

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CASE NO. 8:20-CV-325-T-35AEP

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC;
et al.;

Relief Defendants.

**RECEIVER'S NOTICE OF FILING
NON-PARTIES' JOINT NOTICE OF MOTION AND MOTION TO STAY
PROCEEDINGS**

Comes now, Burton W. Wiand as Receiver (the “**Receiver**”), by and through his undersigned counsel, and provides notice to this Court of a Joint Notice of Motion and Motion to Stay Proceedings filed by non-parties Paul Wassgren, Fox Rothschild LLP and DLA Piper LLP (US)(“Law Firm Movants”)

in the California State Court action filed by the Receiver against them. *See* Exhibit 1. This filing by the Law Firm Movants is related to their Motion to Compel [Doc. 263] which is pending before the Court.

Respectfully submitted,

s/Katherine C. Donlon

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*Attorneys for the Receiver Burton W.
Wiand*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

s/Katherine C. Donlon
Katherine C. Donlon, FBN 0066941

EXHIBIT 1

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[Additional Counsel on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

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

Plaintiffs,

v.

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

Defendants.

Case No. 20STCV49670

Assigned to the Hon. John P. Doyle (Dept. 58)

**DEFENDANTS' JOINT NOTICE OF
 MOTION AND MOTION TO STAY
 PROCEEDINGS AND SUPPORTING
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

M d r d r
 d M r r r

Date: April 8, 2021
 Time: 9:30 AM
 Dept: 58

Action Filed: Dec. 30, 2020
 Trial Date: Not Set

RESERVATION ID: 644808523279

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27 Attorneys for Defendant
28 PAUL R. WASSGREN

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2021, at 9:30 a.m., or as soon as the matter may be heard by the Honorable John P. Doyle in Department 58 of the Los Angeles Superior Court, located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California, 90012, Defendants Fox Rothschild LLP, DLA Piper LLP (US), and Paul Wassgren move for an order to stay proceedings.

Defendants' Joint Motion to Stay is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the Declaration and Michael P. McNamara in Support of Request for Judicial Notice, with associated exhibits, and such other information or argument as may be presented at or before the hearing on this Motion to Stay.

Dated: March 8, 2021

JENNER & BLOCK LLP

By: 

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Wesley M. Griffith

Attorneys for Defendant
FOX ROTHSCHILD LLP

KLINEDINST PC

By: 

Heather L. Rosing
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By: 
Edward W. Swanson
Britt Evangelist

Attorneys for Defendant
PAUL R. WASSGREN

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STAY**

2 Defendants Fox Rothschild LLP (“Fox”), DLA Piper LLP (US) (“DLA”), and Paul Wassgren
3 (collectively, “Defendants”) move the Court to stay this action until the U.S. District Court for the Middle
4 District of Florida (the court that appointed Mr. Burt Wiand as Receiver) rules on their motion to compel
5 Mr. Wiand to file his lawsuit in Florida.¹

6 **INTRODUCTION**

7 In February 2020, the federal court in the Middle District of Florida unsealed an emergency
8 enforcement action filed by the Securities and Exchange Commission against EquiAlt LLC (“EquiAlt”),
9 a Florida-based private real estate firm. That action is styled Case No. 8:20-cv-325-
10 T-35AEP. When the court in the Middle District of Florida unsealed the SEC’s lawsuit, it also entered an
11 order (“Appointment Order”) appointing Mr. Wiand (“Receiver”) as Receiver for the various EquiAlt
12 entities.²

13 In June 2020, the Receiver successfully moved the court in the Middle District of Florida for
14 permission to obtain a Florida law firm—Johnson Pope Bokor Ruppel & Burns, LLP—to help to pursue
15 claims against law firms that provided services to EquiAlt. To date, Johnson Pope is the only firm the
16 Middle District has approved to pursue claims against Defendants.

