stated that "[t]his Offering is being made pursuant to the private offering exemption of Section 4(2) of the [Securities] Act and/or Regulation D promulgated under the Act;"

b. Falsely stated that "[t]his Offering is also being made in strict compliance with the applicable state securities laws;"

c. Falsely stated that "[u]nder no circumstances will the Company admit more than thirty-five (35) non-accredited Investors as computed under Rule 501 of Regulation D promulgated under the [Securities] Act;"

d. Falsely stated that "[t]he Company may utilize the services of one or more registered broker/dealers" to sell the unregistered EquiAlt Securities;

e. Falsely overstated the percentage of investor funds that would be used to invest in properties;

f. Misleadingly omitted to disclose that millions of dollars would be used to pay undisclosed fees and bonuses to EquiAlt and its principals;

g. Misleadingly omitted to disclose that EquiAlt would pocket "discount fees" rather than passing on to the Funds purported savings from listed sale prices;

h. Misleadingly omitted to disclose that monies would be transferred from one Fund to another to pay interest due to investors and failed to adequately disclose that commissions would be paid to unlicensed sales agents; and

i. Misleadingly omitted to disclose that Davison and Rybicki had both filed bankruptcy proceedings during the years prior to the formation of EquiAlt.

239. Defendants were for all times material hereto aware that the information being disseminated by the Non-Defendant Promoters was materially false.

240. Defendants nevertheless rendered substantial assistance and encouragement to the Non-Defendant Promoters' fraudulent conduct, including but not limited to the drafting of the operative PPMs, Subscription Agreements, the EquiAlt Securities, and related organizational and operational agreements and other various regulatory filings, and their several corresponding acts to conceal, omit, and misrepresent material facts to cover up the illicit nature of the Ponzi scheme, all as alleged above with specificity.

241. Defendants thereby aided and abetting the fraud and deceit committed by the Non-Defendant Promotors.

242. Defendants are accordingly jointly and severally liable to Plaintiffs for the fraudulent actions of the Non-Defendant Promoters.

COUNT XIII

Aiding and Abetting Breach of Fiduciary Duty
(Individually and on behalf of the Arizona Class)

243. Plaintiffs Rubinstein, Toone, and Celli, repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

244. The Non-Defendant EquiAlt sales agents who solicited Plaintiffs' investments owed fiduciary duties to Plaintiffs, which derived from their confidential and principal-agent relationship.

245. Given the unbalance of knowledge, Plaintiffs relied heavily upon the Non-Defendant EquiAlt sales agents' representations and advice, and reposed significant trust in the Non-Defendant EquiAlt sales agents.

246. As alleged above, the Non-Defendant EquiAlt sales agents breached their duties to Plaintiffs, including through their receipt of undisclosed and illegal commissions in connection with the unlawful offer and sale to Plaintiffs of unregistered securities through unlicensed broker-dealers and sales agents, causing Plaintiffs damages.

247. Defendants had actual knowledge of the Non-Defendant EquiAlt sales agents' breaches of fiduciary duties.

248. Defendants rendered substantial assistance and encouragement to the Non-Defendant EquiAlt sales agents' breaches and acted to conceal material facts attendant to those breaches, by encouraging them to offer and sell the EquiAlt Securities despite knowing of (a) the lack of registration under either federal or State law, and (b) the lack of any applicable exemption to registration under federal or State law.

249. Defendants are accordingly jointly and severally liable to Plaintiffs for the breach of fiduciary duties by the Non-Defendant Promoters' sales agents.

250. The Non-Defendant Promoters themselves owed fiduciary duties to Plaintiffs under Arizona law.

251. As alleged above, the Non-Defendant Promoters breached their fiduciary obligations to Plaintiffs, including the use through uniform and materially false representations and concealment of material facts concerning the Funds' compliance with the Federal and State securities laws, the safety and risks of the EquiAlt Securities, and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors, causing Plaintiffs damages.

