

**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.

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

The Receiver, by and through undersigned counsel, hereby responds to Non-Party Paul Wassgren's ("Wassgren") November 5, 2020 "Notice of Limited Appearance and Motion to Seek Clarification of the Court's Order Appointing the Receiver" (hereinafter, "Clarification

Motion”). The Receiver requests that the Court deny Wassgren’s Clarification Motion for the reasons that follow.

OVERVIEW AND SUMMARY

This Court is overseeing litigation commenced by the Securities and Exchange Commission (SEC) in the wake of a Ponzi scheme generally known as “EquiAlt,” and in an Order dated February 14, 2020, the Court has appointed the Receiver as part of those proceedings (Dkt. 11). Wassgren served as counsel for EquiAlt through several different law firms over the history of the company.

Wassgren’s November 5, 2020 Clarification Motion has been prompted by a separate case currently pending in the United States District Court for the Northern District of California where Wassgren is a Defendant, styled Robert G. Mar, et al. v. Benjamin Charles Morh, et al., Case No. 3:20-cv-07719-EMC (hereinafter, “the Mar case”).¹ The Mar case is a putative class action brought by investors in EquiAlt. In addition to Mar, Wassgren is also a Defendant in a separate action brought by the Receiver and authorized by this Court (Dkt. 121, 127), pending in the Central District of California, Case No. 2:20-cv-08849, styled Wiand et al. v. Wassgren et al.

¹ Mar was originally filed in California state court. Wassgren removed it to Federal Court on November 4, 2020. Whether the Federal Court will remand Mar back to California state court is an open question. The time for the Mar plaintiffs to file a remand motion has not yet run.

Wassgren -- in violation of this Court's Order -- has expressed the desire to join EquiAlt, LLC ("EquiAlt") to the Mar case as an additional Defendant. Wassgren's Clarification Motion defines the relief he seeks as follows:

Wassgren ... intends to move to add EquiAlt as a required party to the Mar Case. The present motion simply seeks to confirm that Wassgren will not violate the Receivership Order by seeking to join EquiAlt to the Mar case.

Eight days after Wassgren filed his Clarification Motion in this Court -- on November 13, 2020 -- Wassgren filed a "Motion to Transfer or Stay" in the Mar case, and a copy of that Motion is attached as Exhibit 1. As set forth in Wassgren's Motion to Transfer or Stay as filed in Mar, Wassgren seeks the alternative relief of transfer of Mar to this Court, or a stay of Mar.

The Receiver intends to oppose, in Mar, any attempt by Wassgren to have Mar transferred to this Court. This Court can and should, however, stay Mar for all the reasons expressed in the Receiver's separate November 19, 2020 Response to Wassgren's November 5, 2011 "Motion to Enjoin Parallel EquiAlt-Related Action", which is pending.

LEGAL MEMORANDUM

Even if Non-Party Wassgren had standing to seek to clarify the Court's February 14, 2020 Order, the Court should still deny Wassgren's Clarification Motion, which seeks to impermissibly expand the Mar case, diminish the assets potentially available to the Receiver (and by extension, EquiAlt's investors and creditors), and otherwise usurp the Court's authority.

I. THE COURT'S ORDER APPOINTING THE RECEIVER EXPRESSLY PROHIBITS THE RELIEF WASSGREN SEEKS.

The Court's February 14, 2020 Order appointing the Receiver (Dkt. 11) includes the following:

17. 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....

Whether the commissions earned by sellers of EquiAlt securities (an issue in Mar) constitute a Receivership "asset" or "proceeds" is an unresolved question at this point, but allowing EquiAlt to be separately sued in Mar risks disturbing the potential assets or proceeds of the receivership. This interference is inappropriate and unwarranted, and it is expressly prohibited by paragraph 17 of the Court's February 14, 2020 Order.

II. THE RELIEF WASSGREN SEEKS – TO ADD EQUIALT TO THE MAR CASE, SHOULD NOT BE ALLOWED.

Allowing Mar to be expanded to include EquiAlt would result in duplicative and piecemeal litigation in multiple fora, result in inefficiency, unnecessary complexity, risk inconsistent rulings, and needlessly duplicate discovery and motion practice. That result would serve no purpose, and it would impede this Court's exercise of its own jurisdiction over the EquiAlt receivership.

