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 NONPARTIES' MOTION TO COMPEL RECEIVER TO BRING CLAIMS AGAINST MOVANTS IN THIS DISTRICT

The Court-appointed Receiver in this S.E.C. enforcement action fully opposes the February 5, 2021 "Motion to Compel Receiver to Bring Claims Against Movants in this District" ("Motion"), which was jointly filed by nonparties Paul Wassgren, DLA Piper LLP, and Fox Rothschild LLP (collectively, "the Nonparties").

The two-pronged avenues of relief these Nonparties seek is as unprecedented as it is improper: they want the Court to, in their own words, "direct its appointed Receiver to transfer his claims to the Middle District of Florida and to dismiss his California state court complaint." Motion, p. 6. This Motion cannot be considered, let alone granted, because:

1. The Nonparties - who have not sought or received intervention rights - have no standing or other authority to demand that the Receiver's claims against them must be brought only in this Court. Similarly, the Court should not compel the Receiver to dismiss his action against the Nonparties, which was properly brought and is currently pending in a California Superior Court.

2. The relief these Nonparties seek is specifically prohibited by §21(g) of the Securities Exchange Act of 1934, 15 U.S.C. §78u(g) -- even if the Court overlooks or otherwise bypasses the Nonparties' fatal standing problem.

3. Finally, while this appointing Court has authority over the Receiver, the Federal Anti-Injunction Act, codified at 28 U.S.C. §2283, as well as the doctrine of judicial comity, dictate against dismissal of the California action.

RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

This enforcement action, brought by the Securities and Exchange Commission ("S.E.C."), arises out of an alleged multi-million dollar Ponzi scheme which was national in scope. The Receiver's case against the Nonparties, in contrast, relates to breaches of duties owed to a series of Investment Funds ("the Funds") regarding legal services which were rendered and emanated out of the Defendants' Los Angeles, California law offices.

The S.E.C. sought appointment of this Receiver to act with "full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any property of" a number of entities defined as the Corporate Defendants and the Relief Defendants, and on February 14, 2020, the Court granted the S.E.C.'s request. (Doc. 11)[1]

[1] While the Order was initially under seal, the Court subsequently issued an Order unsealing its contents. The entities over which the Receiver was granted authority include a number of Investment Funds, and as explained in more detail below, the Nonparties' Motion springs from litigation the Receiver has filed in California on behalf of those Funds.

The authority the Court gave the Receiver in that Order was very broad, and the Receiver's powers include taking immediate possession of all "property, assets and estates of every kind … wheresoever located." *Id. at* 2, para. 1. The Order also invested the Receiver with the ability to investigate:

> [A]nd **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, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise misappropriated or transferred money or other proceeds directly or indirectly traceable from investors [in the Investment Funds], their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert of participation with them…

Id. at 3, para. 2.

Finally, the Order provided that the Receiver could employ such counsel "as the Receiver deems necessary" in furtherance of his other powers. *Id*. at 4, para. 5.[2] Based on this authority, granted by this Court, the Receiver instituted a case against the Nonparties in California Superior Court, on behalf of the Funds.

[2] The Receiver subsequently requested the Court's permission to employ the undersigned law firm, which had previously and successfully represented the Receiver in a different Ponzi scheme matter, and the Court granted that request. (Doc. 127)

The Nonparties are an attorney (Wassgren) and the two law firms (DLA Piper and Fox Rothschild) who breached their duties to the Funds. The work performed by Mr. Wassgren emanated from the firm's California offices. Investments in the Funds were marketed and sold by sales agents located in California (and elsewhere), and they impacted a large number of California investors, and others nationwide.

On September 28, 2020, the Receiver, as authorized by this Court, filed an action against the Nonparties in the Federal Court for the Central District of California, predicated entirely on California state law causes of action. Upon further investigation, the Receiver determined that the California Federal Court lacked subject matter jurisdiction over his claims based on United States Supreme Court precedent holding that each member of a limited liability partnership is considered for purposes of determining diversity citizenship, and the Nonparty law firms operate nationally.