252. The Non-Defendant Promoters' breaches of fiduciary duties caused Plaintiffs' damages.

253. Defendants had actual knowledge of the Non-Defendant Promoters' breaches of fiduciary duties and knew the misrepresentations and omissions were materially misleading and would result in harm.

254. Defendants rendered substantial assistance and encouragement to the Non-Defendant Promoters' breaches of fiduciary obligations, including but not limited to the drafting of the operative PPMs, Subscription Agreements, the EquiAlt Securities, and related operational agreements and regulatory filings, and their several corresponding acts to conceal, omit, and misrepresent material facts as set forth in those documents to cover up the illicit nature of the Ponzi scheme, all as alleged with specificity herein.

255. Defendants are accordingly jointly and severally liable to Plaintiffs for the breach of fiduciary duties by the Non-Defendant Promoters.

THE COLORADO CLAIMS

COUNT XIV

Statutory Aiding and Abetting Anti-Fraud Violations under the CSA
(Individually and on behalf of the Colorado Class)

256. Plaintiffs Hannen repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

257. The EquiAlt Securities are securities within as defined by C.R.S. § 11-51-201.

258. C.R.S. § 11-51-501 ("Section 501") prohibits fraud in the offer or sale of securities in Colorado. C.R.S. § 11-51-604 ("Section 604") affords a statutory cause of action to victimized investors for violations of Section 501. Finally, C.R.S. § 11-51-604(5)(c) extends liability under Section 501 to "[a]ny person who knows that another person liable under subsection (3) or (4) of this section is engaged in conduct which constitutes a violation of [Section 501] and who gives substantial assistance to such conduct is jointly and severally liable to the same extent as such other person."

259. The Non-Defendant Promoters sold the EquiAlt Securities by employing devices, schemes, and/or artifices to defraud; by making untrue statements of material facts and/or omitting to state material facts; and/or by engaging in acts, practices, and/or courses of business which operated as a fraud or deceit upon Plaintiffs and the other members of the Colorado Class, in violation of Section 501. Accordingly, Plaintiffs were the purchasers of a "security" in Colorado, the Non-Promoters acted in violation of Section 501with the requisite scienter in connection with the offer and sale of that security, and Plaintiffs relied upon their conduct to their detriment, causing the Plaintiffs' injury.

260. Defendants encouraged EquiAlt and its broker-dealers and agents to offer and sell the EquiAlt Securities in Colorado despite the fact that (a) such securities were not registered under the CSA and (b) such broker-dealers and agents were not licensed under the CSA.

261. Defendants knew that the Non-Defendant Promoters were engaged in conduct which constituted a violation of Section 501, and gave substantial assistance to such conduct, and are therefore jointly and severally liable to Plaintiff Hannen and the Colorado Class.

262. *Respondeat superior* is proper basis for liability under the CSA.

263. Defendants are liable to Plaintiffs and the other members of the Colorado Class under Section 604(3) and (4) for rescission or rescissionary damages.

264. Plaintiffs hereby conditionally tender their EquiAlt Securities in accordance with Section 604(6).

COUNT XV

Aiding and Abetting Registration Violations under the CSA
(Individually and on behalf of the Colorado Class)

265. Plaintiffs Hannens repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

266. C.R.S. § 11-51-301 ("Section 310") prohibits the offer or sale by any person in Colorado of securities that are not registration in accordance with C.R.S. Art. 51. C.R.S. § 11-51-604 ("Section 604") affords a statutory cause of action to victimized investors for violations of Section 301.

267. The EquiAlt Securities were required to be registered under Article 51 of Tile 11 of the Colorado revised Statute, pursuant to Section 301.

268. Neither the EquiAlt Securities nor the transactions were exempted under any pertinent Colorado statute.

269. The Non-Defendant Promoters with Defendants' material assistance offered and sold the EquiAlt Securities in Colorado without being properly registered for offer or sale either with any federal or Colorado regulator.

270. Defendants breached Section 301 by encouraging broker-dealers and agents to offer and sell the EquiAlt Securities in Colorado despite the fact that (a) such securities were not registered under the CSA, and (b) such broker-dealers and agents were not licensed under the CSA.