17 However, rather than file his claims in Florida—the center of gravity of this dispute³—the
18 Receiver sued Defendants in federal court the Central District of California. He did so without obtaining
19 the Middle District’s permission to retain California counsel, and he compounded this legal error by filing
20 in a court that lacked subject matter jurisdiction over his claims. Conceding his mistake, the Receiver filed
21 this action and only then asked the court in the Central District of California to dismiss his case. The
22

23 ¹ In advance of filing this motion, Defendants met and conferred with Plaintiffs, but the parties were
24 unable to reach a resolution.

25 ² The Middle District’s Appointment Order is attached as **Exhibit A** to the currently filed Declaration of
26 Michael P. McNamara in Support of Request for Judicial Notice. Subsequent exhibits cited herein are to
the exhibits to the McNamara Declaration, unless otherwise indicated.

27 ³ Not only is the SEC action pending in the Middle District, but also a putative class action involving
28 similar claims. r , No. 8:20-cv-01677 (M.D. Fla.). Judge Mary S. Scriven is assigned to both cases.

Receiver still has not obtained approval of the court in the Middle District to retain California counsel.

To prevent the Receiver from continuing to inject more complexity into an already complex case, Defendants have moved the court in the Middle District of Florida to compel the Receiver to bring his claims in their natural forum—federal court in Florida.⁴

The court in the Middle District of Florida has not yet ruled on Defendants’ motion. Until it does so, this Court should stay this action for three reasons: (i) a stay ensures that the Court’s and the parties’ resources are not wasted litigating a matter that the Receiver may be forced to dismiss; (ii) the court in the Middle District of Florida has original jurisdiction over the Receiver’s claims, and it is appropriate for this Court to await its ruling to avoid any potential conflicts with that court, jurisdictional or otherwise; and (iii) the Receiver is not prejudiced by a stay.

Alternatively, Defendants request that the Court stay this action for 120 days and then hold a status conference to evaluate whether to continue the stay.

ARGUMENT

Trial courts have the inherent power to provide for the orderly administration of justice. *Ortiz*, 53 Cal. 3d 257, 266 (1991). This inherent power includes the discretion to stay an action to promote judicial efficiency and the interests of justice. *Ortiz*, 53 Cal. App. 4th 1484, 1489 (1995) (“Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency.”); *Ortiz*, 159 Cal. App. 3d 323, 329 (1984) (same). “[I]n considering a stay the trial court can take into account any consideration which bears on the relative suitability or convenience of the two forums.” *Ortiz*, 58 Cal. App. 4th 408, 412 (1997).

The Court should exercise its discretionary power and stay these proceedings for at least three reasons.

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⁴ Defendants’ motion is attached as **Exhibit B**, with additional filings related to the motion attached as **Exhibits C-J**.

1 r , allowing this action to proceed before the court in the Middle District of Florida has ruled
 2 on Defendants' motion imposes unnecessary costs on all parties, including the Receivership Estate.⁵
 3 Should the court in the Middle District of Florida grant Defendants' motion, the parties will need to begin
 4 the case anew in Florida. Any costs the parties expend in litigating this action would be for naught, along
 5 with the Court's own time and effort.

6 Neither the Court nor the parties (much less the Receivership Estate) benefit from this unnecessary
 7 waste of resources. r , 848 F.3d 1339, 1344 (11th Cir. 2017) (observing
 8 that "a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and
 9 orderly administration of estates for the benefit of creditors"). Imposing a stay promotes judicial efficiency
 10 and serves the interests of justice.

