

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

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

Plaintiff,

v.

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, TP OLDEST HOUSE  
EST. 1842, LLC.

Relief Defendants.

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**NON-PARTY ROBERT G. MAR'S OPPOSITION TO  
RECEIVER'S MOTION FOR STAY (DOC. 224)**

Non-party Robert G. Mar ("Mar") respectfully seeks to make a limited appearance to oppose Wiand Guerra King P.A.'s (the "Receiver's") Motion for Stay (Doc. 224). The Receiver is asking this Court to stay the case of *Robert G. Mar, et al. v. Benjamin Charles*

*Mohr, et al.* currently pending in the United States District Court for the Northern District of California<sup>1</sup> (hereafter, the “Mar Action”). This Court should not stay the Mar Action because the Mar Action does not violate the Receivership Order (Doc. 11) and will not handicap the Receiver’s Action against Defendant Paul Wassgren.<sup>2</sup>

## I. BACKGROUND

Mar incorporates by reference the factual background detailed in his opposition to Non-Party Paul Wassgren’s Motion to Enjoin Parallel EquiAlt-Related Action (Doc. 223).

## II. POSTURE OF THE MAR ACTION

The undersigned counsel intends to file a Motion to Dismiss the Mar Action Without Prejudice. If granted, counsel intends to re-file the case in the Superior Court of California against the same defendants alleging substantially similar causes of action but revised class definitions. The Motion to Dismiss will be filed by December 18, 2020 and will be heard on February 4, 2021.

Counsel for Defendant Paul Wassgren has filed a Motion to Transfer or Stay the Mar Action. (Doc. 14 of the Mar Action.) Wassgren is asking the District Court for the Northern District of California to transfer the Mar Action to this Court. In the alternative, he is asking to stay the Mar Action pending the resolution of Wassgren’s Motion to Enjoin filed in this Court on November 5, 2020. (Doc. 212 of this Action.) Wassgren’s Motion to Transfer or Stay will also be heard on February 4, 2021.

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<sup>1</sup> Case No. 20-cv-07719-EMC (N.D. Cal.)

<sup>2</sup> *Burton W. Wiand, et al. v. Paul R. Wassgren, et al.*, Case No. 2:20-cv-08849-AB-PVC (C.D. Cal.)

### III. LEGAL MEMORANDUM

#### **A. THIS COURT SHOULD NOT STAY THE MAR ACTION BECAUSE IT DOES NOT VIOLATE THE RECEIVERSHIP ORDER.**

This Court would be justified in staying the Mar Action if it violated the Receivership Order (Doc. 11). As articulated in Mar’s Opposition to Wassgren’s Motion to Enjoin (Doc. 223), the Mar Action does not disturb the assets of the Receivership, it does not involve the Receiver, and it does not affect the property of the Corporate Defendants. The Mar Action therefore does not violate the Receivership Order, so this Court should deny the Receiver’s request for a stay.

#### **B. THIS COURT SHOULD NOT STAY THE MAR ACTION BECAUSE IT DOES NOT HANDICAP THE RECEIVER’S ACTION AGAINST PAUL WASSGREN.**

The Receiver claims that the Mar Action “would . . . handicap separate litigation commenced by the Receiver” against Defendant Paul Wassgren. (Receiver’s Motion at 4.) The Eleventh Circuit disagrees. “[A]ny claims for aiding and abetting the Ponzi scheme do not belong to the Receivership Entities; they belong to the defrauded investors, whom [the Receiver] does not represent.” *Isaiah, et al. v. JPMorgan Chase Bank*, 960 F.3d 1296, 1307–08 (11th Cir. 2020). The Receiver has no right to bring the investors’ claims on the theories alleged in the Mar Action, so the Mar Action cannot handicap the Receiver’s litigation.

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**IV. CONCLUSION**

For the foregoing reasons, Mar respectfully asks this court to deny the Receiver's Motion to Stay the Mar Action.

Dated: December 3, 2020

Respectfully submitted,

/s/ Donald J. Magilligan

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*Attorneys for Non-Party Robert G. Mar*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2020, I electronically filed the foregoing with the Clerk of the Court by using this Court's *Form for Submitting Documents for Electronic Filing During the National Emergency Declared by President Trump on March 13, 2020*, thereby serving this document on all attorneys of record in the case.

Dated: December 3, 2020

Respectfully submitted,

/s/ Donald J. Magilligan

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Donald J. Magilligan