271. Section 604 specifically provides that statutory liability under that rights and remedies provided by the CSA are in addition to any other rights or remedies that may exist at law or in equity.

272. Respondeat superior is a proper basis for claim under the CSA.

273. Defendants are accordingly joint and severally liable to Plaintiffs and the other members of the Colorado Class for rescission or rescissionary damages.

274. Plaintiffs hereby conditionally tender their EquiAlt Securities in accordance with Section 604(6).

COUNT XVI

Aiding and Abetting Breach of Fiduciary Duty
(Individually and on behalf of the Colorado Class)

275. Plaintiffs Hannen repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

276. As alleged above, based on (a) their respective sales agent's assumption of the role of a securities broker advising Plaintiffs about their retirement and investment decisions and (b) the confidential relationship the agent engendered in completing Plaintiffs' applications, transmitting them and Plaintiffs' funds to EquiAlt for investment, those sales agents owed Plaintiffs fiduciary duties, which were breached as alleged above, including by their receipt of

commissions in connection unlawful offer and sale to Plaintiffs of unqualified securities through unlicensed broker-dealers and sales agents.

277. Defendants had actual knowledge of the breaches of such fiduciary duties by the sales agent and the other unlicensed broker-dealers EquiAlt utilized to solicit investment in the EquiAlt Securities, rendered substantial assistance or encouragement to the breaches, and their conduct was a substantial factor in causing harm to Plaintiff.

278. Defendants acted with the specific intent to facilitate the wrongful conduct by EquiAlt and its broker-dealers and sales agents, particularly in connect with its efforts to deter regulatory investigations by the SEC and the State of Arizona.

279. Defendants are therefore liable for common law aiding and abetting the breach of fiduciary duties.

COUNT XVII

Aiding and Abetting Fraud and Deceit
(Individually and on behalf of the Colorado Class)

280. Plaintiffs Hannen repeat and re-allege the allegations paragraphs 1–150 above, as if fully set forth herein.

281. The Non-Defendant Promoters made uniform false representations and concealed or failed to disclose material facts concerning the Funds' compliance with the Federal and State securities laws, the safety and risks of the EquiAlt Securities and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors.

282. Plaintiffs and the members of the Colorado Class justifiably relied on the foregoing false representations and material omissions, were unaware of the falsity of the representations or the material omissions and would not have invested in the EquiAlt Securities had they known the true facts. As a consequence, Plaintiffs and the members of the Colorado Class sustained damages.

283. Defendants had actual knowledge of some or all of the false statements and material omissions used to solicit investment in the EquiAlt Securities, rendered substantial assistance or encouragement to the fraudulent conduct, and their conduct was a substantial factor in causing harm to Plaintiffs and the members of the Colorado Class.

284. Defendants acted with the specific intent to facilitate the foregoing wrongful conduct.

285. Defendants are therefore liable for common law aiding and abetting the fraud and deceit committed by the Non-Defendant Promotors.

286. The foregoing actions by Defendants were done maliciously, oppressively, and with intent to defraud, thereby entitling Plaintiffs and members of the Colorado Class to punitive and exemplary damages.

COUNT XVIII

Aiding and Abetting Intentional Misrepresentation
(Individually and on behalf of the Colorado Class)

287. Plaintiffs Hannen repeat and re-allege the allegations contained paragraphs 1–150 above, as if fully set forth herein.

288. The Non-Defendant Promoters made uniform false representations and concealed or failed to disclose material facts concerning the Funds' compliance with the Federal and State securities laws, the safety and risks of the EquiAlt Securities and the financial performance and solvency of EquiAlt and the Funds.

289. The Non-Defendant Promotors knew the statements were false when made or were made recklessly and without regard to their truth, and intended that Plaintiffs and the members of the Colorado Class would rely on the representations.

290. Plaintiffs and the members of the Colorado Class justifiably relied on the false statements and sustained damages as a result.

291. Defendants had actual knowledge of some or all of the false statements and material omissions used to solicit investment in the EquiAlt Securities, rendered substantial assistance or encouragement to the fraudulent conduct, and their conduct was a substantial factor in causing harm to Plaintiffs and the members of the Colorado Class.