Allowing Mar to be expanded to include EquiAlt would also impede the separate litigation commenced by the Receiver with this Court's express permission (Dkt. 121, 127), a result that can and should be avoided. It is for this reason that the Receiver has separately asked that the Court stay Mar, based on the Court's own Order, the All Writs Act, and case law such as SEC v. Nadel, 2009 WL 2868642, *4 (M.D. Fla. 2009) (granting this same

Receiver's request to enjoin competing litigation) and Klay v. United Healgroup, Inc., 376 F.3d 1092, 1104 (11th Cir. 2004) ("Proceedings in other courts that ... could result in the issuance of an inconsistent judgment[] threaten the jurisdiction of the district court enough to warrant an injunction.")

CONCLUSION

No clarification of the Court's Order is necessary. Allowing Non-Party Wassgren to unnecessarily and improperly expand Mar to include EquiAlt violates this Court's previous order and would only cause avoidable complications, redundancies, delays, and other problems.

WHEREFORE, for the reasons set forth above, the Receiver respectfully requests an Order DENYING Wassgren's Clarification Motion.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 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.

Dated: November 19, 2020

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

Email: kdonlon@wiandlaw.com

Jared J. Perez, FBN 0085192

Email: jperez@wiandlaw.com

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, FL 33609

Tel: (813) 347-5100/Fax: (813) 347-5198

Attorneys for Receiver Burton W. Wiand

EXHIBIT 1

Edward W. Swanson, SBN 159859
ed@smlp.law
Britt Evangelist, SBN 260457
britt@smlp.law
SWANSON & McNAMARA LLP
300 Montgomery Street, Suite 1100
San Francisco, California 94104
Telephone: (415) 477-3800
Facsimile: (415) 477-9010

Attorneys for PAUL WASSGREN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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-CV-07719- EMC

**DEFENDANT PAUL WASSGREN'S
NOTICE OF MOTION AND MOTION TO
TRANSFER OR STAY; MEMORANDUM
OF POINTS AND AUTHORITIES**

[PURSUANT TO 28 U.S.C. § 1404]

Dept.: Courtroom 5 – 17th Floor
Judge: Edward M. Chen
Hearing Date/Time: None set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____ at _____ or as soon thereafter as the matter may be heard, in Courtroom 5 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, defendant Paul Wassgren (“Defendant” or “Mr. Wassgren”) will and hereby does move the Court for an order transferring this action to the District Court for the Middle District of Florida, or, in the alternative, an order staying this action.

This motion is made pursuant to 28 U.S.C. § 1404, the accompanying memorandum of points and authorities, the accompanying declaration of Britt Evangelist, and such argument and evidence as the Court may consider at the hearing on this matter.

Respectfully submitted,

Dated: November 13, 2020

/s/ Edward W. Swanson
Edward W. Swanson
Britt Evangelist
SWANSON & McNAMARA LLP
Attorneys for Defendant PAUL
WASSGREN

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
BACKGROUND	3
LEGAL STANDARD.....	6
ARGUMENT.....	7
I. The Court Should Transfer This Case to the Receivership Court	7
<i>A. Transfer Will Promote Judicial Economy</i>	8
<i>B. Transfer Will Serve the Public Interest By Preserving Receivership Assets</i>	9
<i>C. Transfer Will Protect Against the Risk of Inconsistent Rulings</i>	10
<i>D. Transfer Will Be More Convenient for the Parties and Witnesses</i>	11
<i>E. Plaintiffs’ Choice of Forum Does Not Weigh Against Transfer.....</i>	12
II. Alternatively, the Court Should Stay This Action.....	13
CONCLUSION.....	14

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Baird v. Cal. Faculty Ass’n</i> , No. C-00-628-VRW, 2000 WL 516378 (N.D. Cal. Apr. 24, 2000)	8, 10, 12
<i>Ferens v. John Deere Co.</i> , 494 U.S. 516, 531 (1990).....	8
<i>Hoefer v. U.S. Dep’t of Commerce</i> , No. C 00-0918-VRW, 2000 WL 890862 (N.D. Cal. 2000).....	6, 12
<i>Joe Boxer v. R. Siskind & Co.</i> , No. C 98-4899 (SI), 1999 WL 429549 (N.D. Cal June 28, 1999)	8
<i>Landis v. N. Am. Co.</i> , 299 U.S. 248(1936)	12
<i>Leyva v. Certified Grocers of Cal., Ltd.</i> , 593 F.2d 857 (9th Cir. 1979).....	12
<i>London & Hull v. Eagle Pacific Ins. Co.</i> , No. C 96-01512 (CW), 1996 WL 479013 (N.D. Cal. Aug. 14, 1996).....	10
<i>Lou v. Belzberg</i> , 834 F.2d 730 (9th Cir. 1987)	6
<i>Marshall v. Monster Beverage Corp.</i> , No. 14-cv-2203 (JD), 2014 WL 3870290 (N.D. Cal. Aug. 6, 2014).....	12
<i>Medical Dev. Int’l v. Cal. Dep’t of Corrections and Rehabilitation</i> , No. CIV 2:07-2199 WBS EFB, 2010 WL 347901 (E.D. Cal. Jan. 22, 2010)	6, 9, 11, 12
<i>Pac. Coast Fed’n of Fishermen’s Ass’ns v. Ross</i> , No. 19-CV-7897-LB, 2020 WL 1322947 (N.D. Cal. Mar. 20, 2020)	6, 11
<i>Papagni v. Hammersmith Trust, LLC</i> , No. C-97-4701 (SC), 2000 WL 630901 (N.D. Cal. May 9, 2000)	10, 13
<i>SEC v. Parish</i> , No. 2:07–cv–919–DCN, 2010 WL 8347143 (D.S.C. Feb. 10, 2010)	10