The Nonparties filed pleadings and papers in this Court and in California Federal District Court arguing that the California Federal Court lacks subject matter jurisdiction over the Receiver's action. The Receiver subsequently filed his California state law claims against these same Nonparties in the Los Angeles

Division of the California Superior Court, where jurisdiction is proper. The Receiver has also sought dismissal of the Federal Court action, based on lack of jurisdiction. The Nonparties, for their part, have taken the following actions in the California Federal Court: 1) filed Answers and Affirmative Defenses, separately raising the defense of lack of subject matter jurisdiction; 2) Wassgren and DLA Piper filed a motion seeking mandatory arbitration; 3) jointly opposed the Receiver's request that the California Federal Court action be dismissed for lack of jurisdiction; and 4) jointly moved for a transfer of that California Federal Court action to this Court. Appropriate Oppositions and/or Replies to these issues have all been filed, or are being filed, and a hearing is scheduled in the California Federal Case on February 26, 2021.

The Nonparties have not filed any pleading or papers in any Court contending that the California Superior Court does not have jurisdiction over the Receiver's claims. They simply want to control the Receiver's right to represent the Plaintiff Funds, by limiting the forum. This is contrary to the appointing Order, contrary to the longstanding rule that allows the plaintiff to select his forum, and it would be contrary to the interests of justice. The Court should not allow it.

The Nonparties' Motion is, in any event, untimely; it postdates the filing of the Receiver's first California filing against them by more than four months. It also attempts to make the same argument(s) in both Courts: that 1) the Receiver's dispute against the Nonparties should only be heard in Florida, not California (despite the fact that California is the natural center of gravity for the Receiver's malpractice-based claims against a California attorney who operated out of two California law offices),[3] and 2) the Receiver cannot maintain his California Superior Court case.

MEMORANDUM IN SUPPORT OF MOTION

The Nonparties have no authority to support the relief they seek. The Court must reject both their attempt to compel the Receiver to bring his California law claims in this Court, and their separate request that would require the Receiver to abandon his California Superior Court action.

I. THE NONINTERVENING NONPARTIES HAVE NO RIGHT TO SEEK RELIEF.

[3] Wassgren has recently moved to Florida, where he is not a licensed attorney, after leaving the firm of DLA Piper, whether voluntarily or involuntarily. His change of address does not change the fact that the legal work complained of emanated from California.

Judicial relief requires standing, and "federal courts are under an independent obligation to examine their own jurisdiction and standing 'is perhaps the most important of [the jurisdictional] doctrines.'" *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), citing *Allen v. Wright*, 468 U.S. 737, 750 (1984). Furthermore, the burden of justifying standing is on the party seeking relief:

> It is a long-settled principle that standing cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record. And it is the burden of the party who seeks the exercise of jurisdiction in his favor, clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. 493 U.S. at 231 (citations omitted).

These Nonparties have not demonstrated why they can require the Court to consider their Motion without proper intervention. Instead of demonstrating standing, the Nonparties attempt to bypass this issue by merely asserting in footnote 2 that, "as parties affected by the Receivership Order, they have standing to request relief in connection with such Orders." The two cases the Nonparties cite are factually distinguishable and do not support their argument.

Their first citation is to an unreported 2007 Order (which has no precedential authority), allowing a third party to challenge an injunction which affected that third party. *FTC v. Global Mktg. Grp.*, M.D. Fla. Case No. 06-cv-2272. A subsequent reported decision in *Global Mktg.* shows that it is not factually analogous; there,

the issue was an alleged violation of telemarketing sales rules. 594 F.Supp.2d 1281 (M.D. Fla. 2008). In any event, the nonreported *Global Mktg*. Order is of no binding or precedential value; a "district court is not bound by another district court's decision, or even an opinion by another judge of the same district court…." *Fox v. Acadia State Bank*, 937 F.2d 1566, 1570 (11th Cir. 1991).