292. Defendants are therefore liable for common law aiding and abetting the intentional misrepresentations by the Non-Defendant Promotors.

293. The foregoing actions by Defendants were done maliciously, oppressively, and with intent to defraud, thereby entitling Plaintiffs and members of the Colorado Class to punitive and exemplary damages.

THE NEVADA CLAIMS

COUNT XIX

(Statutory Secondary Liability under the Nevada Securities Act, individually and on behalf of the Nevada Class)

294. Plaintiffs Rory and Marcia O'Neal and Sean O'Neal repeat and re-allege the allegations contained in paragraphs 1-150 as if fully set forth herein.

295. The EquiAlt Securities are securities as defined by NRS 90.295.

296. NRS 90.310 ("Section 301") prohibits any person from transacting business in Nevada as a broker-dealer or sales representative unless licensed or exempt from licensing under the Nevada Securities Act ("NSA").

297. NRS 90.460 ("Section 460") prohibits any person from offering to sell or selling any security in Nevada unless the security is registered or the security or transaction is exempt under the NSA.

298. NRS 90.570 ("Section 570") prohibits any person from, in connection with the offer to sell, sale, offer to purchase or purchase of a security in Nevada, directly or indirectly (1) employing any device, scheme or artifice to defraud; (2) making an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; or (3) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

299. NRS 90.660 ("Section 660") affords a statutory cause of action to victimized investors for violations of Sections 301, 460 and 570. In addition, Section 660(4) extends joint and several liability under Section 660 to "any agent of the person liable."

300. As alleged above, the Non-Defendant Promoters sold the EquiAlt Securities in violation of Sections 301, 460 and 570.

301. As a consequence of the forgoing statutory violations, Plaintiffs and the other members of the Nevada Class have suffered damages in an amount to be proven at trial, including the loss of money invested in the EquiAlt securities.

302. Defendants acted as the agent of the Non-Defendant Promoters in connection with the foregoing violations of the NSA, by among other things, drafting the PPMs and other offering materials containing the false statements and misrepresentations used to solicit sales of the unregistered EquiAlt Securities, receiving signed investor questionnaires on behalf of EquiAlt, authorizing EquiAlt to identify Defendants as "independent" legal counsel who would provide "insight into the fund and its activities" upon request from investors, drafting submissions to the SEC falsely claiming that the EquiAlt Securities were exempt from registration, authorizing the use of their names on brochures that were used to promote and make sales of Equialt Securities, preparing organizational and transactional documents used in furtherance of the EquiAlt Ponzi

scheme, formulating and drafting "Consulting Agreements" falsely characterizing agent commissions as "finder's fees" to circumvent the securities laws, advising non-client unlicensed sales agents that they could lawfully sell the unregistered EquiAlt securities and responding to inquiries from the unlicensed sales agents concerning purported compliance with the applicable securities laws and encouraging the EquiAlt managers to invoke their names and professional standing to deflect inquiries by sales agents or investors about regulatory investigations of EquiAlt. . Through these acts, among others, Defendants intentionally stepped outside their normal role as attorneys providing routine legal advice and instead acted as the agent of the Non-Defendant Promoters.

303. Defendants are accordingly liable to Plaintiffs and the other members of the Nevada Class under Section 660 for rescission or rescissionary damages.

304. Plaintiffs hereby conditionally tender their EquiAlt Securities in accordance with the NSA.

COUNT XX

(Aiding and Abetting Breach of Fiduciary Duty, individually and on behalf of the Nevada Class)

305. Plaintiffs Rory and Marcia O'Neal and Sean O'Neal repeat and re-allege the allegations contained in the paragraphs 1-150 as if fully set forth herein.