1		
2	<i>Umax Techs., Inc. v. Herold Mktg. Assocs., Inc.</i> , No. C 97-4027 SC ARB, 1998 WL 164964	
3	(N.D. Cal. Mar. 19, 1998).....	8
4	<i>United States v. Covenant Care, Inc.</i> , No. C-97-2814 (MHP), 1999 WL 760610,	
5	(N.D. Cal. Sept. 21, 1999)	11
6	<i>Wireless Consumers Alliance v. T-Mobile USA, Inc.</i> , No. 03-3711, 2003 WL 22387598 (N.D.	
7	Cal. Oct. 14, 2003).....	6

STATUTES

9	28 U.S.C. § 1404(a)	1, 6
---	---------------------------	------

DOCKETED FEDERAL CASES

11	<i>Gleinn v. Wassgren</i> , No. 8:20-cv-01677-MSS-CPT (M.D. Fla.)	1
12	<i>SEC v. Davison</i> , No. 8:20-cv-325-MSS-AEP (M.D. Fla.)	1
13	<i>Wiand v. Wassgren</i> , No. 20-8849 (C.D. Cal.)	5

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Paul Wassgren (“Wassgren”) respectfully submits this Memorandum in support of his motion to transfer this action to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 1404(a) or, alternatively, to stay this action.

PRELIMINARY STATEMENT

Plaintiff Robert Mar, an investor who purchased debentures issued by a Tampa, Florida-based company, EquiAlt, LLC (“EquiAlt”), filed this lawsuit based on an alleged “\$170 million Ponzi scheme operated by EquiAlt.” Am. Compl. ¶ 1. This case is just one of several cases relating to the alleged fraud by EquiAlt, including:

- The same allegations regarding EquiAlt are currently being litigated by the Securities and Exchange Commission (“SEC”) in receivership proceedings that the SEC commenced against EquiAlt and its principals on February 11, 2020 before Judge Mary Scriven of the United States District Court for the Middle District of Florida (the “Receivership Court”). *See SEC v. Davison*, No. 8:20-cv-325-MSS-AEP (M.D. Fla.) (the “Receivership Case”); and
- Numerous EquiAlt investors, recognizing that they might not fully recoup their investment from EquiAlt directly, filed a class action on July 21, 2020 against Wassgren, who provided legal services to EquiAlt, as well as his former and current law firms. *See Gleinn v. Wassgren*, No. 8:20-cv-01677-MSS-CPT (M.D. Fla.) (the “Gleinn Case”). The Gleinn Case already has been assigned to the Receivership Court, ensuring that it will be administered by Judge Scriven in coordination with the Receivership Case.

In September 2020, Plaintiff in this action filed his Amended Complaint, adding Wassgren as a defendant for the first time and asserting claims that are essentially identical to those in the Gleinn Case. Am. Compl. ¶ 14. This action should be transferred to the Receivership Court so that it can be administered as efficiently as possible in coordination with the Receivership Case and the Gleinn Case, which already are pending before a single federal

1 judge in that court and involve many of the same issues, the same parties, and the same claims.

