

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

CIVIL ACTION NO. 8:20-CV-325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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 WATRS TI, LLC
BNAZ, LLC
BR SUPPORT SERVERCES, 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

Relief Defendants

**NOTICE OF FILING INVESTOR PLAINTIFFS' MOTION TO
TRANSFER PURSUANT TO LOCAL RULE 1.04(b)**

Investor Plaintiffs hereby give notice of filing the Motion to Transfer Pursuant to Local Rule 1.04(b) attached as Exhibit 1.

Dated: April 27, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed on April 27, 2022, with the Court via CM/ECF system, which will send notification of such filing to all attorneys of record.

By: /s/ Adam M. Moskowitz

ADAM M. MOSKOWITZ

Florida Bar No. 984280

Exhibit 1

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

MARCIA O'NEAL and DAVID SIU, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

JOSEPH FINANCIAL, INC., a California
corporation; JOSEPH FINANCIAL
INVESTMENT ADVISORS, LLC, a California
limited liability company; and ROBERT JOSEPH
ARMIJO, a California individual,

Defendants.

Case No. 8:22-cv-00939-CEH-JSS

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-T-35AEP

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.

**INVESTOR PLAINTIFFS' MOTION TO TRANSFER
PURSUANT TO LOCAL RULE 1.04(b)**

Plaintiffs Marcia O'Neal and David Siu (the "Investor Plaintiffs") respectfully request that this class action lawsuit brought on behalf of all investors in certain funds sponsored by EquiAlt LLC ("EquiAlt") be transferred pursuant to Local Rule 1.04(b) to the Hon. Mary S. Scriven, who is presiding over a Securities and Exchange Commission ("SEC") enforcement action and receivership established in *Securities and Exchange Commission v. Brian Davison et al.*, No. 8:20-cv-00325-T-35AEP (M.D. Fla.) (the "SEC Action").

INTRODUCTION

There are currently two related cases in this district arising from the Ponzi scheme allegedly orchestrated by the former managers of EquiAlt and the financial collapse of four investment funds (the "EquiAlt Funds") previously sponsored by EquiAlt: (1) the SEC Action; and (2) this action (the "Armijo Action").

A. The SEC Action

The SEC Action was commenced in this Court on February 11, 2020 by SEC against EquiAlt and Defendants Brian Davison and Barry M. Rybicki alleging that they "have conducted a Ponzi scheme raising more than \$170 million from over 1,100 investors nationwide, many of them elderly through fraudulent unregistered securities offerings." [SEC Compl., ¶ 1.] The SEC

Action asserts claims against the Defendants under the Federal Securities Act for unlawfully selling unregistered securities and for committing securities fraud. *See* 15 U.S.C. §§ 77e(a) & (c) and §§ 77q(a)(1), (2) & (3). The SEC also asserts claims against the Defendants for violating the anti-fraud provisions of the Exchange Act and Rule 10b-5 promulgated thereunder, control person liability and aiding and abetting the foregoing securities laws. *See* 15 U.S.C. §78j(b) and 17 C.F.R. § 240.10b-5(a), (b) & (c).

The Armijo Defendants voluntarily agreed to submit to this Court’s jurisdiction through the submission of a “Proof of Claim” in the SEC Action (“the Proof of Claim”), signed by Robert Armijo, which states:

**IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING
THIS FORM**

Any person or entity submitting this Proof of Claim Form submits to the exclusive jurisdiction of the above-captioned Court for all purposes, including, without limitation, as to any claims, objections, defenses, or counterclaims that could be or have been asserted by the Receiver against such Claimant or the holder of such claim in connection with this Receivership, including, those arising out of (1) any dealing or business transacted by or with any Receivership Entity and/or (2) any dealing or business transacted that relates in any way to any Receivership property.

B. The Armijo Action

The Investor Plaintiffs, and the class members they seek to represent, are California and Nevada residents who purchased securities styled as “Debentures” and issued by the EquiAlt Funds (the “EquiAlt Securities”). Investor Plaintiffs filed this action on April 21, 2022, asserting state law claims against Robert Joseph Armijo and the two companies he controls, Joseph Financial, Inc. and Joseph Financial Investment Advisers, LLC (collective, the “Armijo Defendants”), related to the Armijo Defendants’ role as the sales agents and brokers who sold the Investor Plaintiffs and class members the EquiAlt Securities.