306. NRS 90.575 provides: "A broker-dealer, sales representative, investment adviser or representative of an investment adviser shall not violate the fiduciary duty toward a client imposed by NRS 628A.020." NRS 628A.020 in turn provides:

> A financial planner has the duty of a fiduciary toward a client. A financial planner shall disclose to a client, at the time advice is given, any gain the financial planner may receive, such as profit or commission, if the advice is followed. A financial planner shall make diligent inquiry of each client to ascertain initially, and keep currently informed concerning, the client's financial circumstances and obligations and the client's present and anticipated obligations to and goals for his or her family.

307. The Non-Defendant Promoters and their sales agents in addition owed Plaintiffs and the other members of the Nevada Class fiduciary duties of loyalty and full disclosure, based on (a) their respective sales agent's assumption of the role of a securities broker and financial planner advising Plaintiffs about their retirement and investment decisions and (b) the confidential relationship the agent engendered in completing Plaintiffs' applications, transmitting them and Plaintiffs' funds to EquiAlt for investment. These fiduciary duties which were breached by, among other things, the payment and receipt of undisclosed commissions in connection unlawful offer and sale to Plaintiffs of unregistered securities through unlicensed broker-dealers and sales agents, the failure to exercise due diligence to confirm the representations in the EquiAlt sales solicitation materials or to investigate or evaluate EquiAlt's financial condition and purported business operations, the failure to independently evaluate or confirm EquiAlt's compliance with the securities laws or the need for the unlicensed broker-dealers and sales agents to procure required licensures and the other actions and inactions alleged above. .

308. As a consequence of the forgoing breaches of fiduciary duty, Plaintiffs and the other members of the Nevada Class have suffered damages in an amount to be proven at trial, including the loss of money invested in the EquiAlt securities.

309. Under Nevada law, "liability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem. Co. v. Mahlum*, 970 P.2d 98, 112 (Nev. 1998), o*verruled in part on other grounds by GES, Inc. v. Corbitt*, 21 P.3d 11, 15 (Nev. 2001).

310. The Defendants were aware at the time of their role in promoting the foregoing alleged primary breach of fiduciary duties by the Non-Defendant Promoters and their sales agents, and knowingly and substantially assisted the Non-Defendant Promoters and their sales agents in

committing the primary breaches through direct communications with them and with their sales agents.

311. Defendants acted with the specific intent to facilitate the wrongful conduct by EquiAlt and its sales agents, particularly in connect with its efforts to deter regulatory investigations by the SEC and the State of Arizona.

312. Defendants are therefore liable for common law aiding and abetting the breach of fiduciary duties.

COUNT XXI

(Aiding and Abetting Fraud/Fraudulent Concealment, Individually and on behalf of the Nevada Class)

313. Plaintiffs Rory and Marcia O'Neal and Sean O'Neal repeat and re-allege the allegations contained in the paragraphs 1-150 as if fully set forth herein.

314. The Non-Defendant Promoters knowingly made uniform false representations and concealed or failed to disclose material facts concerning the Funds' compliance with the Federal and State securities laws, the safety and risks of the EquiAlt Securities and the financial performance and solvency of EquiAlt and the Funds, all with the intent to induce Plaintiff and the other members of the Nevada Class to act or to refrain from acting in reliance upon the misrepresentation and omission.

315. Plaintiffs and the members of the Nevada Class justifiably relied on the foregoing false representations and material omissions, were unaware of the falsity of the representations or the material omissions and would not have invested in the EquiAlt Securities had they known the true facts.

316. As a consequence of the forgoing acts of fraud and fraudulent omission, Plaintiffs and the other members of the Nevada Class have suffered damages in an amount to be proven at trial, including the loss of money invested in the EquiAlt securities.

317. Under Nevada law, "liability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem. Co. v. Mahlum*, 970 P.2d 98, 112 (Nev. 1998), *overruled in part on other grounds by GES, Inc. v. Corbitt*, 21 P.3d 11, 15 (Nev. 2001).

318. The Defendants were aware at the time of their role in promoting the foregoing alleged primary fraudulent conduct by the Non-Defendant Promoters and their sales agents, and knowingly and substantially assisted the Non-Defendant Promoters and their sales agents in committing the primary fraud through direct communications with them and with their sales agents.