2 It is well-settled that transfer is “in the interest of justice” under Section 1404 where, as
 3 here, duplicative, piecemeal litigation in different forums would otherwise waste scarce judicial
 4 resources and impose unnecessary costs and burdens on the parties and witnesses. Transfer is
 5 particularly imperative here because the costs associated with maintaining this action in this
 6 forum inevitably will deplete receivership assets and threaten to reduce the potential recovery of
 7 all EquiAlt investors. The Receivership Court, unlike this Court, already has EquiAlt before it
 8 and necessarily will have before it all of the evidence and witnesses relevant to the alleged
 9 misconduct by EquiAlt and its principals. That court is best positioned to oversee discovery and
 10 adjudicate all EquiAlt-related claims, including the claim – asserted both by plaintiffs in the
 11 Gleinn Case and the Plaintiff in this case – that Wassgren and other third parties assisted in
 12 EquiAlt’s alleged misconduct. Ex. 1 (Am. Compl. ¶¶ 36-37, Gleinn Case).¹ Centralizing all
 13 EquiAlt-related lawsuits in the Receivership Court will also promote the interest of justice by
 14 protecting against the risk of inconsistent judgments.

15 The Receivership Court has already recognized the significant costs, burdens, and risks
 16 that parallel litigation in other forums pose. In its Order appointing a receiver over EquiAlt, the
 17 Receivership Court enjoined “all parties,” including EquiAlt’s investors, from “in any way
 18 disturbing the assets or proceeds of the receivership or from prosecuting any actions or
 19 proceedings which involve the Receiver or which affect [receivership] property.” Ex. 2 ¶ 17
 20 (Sealed Order Granting Pl.’s Emergency Ex Parte Mot. For Appointment Of Receiver And Mem.

21
 22
 23
 24
 25
 26 ¹ All citations to exhibits herein are attached to the Declaration of Britt Evangelist dated
 27 November 13, 2020 and submitted herewith.

1 Of Law (“Receivership Order”), Receivership Case). Because Plaintiff’s prosecution of this case
 2 would embroil EquiAlt as a necessary party in this action and deplete receivership assets in
 3 contravention of that Order, Wassgren separately has moved the Receivership Court to enjoin
 4 this action. Ex. 3 (Wassgren’s Mot. to Enjoin, Receivership Case).

5
 6 In these circumstances, a transfer of this case to the Receivership Court is warranted.
 7 Alternatively, in the event that this Court declines to transfer this action to the Receivership
 8 Court, Wassgren respectfully requests that the Court, at a minimum, should stay proceedings
 9 pending guidance from the Receivership Court as to whether its existing Order prohibits Plaintiff
 10 from further prosecuting this action during the period of the EquiAlt receivership.
 11

12 BACKGROUND

13 EquiAlt is “a private Tampa, Florida-based limited liability company” that, until recently,
 14 was controlled by owner and chief executive officer Brian Davison and managing director Barry
 15 Rybicki. DE 1-2, p. 595, Am. Compl. ¶ 17. EquiAlt’s “primary business is to manage four real
 16 estate investment funds: EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; and
 17 EA SIP, LLC.” *Id.* On February 11, 2020, the SEC sued against Davison and Rybicki to halt an
 18 alleged \$170 million fraud that they allegedly were perpetrating and to seek appointment of a
 19 receiver over EquiAlt. Ex. 4 ¶ 1 (Compl. For Injunctive And Other Relief And Demand For Jury
 20 Trial (“Receivership Compl.”)). The SEC alleged that EquiAlt promised investors that
 21 substantially all of their money would be used to purchase distressed real estate and their
 22 investments would yield certain returns, but that Davison and Rybicki thereafter misappropriated
 23 millions of dollars in investor funds for their own personal use and benefit. Ex. 4 (Receivership
 24
 25
 26
 27
 28

1 Compl. ¶ 2). That lawsuit, filed nine months ago, currently is proceeding in the Receivership
2 Court in Florida, where EquiAlt and Davison are based, much of EquiAlt’s real property assets
3 are located, and substantial portions of the activity in question is alleged to have occurred. Ex. 4
4 (Receivership Compl. ¶¶ 10, 12, 35).

5
6 On February 14, 2020, the Receivership Court appointed a Florida lawyer, Burton Wiand
7 (the “Receiver”), to oversee the liquidation of assets belonging to EquiAlt and associated entities
8 (the “Receivership Assets”), to investigate the alleged fraud, and to institute such actions as the
9 Receiver deems necessary on behalf of EquiAlt and its investors, Ex. 2 (Receivership Order ¶ 2).
10 The Receiver’s mandate includes prosecuting suits against parties that “the Receiver may claim
11 have wrongfully, illegally or otherwise improperly misappropriated proceeds directly or
12 indirectly traceable from investors.” *Id.* Consistent with that grant of authority to the Receiver,
13 the Receivership Court’s Order also expressly enjoined all other parties from prosecuting such
14 claims, stating:
15
16

17 *During the period of this receivership, all persons, including creditors, banks,*
18 *investors, or others, with actual notice of this Order, are enjoined ... from in any*
19 *way disturbing the assets or proceeds of the receivership or from prosecuting any*
20 *actions or proceedings which involve the Receiver or which affect the property of*
21 *the Corporate Defendants and Relief Defendants [i.e., Receivership Assets].*

22 *Id.* ¶ 17 (emphases added).