The Nonparties' only other footnote citation regarding their supposed "standing" is from another circuit. Again, this has no precedential value: "Under the established federal legal system the decisions of one circuit are not binding on other circuits." *Minor v. Dugger*, 864 F.2d 124, 126 (11th Cir. 1989), citing 1B J. Moore, Federal Practice ¶ 04.02[1] (1980) and *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981). Furthermore, that case, *U.S. v. Kirschenbaum*, 156 F.3d 784 (7th Cir. 1998), is factually distinguishable. *Kirschenbaum* involved a nonparty's ability to challenge a binding equitable trial decree for the first time on appeal. Even the nonbinding 7th Circuit opinion recognized that allowing that particular aggrieved nonparty to challenge a binding decree on appeal was still in derogation of the usual standing rules, finding that: "Generally, non-parties lack standing to bring appeals." *Id*. at 794.

The Nonparties here have failed to explain why they waited for months to file their Motion, and why they have not even attempted to seek (let alone obtain) intervention rights, which are provided for in Fed.R.Civ.P. 24(a)(2), and available to a person who "claims an interest relating to the property or transaction that is the subject of the action and who is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest…" These Nonparties have no interest in the underlying S.E.C. action, nor do they have any interest in the Receivership. That the Nonparties claim an interest in other litigation pending in other courts shows their Motion here is ill-founded.

What the Nonparties are really seeking is a rehearing of, and geographic limitation on, the Receiver's ability to pursue litigation, as allowed in the February 2020 appointment Order and this Court's subsequent Order (Dkt. 127) authorizing the Receiver's retention of Johnson Pope to investigate and pursue claims against Wassgren and the law firms. The Court placed no limitations upon the Receiver or his counsel's choice of venue or court. The Nonparties' effort to undermine those actions is not only untimely, but improper. Since the Nonparties do not have standing, and because they have neither sought nor received any intervention rights, the Court should not even consider the merits of their Motion. Instead, the

Court should strike the Nonparties' Motion outright, which the Court is entitled to do under Fed.R.Civ.P. 12(f)(1).

II. SECTION 21(g) OF THE EXCHANGE ACT SPECIFICALLY PROHIBITS THE RELIEF SOUGHT BY THE NONPARTIES.

Section 21 of the Exchange Act of 1934, 15 U.S.C. §78u, authorized the S.E.C. to investigate and undertake the enforcement action currently before this Court. Subsection (g) of that section provides strict limitations on combining S.E.C. actions with other actions. That provision states, in full:

> Notwithstanding the provisions of section1407(a) of title 28, or any other provision of law, **no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission**. 15 U.S.C. §78u(g) (emphasis added).

Although the language of the statute does not expressly mention intervention, some federal courts have held that it operates as an "impenetrable wall" to litigants who attempt to join an S.E.C. action without the agency's statutorily-required consent. *See e.g.*, S.E.C. v. Wozniak, 1993 WL 34702, *1 (N.D. Ill. 1993).

The relief requested in the Nonparties' Motion cannot be granted, even though it is riddled with assertions that the Receiver's institution of California legal efforts against them are in an "inappropriate and inconvenient forum that

will multiply costs and coordination problems" (Motion, p. 3); that they "will end up defending against the same claims and litigating the same issues" at "opposite ends of the country" (Motion, p. 5); that the Receiver is "forum-shopping" (Id.); that the choice of California was "a tactic to avoid Eleventh Circuit and Florida law" (Motion, p. 12); and that the litigation in California will be "complicated, expensive, wasteful and unduly prejudicial to Movants." (Motion, p. 16) These assertions are, first of all, not true, as explained in Section III below. The Nonparties' arguments are, in any event, irrelevant to application of the statute cited above.

The Receiver has the legal and ethical duty to maximize recovery for the entities for which he was appointed. The Receiver and his counsel thus chose California as their forum, and they were fully entitled to do this both under principals of jurisdiction and venue, and under the Court's appointing Orders. On the other hand, the Nonparties seek to avoid or minimize recovery by making the selection of the litigation forum, but this selection is a right belonging to the Receiver.

