

**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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**NOTICE OF LIMITED APPEARANCE
OF NON-PARTIES FOX ROTHSCHILD LLP,
DLA PIPER LLP (US) AND PAUL WASSGREN**

Non-Parties Fox Rothschild LLP, DLA Piper LLP (US) and Paul Wassgren (collectively “Movants”) respectfully seek a limited appearance¹ in this action to compel the Receiver to bring his claims relating to Movants’ legal services in the Middle District of Florida and to dismiss his duplicative California state court action.²

LIMITED APPEARANCE

The Receivership Order is an equitable decree that binds persons seeking to prosecute actions involving the Receiver³ or that affect the Receivership Estate. (Doc. 11). Because Movants are affected by the Receiver’s conduct, Movants should be permitted to appear in this action for the limited purpose of moving to compel the Receiver to bring his claims relating to Movants’ legal services in the Middle District of Florida and to dismiss his duplicative California state court action. The relief sought by the Compel Motion will advance the lawful and appropriate

¹ Movants are making a limited appearance in this action solely for the purpose of filing their *Motion to Compel Receiver to Bring Claims Against Movants in this District* (hereinafter, the “Compel Motion”).

² Case No. 20STCV49670; *Burton W. Wiand, as Receiver on behalf of, EquiAlt Fund LLC, et al. v. Paul R. Wassgren, et al.*; in the Superior Court of California, County of Los Angeles.

³ The Court appointed Burton W. Wiand as Receiver (the “Receiver”) over 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; TB Oldest House Est. 1842, LLC; EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. These entities are referred to herein as the “Receivership Estate” or the “Receivership Entities”.

disposition of the Receivership Estate. Movants incorporate the Compel Motion by reference as if fully set forth herein to avoid repetitive recitation of the facts and the procedural history leading to the Compel Motion.

Movants need not formally intervene to bring the Compel Motion because as parties affected by the Receivership Order, Movants have standing to request relief in connection with such order. *See, e.g., United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) (finding that “nonparties who are bound by a court’s equitable decrees have a right to move” the court for relief related to such orders); *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[.]’”). Accordingly, the Court should grant Movants a limited appearance in this action for purposes of bringing and arguing the Compel Motion.

MOVANTS’ RIGHT TO INTERVENE

A. Movants may intervene as a matter of right under Rule 24.

To the extent formal intervention is necessary, Movants satisfy the requirements for intervention as of right under Federal Rule of Civil Procedure 24.

First, the Compel Motion is timely. It is being filed less than 45 days after the Receiver's decision not to voluntarily transfer the case to the Middle District of Florida and less than 45 days after the Receiver's filing of the California state court action. To date, no hearings have occurred in the California state court action. Nor have Movants made an appearance in that case. The Compel Motion is also being filed prior to any hearing in the also-pending California federal court action,⁴ which is identical to the California state court action. Notably, the Receiver did not obtain leave to dismiss his federal action under Federal Rules of Civil Procedure 41 or 66 prior to filing his lawsuit in California state court.

Second, Movants are the parties in interest given the Receiver's mandate to collect assets for purposes of restoring the investors and, at present, Movants' assets are being sought in three lawsuits: the two actions brought by the Receiver and a putative investor class action filed in this District known as the *Gleinn* Action.⁵ *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").

⁴ Case No. 2:20-cv-08849; *Burton W. Wiand, as Receiver on behalf of, EquiAlt Fund LLC, et al. v. Paul R. Wassgren, et al.*; in the United States District Court for the Central District of California.

⁵ Case No. 8:20-cv-01677-MSS-CPT; *Richard Gleinn and Phyllis Gleinn, et al. v. Paul Wassgren, et al.*; in the United States District Court for the Middle District of Florida.

Third, defending lawsuits in multiple jurisdictions, at the same time, and with some identical causes of action necessarily implicates and squanders any insurance proceeds available to cover defense costs or settlement amounts in any one of the cases. For example, the Receiver's federal action and state court action both assert two causes of action identical to those brought by the *Gleinn* Plaintiffs.

As a result, in the event this Court declines Movants' request to enter a limited appearance, Movants have shown themselves entitled to formal mandatory intervention under Rule 24.

B. Alternatively, this Court should grant Movant's request for permissive intervention under Rule 24.

Movants are further entitled to permissive intervention under Rule 24. This action and the California actions share common questions of law and fact that will impact Movants' defenses against the Receiver, 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 perpetrated a Ponzi scheme. For example, Movants have been sued by the Receiver for aiding and abetting EquiAlt's alleged fraud. If there is no fraud, there can be no aiding and abetting liability attributable to Movants.

Finally, public policy favors a liberal construction of allowing intervention under Rule 24. *See, e.g., Arkansas Electric Energy Consumers v. Middle S. 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 the Compel Motion and the relief requested therein.

CONCLUSION

For the foregoing reasons, Movants seek a limited appearance in this action and, alternatively, move for intervention in this action to pursue the relief requested in the Compel Motion, as well as any other or further relief to which Movants may be justly entitled to avoid the undue prejudice referenced in the Compel Motion.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for Wassgren, on behalf of all Movants, conferred by email with counsel for the Securities & Exchange Commission and the Commission takes no position on this relief. Counsel for Fox Rothschild, on behalf of all Movants, conferred with counsel for the Receiver by telephone and the Receiver opposes the relief requested herein.

Dated: February 5, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2021, 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/ William J. Schifino, Jr.
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