23 On July 21, 2020, numerous EquiAlt investors filed suit in the United States District
24 Court for the Middle District of Florida on behalf of putative classes of EquiAlt investors in
25 California, Arizona, Colorado, and Florida against Wassgren, his former law firm Fox
26 Rothschild LLP (“Fox”), and his current law firm DLA Piper LLP (US) (“DLA”) based on their
27 prior representation of EquiAlt. *See* Ex. 1 ¶ 1 (Am. Compl., Gleinn Case (“Gleinn Compl.”)).
28

1 The Gleinn Case Plaintiffs’ allegations of fraud by EquiAlt principals Davison and Rybicki
 2 mirror those in the Receivership Case, but the Gleinn Case Plaintiffs seek to establish that
 3 Wassgren and his law firms somehow were liable for that alleged fraud. Specifically, Plaintiffs
 4 assert common law and statutory claims against Wassgren under the laws of several states,
 5 including under Section 25110 of the California Corporations Code. *Id.* ¶¶ 170-80. Because of
 6 its relation to the Receivership Case, the Gleinn Case has been assigned to the Receivership
 7 Court.²

9 The Plaintiff in this case, Robert Mar, originally filed this lawsuit in the Superior Court
 10 of the State of California in and for the County of San Mateo on May 7, 2020 against Benjamin
 11 Mohr, an insurance agent who allegedly sold Mar \$100,000 in EquiAlt securities (herein referred
 12 to as the “Mar Case” or “Mar Plaintiffs”), asserting that Mohr and his insurance agency, as
 13 agents of EquiAlt, violated California’s securities laws and made materially false representations
 14 in promoting EquiAlt’s securities. DE 1-1, p. 6, Compl. ¶¶ 1-2. Approximately two months
 15 after the Gleinn Case was filed, Plaintiff amended his complaint on September 10, 2020 to add
 16 Wassgren as a defendant and to assert claims against Wassgren that overlap substantially with
 17 those in the Gleinn Case. *See, e.g.*, DE 1-2, p. 611, Am. Compl. ¶¶ 118-24 (asserting claim
 18 against Wassgren under Section 25110 of California Corporations Code). Further, Plaintiff’s
 19
 20
 21

22 ² On September 28, 2020, the Receiver commenced a separate action in the Central District of
 23 California on behalf of EquiAlt against Wassgren, Fox, and DLA asserting various state-law
 24 claims similar to those in the Gleinn Case. *Wiand v. Wassgren*, No. 20-8849 (C.D. Cal.). That
 25 court, however, lacks federal subject matter jurisdiction over those claims, because: a) only the
 26 Receivership Court can exercise supplemental federal subject matter jurisdiction over the
 27 Receiver’s state-law claims absent an independent basis for subject matter jurisdiction; and b)
 28 the Receiver’s claim of diversity jurisdiction fails due to the presence of non-diverse parties.
 Defendants therefore anticipate seeking to transfer that action to the Receivership Court as well.

1 amended complaint asserts these claims on behalf of a subset of the EquiAlt investors already
 2 represented in the Gleinn Case. *Id.* ¶ 78. On September 30, 2020, Defendants Mohr and his
 3 agency filed a cross-complaint against Wassgren. DE 1-2, p. 853, Cross-Compl. of Defs. Mohr
 4 and Ben Mohr, Inc. Against Wassgren ¶ 3. On November 2, 2020, Wassgren removed this
 5 action to this Court. DE 1.