It is undisputed that California is where the Nonparties engaged in the wrongdoing complained of, and the Nonparties have not argued that the

California Superior Court does not have jurisdiction over them. The fact that California law might be more favorable to the Receiver is consistent with the Receiver's duty to maximize recovery for the Receivership, and does not justify the Nonparties' improper attempt to enlist the Court as a vehicle to advance their defensive strategies. In fact, the Supreme Court has already considered, and rejected, such an approach:

> [P]laintiffs [may] retain whatever advantages may flow from the state laws of the forum they have initially selected. **There is nothing [in 28 U.S.C. §1404, the venue statute] to justify its use by defendants to defeat the advantages accruing to plaintiff who have chosen a forum which, although it was inconvenient, was a proper venue.** *Van Dusen v. Barrack*, 376 U.S. 812, 818 (1964) (emphasis added).

In any event, the S.E.C.'s consent to intervention has not been requested by the Nonparties, nor has it been granted. The Court must apply the statute as written; the Receiver's California law-based claims, which arise out of conduct in California, cannot be consolidated with the action before this Court, even if there may be some overlapping questions of fact.

III. THE COURT SHOULD BE GUIDED BY THE ANTI-INJUNCTION ACT, 28 U.S.C. §2283, AND NOT DIRECT THE RECEIVER TO DISMISS THE CALIFORNIA SUPERIOR COURT ACTION.

1. The Court Should Not Disturb the Receiver's California Legal Efforts Against These Nonparties.

Although the Federal "All Writs Act" (28 U.S.C. §1651) allows Federal Courts to "issues all writs necessary or appropriate in aid of their respective jurisdictions," a separate statute, the Federal Anti-Injunction Act, codified at 28 U.S.C. §2283, serves as a check on the scope of the All Writs Act, and limits a Court's ability to enjoin state court proceedings. *See* Wes, Joshua, "The Anti-Injunction and All Writs Act in Complex Litigation", 373 Loyola L. Rev. 1603, 1606 (2004).

In cases which do not involve contractual choice of forum clauses, a plaintiff's choice of a forum is generally to be taken into account and respected, a doctrine known as the "plaintiff's venue privilege." *Atlantic Marine Const. Co. v. U.S. Dist. Court for the Western Dist. of Texas*, 571 U.S. 49, 62 (2013). The Nonparties' extraordinary request that the Court direct the Receiver "to dismiss his California state court complaint" (Motion, p. 6) would have the Court ignore its own Orders appointing the Receiver and authorizing retention of counsel. The Court should resist the Nonparties' request that it disregard principles of judicial comity and the Receiver's right to choose the forum. Finally, as the Supreme Court has explained, a plaintiff is entitled to retain whatever advantages that may flow from the laws of the selected forum. The Nonparties' relief should not be granted because doing

so might leave the entities represented by the Receiver without any remedy against these wrongdoers.

The Court's jurisdiction over the S.E.C. enforcement action is not at risk because the Receiver has sued the Nonparties in California, where jurisdiction is proper. No matters relating to Wassgren, DLA Piper, or Fox Rothschild are pending in this S.E.C. action. The Court's own jurisdiction is in no way impeded by allowing the Receiver and his selected counsel to pursue claims emanating in California in a California Superior Court, where they will rightly be interpreted by a California judge, under California law. The Court, in the interests of justice, should allow the Receiver to continue his California efforts.

2. The Court's Appointing Order Authorized The Receiver To File Actions Outside The Middle District of Florida; California Is The Proper Forum To Address Wrongdoing That Occurred In California.

The Court's Order appointing the Receiver did not in way impose geographic limitations upon the Receiver. On the contrary, that Order specifically directed the Receiver to take possession of all property and assets "wheresoever located." Doc. 11 at 2, para. 1. Federal law on receivership is entirely consistent with the Receiver's ability to act nationwide: 28 U.S.C. §754 specifically allows a receiver to sue in any district; 28 U.S.C. §1692 provides for national service of

process for actions instituted by a Receiver. Nothing in the appointing Order, or the subsequent Order allowing the Receiver to retain the Johnson Pope firm as counsel, prevents the Receiver from instituting legal actions in states other than Florida. Certainly, nothing would require the Receiver to file suit against the Nonparties only in the Middle District of Florida, as the Nonparties suggest. Any such restriction would be nonsensical, because it would lead to a myriad of complications regarding defendants who have no contact with Florida, and who cannot be sued here.