11 d, the court in the Middle District of Florida is supervising the Receiver, and this Court
 12 should permit that court the time it needs to determine whether the Receiver's actions are appropriate
 13 before allowing this case to proceed. This case is ancillary to the SEC action over which the court in the
 14 Middle District of Florida has original jurisdiction. d r , 657 F.2d 816, 822
 15 (6th Cir. 1981) ("[T]he initial suit which results in the appointment of the receiver is the primary action
 16 and that any suit which the receiver thereafter brings . . . to execute his duties is ancillary to the main
 17 suit."); r No. 6:07-cv-1670-ORL31DAB, 2007 WL 4482241, at *2 n.6 (M.D. Fla. Dec.
 18 19, 2007) (same). "As such, the district court has ancillary subject matter jurisdiction of every such suit
 19 irrespective of diversity, amount in controversy or any other factor which would normally determine
 20 jurisdiction." , 657 F.2d at 822 (citation omitted); , 622 F.2d 1363, 1369 (9th Cir.
 21 1980) ("[T]he [receivership] court may issue blanket stays against litigation in other courts by parties to
 22 the securities fraud action. . . ."). This jurisdictional grant gives the court in the Middle District of Florida
 23 plenary power to compel the Receiver to pursue its claims in Florida. d Case No. 8:06-

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 25
 26 ⁵ In their motion to compel, Defendants argue that the Receiver's decision to bring suit against Defendants
 27 in California will result in the incurring of unnecessary "significant costs or expenses to the receivership."
 28 Defendants' motion explains that litigating this suit in California while related actions remain pending in
 the Middle District risks inconsistent rulings and wastes the parties' resources through, for example, the
 hiring of local counsel and the need to propound and answer duplicative discovery.

1 cv-706-T-27MSS, 2007 WL 9723817, at *3 (M.D. Fla. Apr. 12, 2007) (The powers conveyed to receivers
 2 stem from “the need to recognize one locale—the locale of the [r]eceivership—as the proper venue to
 3 pursue claims ancillary to the [r]eceivership”) (collecting cases); *Id.*, 854 F. Supp. 113, 115–
 4 16 (E.D.N.Y. 1994) (“The court that appoints the receiver determines the scope of that receiver’s authority
 5 and generally, a receiver may not sue or be sued without the express permission of the court that appointed
 6 him.”) (quoting *Id.*, 829 F. Supp. 82, 88 (S.D.N.Y. 1993)).

7 Here, the Appointment Order issued by the court in the Middle District of Florida imposes a
 8 continuing obligation on the Receiver to seek that court’s consent before he undertakes litigation that may
 9 impose significant costs on the Receivership Estate:

10 The Receiver shall advise and seek the consent of the Court with respect to the
 11 institution of claims relating to . . . professionals . . . or other litigation of a complex
 12 and significant nature that may involve commitment of significant assets or the
 incurrence of significant costs or expenses to the receivership.

13 *Id.* ¶ 3. Among other things, the Receiver has exceeded the authority of his appointment by bringing this
 14 action. The Appointment Order required the Receiver to obtain prior authorization from that court before
 15 securing counsel to pursue this action. Appointment Order ¶ 31. The Receiver failed to obtain such
 16 authorization before retaining California counsel. Thus, before this case proceeds, this Court should first
 17 allow the court in the Middle District of Florida to evaluate the Receiver’s actions and decide whether the
 18 Receiver may continue to pursue his claims in this Court. *Id.*
 19 , 585 F.3d 1211, 1217 (9th Cir. 2009) (“It is for th[e receivership] court . . . to decide whether it
 20 will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere.”)
 21 (citation and internal quotation marks omitted).

22 A stay is proper until the court in the Middle District of Florida resolves these issues. *Id.*
 23 , 219 Cal. App. 4th 1408, 1424 (2013) (“In exercising its discretion the court
 24 should consider the importance of discouraging multiple litigation designed solely to harass an adverse
 25 party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider
 26 whether the rights of the parties can best be determined by the court of the other jurisdiction because of
 27 the nature of the subject matter.”) (internal quotation marks and citation omitted). Indeed, in dismissing
 28

Receiver's federal case, the federal court in the Central District of California agreed that the appointing federal court in Florida was the appropriate forum to resolve these issues. ^d ^r, Case No. 2:20-cv-8849-AB-PVC, Dkt. 54 (Feb. 24, 2021) ("Defendants contend that litigating this case in Superior Court would overburden them or thwart judicial economy, but such arguments are better made to the appointing court in the context of the SEC Enforcement Action.").⁶

rd, the Receiver is not prejudiced by a stay. This case is in its earliest stages. The parties have exchanged no discovery. No dispositive motions are pending. Nor has the Case Management Conference occurred and there is still a question of whether this case should be designated "complex" and transferred to the complex division. If the court in the Middle District of Florida court denies Defendants' motion, the Receiver may proceed with his claims here without the cloud of uncertainty arising from unresolved legal disputes in related litigation 3,000 miles away.