319. Defendants acted with the specific intent to facilitate the foregoing wrongful conduct.

320. Defendants are therefore liable for common law aiding and abetting the fraud and deceit committed by the Non-Defendant Promotors.

COUNT XXII

(Violation of the Nevada Trade Practices Act, N.R.S. 41.600 Individually and on behalf of the Nevada Class)

321. Plaintiffs Rory and Marcia O'Neal and Sean O'Neal repeat and re-allege the allegations contained in the paragraphs 1-150 as if fully set forth herein.

322. NRS 41.600 ("Section 600") provides a statutory cause of action by "any person who is a victim of consumer fraud," which is in turn defined to include any deceptive trade practice as defined in NRS 598.092 ("Section 092"). *Holmquist v. Exotic Cars at Caesars Palace, LLC*,

No.: 2:07–cv–00298–RLH–GWF, 2009 WL 10692730 (D. Nev. Jan. 13, 2009) (finding plaintiffs stated claim for deceptive trade practices under Section 092 regarding the sale of securities).

323. Section 092(8) provides that "[a] person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she … [k]nowingly misrepresents the legal rights, obligations or remedies of a party to a transaction."

324. As alleged above, Defendants knowingly misrepresented "the legal rights" and "remedies" to Plaintiffs when through their drafting of the PPM and their representations made to the sales agents that the EquiAlt Securities were exempt from registration under Federal and State securities laws and could be sold by unlicensed broker-dealers and sales representatives.

325. As a consequence of the forgoing deceptive trade practices, Plaintiffs and the other members of the Nevada Class have suffered damages in an amount to be proven at trial, including the loss of money invested in the EquiAlt securities.

COUNT XXIII

(Aiding and Abetting Violation of Nevada Trade Practices Act, NRS 41.600 Individually and on behalf of the Nevada Class)

326. Plaintiffs Rory and Marcia O'Neal and Sean O'Neal repeat and re-allege the allegations contained in the paragraphs 1-150 as if fully set forth herein.

327. Under NRS 41.600 ("Section 600") a statutory cause of action may be brought by "any person who is a victim of consumer fraud," which is in turn defined to include any deceptive trade practice as defined in NRS 598.092 ("Section 092").

328. Section 092(5) provides that "[a] person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she … [a]dvertises or offers an opportunity for investment" and:

(a) Represents that the investment is guaranteed, secured or protected in a manner which he or she knows or has reason to know is false or misleading;

(b) Represents that the investment will earn a rate of return which he or she knows or has reason to know is false or misleading;

(c) Makes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading;

(d) Fails to maintain adequate records so that an investor may determine how his or her money is invested;

(e) Fails to provide information to an investor after a reasonable request for information concerning his or her investment;

(f) Fails to comply with any law or regulation for the marketing of securities or other investments; or

(g) Represents that he or she is licensed by an agency of the State to sell or offer for sale investments or services for investments if he or she is not so licensed.

329. As alleged above, the Non-Defendant Promoters and their sales agents engaged in each of these "deceptive trade practices" with respect to the offer and sale of the EquiAlt Securities in Nevada, breaching a statutory duty that injured Plaintiffs and the other members of the Nevada Class.

330. As a consequence of the forgoing deceptive trade practices, Plaintiffs and the other members of the Nevada Class have suffered damages in an amount to be proven at trial, including the loss of money invested in the EquiAlt securities

331. Under Nevada law, "liability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem. Co. v. Mahlum*, 970 P.2d 98, 112 (Nev. 1998), *overruled in part on other grounds by GES, Inc. v. Corbitt*, 21 P.3d 11, 15 (Nev. 2001).

332. The Defendants were aware at the time of their role in promoting the foregoing alleged primary violations by the Non-Defendant Promoters and their sales agents, and knowingly and substantially assisted the Non-Defendant Promoters and their sales agents in committing the primary violations through direct communications with them and with their sales agents.

333. Defendants' conduct was a substantial factor in causing harm to Plaintiffs and the members of the Nevada Class.

334. Defendants are therefore liable for common law aiding and abetting the statutory deceptive trade practices of the Non-Defendant Promotors.