The fact is, Paul Wassgren was operating in California out of DLA Piper's and Fox Rothschild's California offices. Multiple witnesses and documents will be found in California, not Florida. One of "top ten" salespeople for the fraudulent Investment Funds were located in California (and none of them were located in Florida). All of these facts were set forth in a sworn Declaration executed by the Receiver and filed in California, attached here as **Exhibit 1**. Although the Nonparties filed multiple exhibits as part of their Motion, the Nonparties never brought the Receiver's own Declaration to the Court's attention, so the Receiver does so now.

While the Nonparties accuse the Receiver of "forum-shopping" (Motion, p. 5), in reality it is the Nonparties who wish to shop for a forum far from the place of wrongdoing, simply because the Nonparties believe that this jurisdiction might provide them with more favorable defenses (Motion at 12-13). Wassgren, DLA Piper, and Fox Rothschild should defend their alleged legal malpractice conduct in California, because it took place in California (not Florida), and it is appropriate that California law be applied to the Receiver's California state common law causes of action.

3. <u>The Court Should Refrain From Interfering With The Receiver's California Lawsuit Under The Doctrine Of Judicial Comity</u>.

Judicial comity is defined in BLACK'S LAW DICTIONARY (5th Ed. 1979) as:

> The principal in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect.

The doctrine of comity, while not a binding rule, rather instructs "that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." *Rhines v. Weber*, 544 U.S. 269, 274 (2005), quoting *Rose v. Lundy*, 455 U.S. 509, 518 (1982).

The doctrine is well established. In *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100, 111 (1981), the Supreme Court explained that the notion of comity is founded on:

> [A] proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.... Id. at 111-112, quoting Younger v. Harris, 401 U.S. 37, 44-45 (1971).

This Court should apply the doctrine of judicial comity and refrain from interfering with the pending litigation in California. The Nonparties can make all of their defensive arguments in that California Court, which is the proper forum.

4. The Nonparties' Arguments Relating To A Class Action Which Was Not Filed By The Receiver, And To The Wassgren/DLA PIPER Arbitration Defense, Are Irrelevant.

The Nonparties discuss at length two issues not relevant to their requested relief: the existence of an investor class action called *Gleinn* (Motion at p. 2, 8-10, 20), and the Wassgren/DLA Piper argument that arbitration of claims against them is required (Motion at 10-11, 13).

First, the Receiver is not a party in *Gleinn*, he is not representing the *Gleinn* plaintiffs, and he is not directing the *Gleinn* counsels' litigation strategy. In any event, the *Gleinn* plaintiffs certainly could have elected to sue elsewhere, including

California, where numerous investors are located, and where numerous fraudulent promotions and sales took place, all as set forth in the Receiver's Declaration. Second, this is not the appropriate forum to litigate the Wassgren/DLA Piper arbitration arguments: those Nonparties have filed an arbitration-related Counterclaim in California, where the issue has been fully briefed. The Court should not be distracted by those issues here.

CONCLUSION

The Court should, as a threshold matter, find that these non-intervening Nonmovants have no standing to file their Motion in the first place, and *sua sponte* strike their Motion from the Record as authorized by Fed.R.Civ.P. 12(f).

In the alternative, should the Court even consider the Motion, it should: 1) find that the Nonparties have presented no basis for enjoining the Receiver's prosecution of the California Superior Court lawsuit; 2) apply §21(g) of the Exchange Act of 1934 (which prohibits combining the Receiver's separate legal efforts with this enforcement action), and 3) deny the Nonparties' request that the Receiver dismiss his California Superior Court action.