7 LEGAL STANDARD

8 28 U.S.C. § 1404(a) states that “[f]or the convenience of parties and witnesses, in the
 9 interest of justice, a district court may transfer any civil action to any other district or division
 10 where it might have been brought.” “The purpose of section 1404(a) is to prevent waste of time,
 11 energy and money and to protect litigants, witnesses and the public against unnecessary
 12 inconvenience and expense.” *Hofer v. U.S. Dep’t of Commerce*, No. C 00-0918-VRW, 2000
 13 WL 890862, at *3 (N.D. Cal. 2000) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)). In
 14 determining whether transfer is appropriate, “[t]he question of which forum will better serve the
 15 interest of justice is of predominant importance.” *Medical Dev. Int’l v. Cal. Dep’t of Corrections*
 16 *and Rehabilitation*, No. CIV 2:07-2199 WBS EFB, 2010 WL 347901, at *5 (E.D. Cal. Jan. 22,
 17 2010) (quoting *Wireless Consumers Alliance v. T-Mobile USA, Inc.*, No. 03-3711, 2003 WL
 18 22387598, at *4 (N.D. Cal. Oct. 14, 2003)). “An important consideration in determining
 19 whether the interests of justice dictate a transfer of venue is the pendency of a related case in the
 20 transferee forum.” *Id.* at *3. This “court has broad discretion to adjudicate motions for transfer
 21 according to an individualized, case-by-case consideration of convenience and fairness,” *Pac.*
 22 *Coast Fed’n of Fishermen’s Ass’ns v. Ross*, No. 19-CV-7897-LB, 2020 WL 1322947, at *4

(N.D. Cal. Mar. 20, 2020) (Beeler, M.J.); *see also Lou v. Belzberg*, 834 F.2d 730, 734 (9th Cir. 1987) (transfer decision “is reviewed for an abuse of discretion”). The question of venue properly is decided before resolving any challenge to the court’s subject matter jurisdiction. *In re Limitnone*, 551 F.3d 572, 578 (7th Cir. 2008).

ARGUMENT

I. The Court Should Transfer This Case to the Receivership Court

There can be no reasonable dispute that this action “might have been brought” in the Receivership Court because identical claims *already* have been brought in that court in the Gleinn Case against Wassgren and others on behalf of all EquiAlt investors, including members of the putative class of California investors here. *See supra* at 4. Similarly, venue clearly is proper in the Middle District of Florida for Plaintiff’s claims against Defendant Mohr because they are based on Mohr’s participation in an alleged fraud that Plaintiff contends EquiAlt perpetrated in that District. Furthermore, while Defendant Mohr is not yet a party to the Receivership Case, the Receiver already has taken the position that the payments Mohr and other persons received from EquiAlt – which Plaintiff in this action alleges Mohr unlawfully failed to disclose, *see* Am. Compl. ¶ 47 – are Receivership Assets and subject to a constructive trust. *See* Ex 5 (Receiver’s Reply to Pls’ Response to Notice of Filing, *Steven J. Rubinstein, et al. v. EquiAlt, LLC, et al.*, 8:20-cv-448-T-02TGW (M.D. Fla. May 22, 2020), ECF No. 98 at 9-11).

The key question before this Court, therefore, is simply whether the transfer of this case to the Receivership Court – where closely related litigation already is pending – will serve the interests of justice and the convenience of the parties and witnesses. The answer is resoundingly

yes, as each of the relevant factors strongly favors transfer for the reasons set forth below.

A. Transfer Will Promote Judicial Economy

Courts routinely transfer actions “to the district in which another action involving the same issue and the same parties was previously filed” – the precise circumstances here – because doing so will “conserve judicial resources, promote judicial economy and avoid the problems related with duplicative actions being filed in different districts.” *Umax Techs., Inc. v. Herold Mktg. Assocs., Inc.*, No. C 97-4027 SC ARB, 1998 WL 164964, at *1 (N.D. Cal. Mar. 19, 1998); *see also Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990) (“To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time and money that § 1404(a) was designed to prevent.”) (citation omitted); *Baird v. Cal. Faculty Ass’n*, No. C-00-628-VRW, 2000 WL 516378, at *1 (N.D. Cal. Apr. 24, 2000) (“a major consideration in the interests of justice analysis is the desire to avoid duplicative litigation”); *Joe Boxer v. R. Siskind & Co.*, No. C 98-4899 (SI), 1999 WL 429549, at *9 (N.D. Cal June 28, 1999) (“It would be a waste of judicial resources to maintain two separate actions in different districts between the same parties involving the same underlying disputes.”).

The Receivership Court already has devoted significant time and energy to overseeing the Receivership Case (which has already surpassed 200 docket entries), including by rendering decisions and issuing Orders on multiple procedural and substantive issues during the past nine months. That court is uniquely positioned to administer all related lawsuits – including this case and the Gleinn Case, which already is pending before it – in a coordinated and efficient manner.