PRAYER

Based on the foregoing, Plaintiffs request the Court enter a judgment:

A. certifying the Classes;

B. awarding such declaratory, injunctive and other equitable relief as warranted under the claims asserted;

C. awarding compensatory damages and punitive damages to Plaintiffs and the Classes, in an amount to be determined at trial;

D. awarding Plaintiffs and the Classes the costs of this action, including reasonable attorneys' fees and expenses, including pursuant to the Elder Abuse Act; and

E. awarding such further relief as may be just and proper.

RESPECTFULLY SUBMITTED this 3rd day of August, 2020.

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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:

> **When will I get my principal back?**
>
> The investment term is 36 months. At maturity of your investment, your principal will be returned.

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 C

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

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 2:20-cv-08849

COMPLAINT

DEMAND FOR JURY TRIAL

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

OVERVIEW

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

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

law firms that provided services to EquiAlt and The Funds.

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

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

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

THE PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADDITIONAL ALLEGATIONS COMMON TO ALL COUNTS

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

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

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

scheme.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Fox Rothschild and DLA Piper failed to advise and protect The Investment Funds by recommending or structuring proper checks and balances in the operation of The Funds, and by allowing EquAlt and the EquiAlt Insiders to operate The Investment Funds without the customary checks, balances and oversights routinely employed in the operation of an investment company such as The Funds;

B. Fox Rothschild and DLA Piper failed to conduct an adequate review of the controls and practices in place for The Investment Funds;

C. Fox Rothschild and DLA Piper were operating with irreconcilable conflicts of interest;

D. Fox Rothschild and DLA Piper failed to have a system of supervision in place to prevent Wassgren from undertaking representation that had conflicts of interest.

E. Fox Rothschild and DLA Piper failed to have a system of supervision in place to deter and prevent Wassgren from giving illegal advice and from aiding and abetting the fraudulent scheme described in this Complaint.

F. Fox Rothschild and DLA Piper failed to exercise due diligence in their preparation of investment disclosure materials prepared for and utilized by EquiAlt and the EquiAlt Insiders in soliciting investments from the public; these disclosure materials contain material misrepresentations as well as omissions of material facts;

G. Fox Rothschild and DLA Piper failed to advise The Investment Funds (and their investors) that Davison and Rybicki were selling and operating The Funds illegally; and

H. Fox Rothschild and DLA Piper failed to advise and protect The Investment Funds from being sold through illegal solicitation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O. Another restriction for Regular D offerings is they cannot be sold by a "general solicitation."

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

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

R. In 2018, the EquiAlt Insiders, with the assistance of Wassgren, established two new Funds, the Qualified Opportunity Zone ("QOZ") and the EquiAlt Security Income Portfolio REIT ("REIT"). These funds were formed by diverting investor's money from the existing EquiAlt Funds into QOZ and REIT. The redemption of certain investors debentures from the existing Funds at full value and then reinvesting the proceeds with QOZ and the REIT constitute fraudulent transactions without sufficient disclosure and to the detriment to the existing Funds and their investors.

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

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

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

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

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

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

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

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

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

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

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

64. With Wassgren acting as the investor's gatekeeper, the Defendants knew or should have known that The Investment Funds had been sold to more than the allowable 35 "unaccredited investors."

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

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

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

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

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

investment securities in violation of applicable securities laws and regulations.

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

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

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

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

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

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

COUNT I

Breach of Fiduciary Duty

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

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

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

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

creating an ongoing conflict of interest.

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

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

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

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

COUNT II

Negligence/Gross Negligence/Professional Malpractice

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

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

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

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

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

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

89. The Defendants' actions constituted gross negligence.

WHEREFORE, the Plaintiffs request judgment against Defendants for

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

COUNT III

Common Law Aiding and Abetting of Fraud

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

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

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

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

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

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

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

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

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

COUNT IV

Common Law Aiding and Abetting of Breach of Fiduciary Duty

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

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

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

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

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

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

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

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

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

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: September 25, 2020

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