CERTIFICATE OF SERVICE

I hereby certify that I have 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: February 19, 2021

Respectfully submitted,

/s/ Katherine C. Donlon
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EXHIBIT 1

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-09949

DECLARATION OF BURTON W. WIAND, RECEIVER

I, Burton W. Wiand, pursuant to 28 U.S.C. §1746, provide the following Declaration:

1. My name is Burton W. Wiand. I am an adult over the age of twenty-one, with knowledge of the facts set forth in this Declaration.

2. I am the Court-appointed Receiver in an enforcement action commenced by the Securities and Exchange Commission against Brian Davison, Barry M. Rybicki, EquiAlt, LLC, et al, assigned Case No. 8:20-cv-00325 (M.D. Fla.).

3. The Federal Court Order appointing me as Receiver authorizes me to institute such actions and legal proceedings as I deem necessary, without any geographic limitation, regarding the various investment funds and other entities related in some way to an alleged Ponzi scheme perpetrated by Mr. Davison et al.

4. Pursuant to that Federal Court authority, I authorized the filing of the above-captioned action, and when it became apparent that this Court lacked jurisdiction, I then authorized the filing of a separate similar action which is now pending in California Superior Court. That

California Superior Court case, which alleges exclusively California state law claims, was filed against these same Defendants – Paul Wassgren, Fox Rothschild LLP, and DLA Piper LLP -- on December 30, 2020.

5. In both this lawsuit and the pending California Superior Court lawsuit, I, on behalf of the Plaintiff Investment Funds named in the caption, allege that Defendant Wassgren, while employed at Fox Rothschild and then DLA Piper, facilitated the operation of a Ponzi scheme which damaged the Plaintiffs.

6. The Defendants, early in these proceedings, took the position that this Court lacked jurisdiction over this case. For the reasons explained above, when it became apparent to me and my counsel that the Court did in fact lack jurisdiction over this cause, I authorized the filing of a Motion to Permit Dismissal Without Prejudice, which has been filed with this Court and which is now pending as Dkt. 30.

7. I authorized the filing of that Motion to Permit Dismissal in order to eliminate or streamline unnecessary litigation, which would allow me and my counsel to focus on pursuing the pending California state law claims in California Superior Court.

8. I have reviewed the Defendants' January 12, 2021 Joint Motion to Transfer for Lack of Subject Matter Jurisdiction, and related Memorandum of Law ("Motion"), which makes arguments and assertions that the Court should transfer this action to the Middle District of Florida.

9. Based on documents furnished to me by the Defendant law firms, and based on an investigation by myself and my staff and counsel, which was conducted at my request and under my supervision, and based on a review of the Defendants' Motion, it appears that the Defendants' arguments relating to a requested transfer do not take into account the following facts:

a) The legal work that is the basis of this litigation was performed by Defendant Paul Wassgren from the California offices of Defendants DLA Piper and Fox Rothschild.

b) Mr. Wassgren did not act unilaterally: he had the assistance of other personnel and staff at those California law offices.

c) There were numerous investors in the Plaintiff investor funds geographically disbursed throughout the United States, but many of them were located in, or were adjacent to, the State of California. In terms of numbers: California had 488 investors. Arizona also had a large number of investors, and the third largest State, in terms of investors, was Colorado, with 86.

d) Florida, in contrast, had only a handful of investors: 32. Florida, therefore, represented approximately only 1/15 the number of investors, compared to California.

e) Furthermore, those investments were sold by a group of selling agents, and the "top ten" salespersons of the investment funds were located in the following jurisdictions: California; Nevada; Wyoming; and Arizona.

f) <u>None</u> of the top ten salespersons of the investment funds were located in Florida. This is not surprising, given the small number of Florida investors versus the hundreds of investors in California.

g) Material witnesses including investors, salespeople, and legal staff are expected to be in and about the State of California, as are relevant documents and material evidence, based in part on the number of California investors and also on the

location of the Defendants' California offices, from which the legal work that forms the basis of this lawsuit originated.

10. Further your Declarant sayeth naught.

I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Executed on this 22nd day of January 2021.

Burton W. Wiand, as Receiver

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