Centralizing all of these actions in the Receivership Court will minimize the artificial complexities that otherwise would arise in discovery and motions practice as a result of parallel, piecemeal litigation in different forums. And because the Receivership Court already has familiarized itself with many of the relevant factual and legal issues and will continue to develop even greater expertise in those issues as the Receivership Case and Gleinn Case progress, that court also is best positioned to adjudicate the merits of the various interrelated claims in this case with the least additional investment of scarce judicial resources. *See Medical Dev. Int'l*, 2010 WL 347901, at *4 (transferring class action to federal court overseeing related receivership proceedings, which had “already committed judicial resources to the contested issues and [wa]s familiar with the facts of the case”).

B. Transfer Will Serve the Public Interest By Preserving Receivership Assets

The goal of avoiding duplicative litigation takes on even greater importance where, as here, the parallel litigation involves an entity in receivership. This is because one of the Receivership Court’s primary objectives in appointing the Receiver was to ensure that “whatever actions are necessary” would be taken “for the protection of investors.” Ex. 2 (Receivership Order at 2). The Receivership Court accordingly empowered the Receiver to investigate and institute legal proceedings to recover Receivership Assets for the benefit and on behalf of *all* investors and other creditors of EquiAlt. *Id.* ¶ 2.

Because Plaintiff’s case here “arises from a \$170 million Ponzi scheme [allegedly] operated by EquiAlt,” DE 1-2, Am. Compl. ¶ 1, *Mar v. Mohr*, No. 20-1986 (Cal. Super. Ct. filed July 29, 2020), and seeks “rescission” of debentures issued by EquiAlt and the “return of

1 compensation paid” for those debentures to EquiAlt, *id.* at 23, EquiAlt is not only a necessary
 2 and indispensable party to this case, but it inevitably will become embroiled in discovery
 3 regardless of whether it is formally added as a party because its conduct is central to the core
 4 factual allegations in this case. The costs of engaging in discovery and motions practice in a
 5 parallel action will needlessly deplete potential Receivership Assets, which otherwise could be
 6 distributed to all EquiAlt investors and creditors. Transfer, therefore, is not only in the long-term
 7 interests of the parties to this action, but also in the interests of the much broader set of EquiAlt
 8 investors and creditors represented in the proceedings before the Receivership Court. *See*
 9 *Papagni v. Hammersmith Trust, LLC*, No. C-97-4701 (SC), 2000 WL 630901, at *1 (N.D. Cal.
 10 May 9, 2000) (transferring venue to federal court presiding over related receivership proceedings
 11 and citing that court’s “broad equitable powers . . . especially where a federal agency, such as the
 12 S.E.C., seeks [appointment of a receiver] in the public interest”).

13
 14
 15 ***C. Transfer Will Protect Against the Risk of Inconsistent Rulings***
 16

17 Transfer of venue to a District where a related case is pending also is appropriate where it
 18 can prevent inconsistent judgments. *See Baird*, 2000 WL 516378, at *1 (“Resolution of related
 19 claims in the same forum can also avoid inconsistent results.”). Here, Wassgren faces a
 20 heightened risk of inconsistent rulings because, unless this case is transferred, he will be
 21 compelled to defend himself in at least two parallel lawsuits brought on behalf of the same
 22 California-based EquiAlt investors asserting the same claim – violation of Section 25110 of the
 23 California Corporations Code – based on the same core facts regarding EquiAlt’s allegedly
 24 fraudulent scheme. *See supra* at 4. Not only would these circumstances be fundamentally unfair
 25
 26
 27
 28

1 to Wassgren, as he could be subject to inconsistent judgments, *see London & Hull v. Eagle*
 2 *Pacific Ins. Co.*, No. C 96-01512 (CW), 1996 WL 479013, at *5 (N.D. Cal. Aug. 14, 1996) (“If
 3 this case is not transferred, inconsistent judgments could result, which would work an
 4 injustice.”), but it also would undermine the equitable and orderly distribution of Receivership
 5 Assets to all investors. *See SEC v. Parish*, No. 2:07-cv-919-DCN, 2010 WL 8347143, at *7
 6 (D.S.C. Feb. 10, 2010) (finding that “disparate outcomes” from parallel suits “would run counter
 7 to the goals of this receivership and would likely impair the Receiver’s and, ultimately, this
 8 court’s ability to fairly administer the receivership estate”).