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⁶ The Central District of California's dismissal order is attached as **Exhibit K**.

1 For these reasons, the Court should grant Defendants' Motion and stay this case until the Middle
2 District of Florida decides whether the Receiver must bring his claims in a different forum.

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4
5 Dated: March 8, 2021

JENNER & BLOCK LLP

6
7 By: 

Michael P. McNamara
Wesley M. Griffith

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9 Attorneys for Defendant
FOX ROTHSCHILD LLP

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11 KLINEDINST PC

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13 By: 

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22 SWANSON & MCNAMARA LLP

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24 By: 

Edward W. Swanson
Britt Evangelist

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26 Attorneys for Defendant
PAUL R. WASSGREN

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On March 8, 2021, I served the following documents in the manner described below:

**DEFENDANTS' JOINT NOTICE OF MOTION AND MOTION TO STAY
PROCEEDINGS AND SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES**

- ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Jenner & Block LLP's electronic mail system from COropeza@jenner.com to the email addresses set forth below.
- ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Jenner & Block LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by UPS for overnight delivery.

On the following part(ies) in this action:

KLINEDINST PC Heather L. Rosing Daniel S. Agle 501 West Broadway, Suite 600 San Diego, California 92101 Email: hrosing@klinedinstlaw.com dagle@klinedinstlaw.com WILLIAMS & CONNOLLY LLP David M. Horniak 725 12th St., NW Washington, DC 20005 Email: dhorniak@wc.com	Attorneys for Defendant DLA PIPER LLP (US)
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JOHNSON POPE BOKOR RUPPEL & BURNS, LLP Guy M. Burns Scott Ilgenfritz 401 E. Jackson St., Suite 3100 Tampa, FL 33602 Email: Guyb@ipfirm.com ScottI@ipfirm.com	Attorneys for Plaintiffs BURTON W. WIAND, as Receiver EQUALT FUND, LLC; EQUALT FUND II, LLC; EQUALT FUND III, LLC; EA SIP, LLC; EQUALT QUALIFIED OPPORTUNITY ZONE FUND, LP; EQUALT SECURED INCOME PORTFOLIO REIT, INC.; and their Investors

1 DIAMOND MCCARTHY LLP
2 Kathy Bazoian Phelps
3 1999 Avenue of the Stars, Suite 1100
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5 Email: kphelps@diamondmccarthy.com

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct. Executed on March 8, 2021, at, Covina, CA 91724:

8
9 /s/ Christal Oropeza
10 Christal Oropeza
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Make a Reservation

BURTON W. WIAND, et al. vs PAUL R. WASSGREN, et al.

Case Number: 20STCV49670 Case Type: Civil Unlimited Category: Other Commercial/Business Tort (not fraud/breach of contract)

Date Filed: 2020-12-30 Location: Stanley Mosk Courthouse - Department 58

Reservation

Case Name: BURTON W. WIAND, et al. vs PAUL R. WASSGREN, et al.	Case Number: 20STCV49670
Type: Motion for Stay of Proceedings	Status: RESERVED
Filing Party: Fox Rothschild LLP (Defendant)	Location: Stanley Mosk Courthouse - Department 58
Date/Time: 04/08/2021 9:30 AM	Number of Motions: 1
Reservation ID: 644808523279	Confirmation Code: CR-AJPFBSXCFRCPT2LDM

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment

Amount: \$446.96	Type: Visa
Account Number: XXXX7100	Authorization: 090511

Print Receipt

[Reserve Another Hearing](#)