9
10
11 ***D. Transfer Will Be More Convenient for the Parties and Witnesses***

12 While the factors related to “interests of justice,” such as those discussed above, are of
 13 “predominant importance” in determining whether to transfer, *Medical Dev. Int’l*, 2010 WL
 14 347901, at *5, considerations regarding the “convenience of the parties and witnesses” also
 15 weigh strongly in favor of transfer here. As discussed above, because of the substantial overlap
 16 in legal theories and factual allegations, this action and the cases already pending in the
 17 Receivership Court likely will involve many of the same witnesses and documentary evidence,
 18 including substantial document discovery from EquiAlt. As a result, unless this case is
 19 transferred, the parties to this action and other relevant witnesses likely would be required to
 20 provide testimony twice – once in the Middle District of Florida before the Receivership Court,
 21 and again in this Court – effectively doubling the cost and burden of providing testimony for all
 22 parties and witnesses.
 23
 24
 25
 26
 27
 28

E. Plaintiffs' Choice of Forum Does Not Weigh Against Transfer

Even when the request to transfer is made in the forum chosen by the plaintiff, plaintiff's choice of forum "is not a determinative factor" in the transfer-of-venue analysis, and courts frequently give greater weight to other "interest of justice" and "convenience" factors, particularly where those factors strongly favor transfer. *United States v. Covenant Care, Inc.*, No. C-97-2814 (MHP), 1999 WL 760610, at *3 (N.D. Cal. Sept. 21, 1999); *see also Pac. Coast Fed'n of Fishermen's Ass'ns*, 2020 WL 1322947, at *4 ("[S]ometimes a plaintiff's choice of forum is entitled to only minimal weight, *even if* the plaintiff is a resident of the forum.") (emphasis in original, internal quotations omitted). Here, Plaintiff's choice of forum is not entitled to any weight for two reasons. *First*, this action is no longer even pending in the forum Plaintiff chose, which was the San Mateo Superior Court. *See Medical Dev. Int'l*, 2010 WL 347901, at *4 (declining to give substantial weight to plaintiff's choice of forum following removal because "Plaintiff's choice of forum was not this court but the Sacramento County Superior Court"). *Second*, deference to a plaintiff's choice of forum "is inappropriate in a class action in which plaintiffs are dispersed throughout the state." *Baird*, 2000 WL 516378, at *2; *see also Marshall v. Monster Beverage Corp.*, No. 14-cv-2203 (JD), 2014 WL 3870290, at *2 (N.D. Cal. Aug. 6, 2014). The individual named plaintiff's chosen forum has no meaningful bearing on the venue analysis because this action has been brought on behalf of a state-wide class, which itself comprises only a subset of the EquiAlt investors represented in the Gleinn Case, and its putative members are dispersed across Districts in several states, including the Middle District of Florida. *See Hoefer*, No. C 00-0918-VRW, 2000 WL 890862, at *3 (holding

1 “[l]ittle deference” is given to a named plaintiff’s choice of forum where “members of the
2 purported class are numerous and are located throughout the nation”).

3 **II. Alternatively, the Court Should Stay This Action**

4 This Court has broad, inherent authority to stay proceedings before it in the interests of
5 judicial economy. *See, e.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to
6 stay proceedings is incidental to the power of the court to control the disposition of the causes on
7 its docket with economy of time and effort for itself, for counsel, and for litigants.”); *Leyva v.*
8 *Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (“A trial court may, with
9 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay
10 of an action before it, pending resolution of independent proceedings which bear upon the
11 case.”). The Receivership Order on its face prohibits Plaintiff in this case from further
12 prosecuting this action because it plainly “involve[s] the Receiver” and will “affect the property
13 of [the Receivership].” Ex. 2 (Receivership Order ¶ 17). In such circumstances, “the usual way
14 of proceeding is to stay all proceedings unless and until the plaintiff receives an order from the
15 district court that issued the injunction either allowing it to proceed or granting it an exception
16 from the injunction.” *Papagni*, 2000 WL 630901, at *2. Here, Wassgren diligently has sought
17 clarification from the Receivership Court regarding whether Plaintiff should be enjoined from
18 further prosecuting this action. *See* Ex. 4. Thus, even if the Court does not agree that transfer is
19 warranted, it is plainly appropriate and prudent for this Court stay the action pending resolution
20 of Wassgren’s Motion to Enjoin, which is currently pending in the Receivership Court in Florida.
21
22
23
24
25
26
27
28

1 **CONCLUSION**

2 For the foregoing reasons, the Court should transfer this case to the Receivership Court
3 or, alternatively, stay this case pending adjudication of Wassgren's Motion to Enjoin.
4

5
6
7
8 Respectfully submitted,

9 Dated: November 13, 2020

10 /s/ Edward W. Swanson
11 Edward W. Swanson
12 Britt Evangelist
13 SWANSON & McNAMARA LLP
14 Attorneys for Defendant PAUL
15 WASSGREN
16
17
18
19
20
21
22
23
24
25
26
27
28