The Investor Plaintiffs contend that the Armijo Defendants violated California's securities, consumer protection, and common law by providing material assistance in the unlawful and fraudulent sale of the unregistered EquiAlt Securities from their headquarters in California. Investor Plaintiffs accordingly assert independent claims against the Armijo Defendants for violations of California's securities and consumer protection laws and for fraud and deceit.

Because the Investor Plaintiffs' claims against the Armijo Defendants arise out of the same unlawful sale of the EquiAlt Securities at issue in the SEC Action, in accordance with Local Rule 1.04(d), the Investor Plaintiffs have filed a Notice of Pendency of Other Actions designating this action as a case related to the SEC Action. Now, the Investor Plaintiffs respectfully request that this action be transferred to Judge Scriven, who is presiding over the SEC Action.

LEGAL ARGUMENT

Local Rule 1.04 (b) provides for the transfer of actions where related cases are pending before different judges in this district:

If cases assigned to different judges are related because of either a common question of fact or any other prospective duplication in the prosecution or resolution of the cases, a party may move to transfer any related case to the judge assigned to the first-filed among the related cases.

Under Local Rule 1.04(b), the party seeking transfer must move in the later-filed action to transfer the matter to the judge assigned to the first-filed case. *Maryland Casualty Co. v. Superior Pharmacy LLC*, Case No. 8:14-cv-375-T-23TMB, 2014 WL 12708718 at *1 (M.D. Fla. May 14, 2014).

Here, the Investor Class Action and the SEC Action plainly share not one, but a constellation of common factual issues. Each of the cases alleges that EquiAlt violated the

applicable securities laws by issuing and selling unregistered securities that were not exempt from registration under the federal and state securities laws and that EquiAlt and its sales agents committed other securities law violations by selling securities through unlicensed broker-dealers. And each of the cases arises from the same alleged overarching Ponzi scheme. Some of the many factual issues common to both the Investor Class Action and the SEC Action are set forth in the following chart:

Investor Class Action	SEC Complaint
“Brian Davison (‘Davison’) and Barry Rybicki (‘Rybicki’) conducted a Ponzi scheme raising more than \$170 million from over 1,100 investors nationwide, many of them elderly, through fraudulent unregistered securities offerings.” ¶ 8.	“Beginning in 2011 to the present, Defendants ... conducted a Ponzi scheme raising more than \$170 million from over 1,100 investors nationwide, many of them elderly, through fraudulent unregistered offerings.” ¶ 1.
“EquiAlt, Davison and Rybicki misappropriated millions in investor funds for their own personal use and benefit.” ¶ 8.	“EquiAlt, Davison and Rybicki misappropriated millions in investor funds for their own personal use and benefit.” ¶ 1.
Defendants at all times knew that the offering documents and other solicitation materials they were using to solicit and sign-up investors for the EquiAlt Securities contained misrepresentations and material omissions regarding the non-payment of commissions, rendering the EquiAlt Securities not exempt from registration under Rule 506 despite contrary statements in the offering documents.” ¶ 3.	“...Davison and Rybicki made material misrepresentations and omissions to investors.” ¶ 3. “The Defendants also failed to adequately disclose to investors that their funds would be used to pay commissions to unlicensed third party sales agents. First, many of the subscription agreements signed by Rybicki stated that investments in the Funds were being sold without the payment of a commission. Furthermore, while the private placement memoranda provided to investors stated that the Funds ‘may’ pay commissions to sales agents, in reality commissions were always paid in connection with the sale of the Funds’ investments.” ¶ 54.
“Defendants furthermore received and accepted sales commissions, which they then either concealed or mischaracterized as “finders’ fees” to hide the true nature of the commission payments. Defendants furthermore sold the EquiAlt Securities without making reasonable efforts to verify the	“...Davison and Rybicki paid significant sales commissions to numerous unregistered sales agents who sold investments to unaccredited and unsophisticated investors in various states.” ¶ 3.

<p>offerees’ actual status as accredited or non-accredited investors.” ¶ 5.</p>	
<p>“the PPMs ... [m]isleadingly omitted to disclose that millions of dollars would be used to pay undisclosed fees and bonuses to Davison and Rybicki.” ¶ 30.</p>	<p>“...the private placement memoranda for [the EquiAlt Funds]...did not disclose that the Funds would use investor money to pay EquiAlt extraneous fees...[or that] investor money would be transferred between the Funds.” ¶¶ 52-53.</p>
<p>“Defendants provided the PPMs and Subscription Agreements to investors knowing they contained misrepresentations and material omissions. For example, the PPMs and Subscription Agreements for the Funds stated either that no commissions would be paid (Fund 1) or that commissions may be paid and if paid, would only be paid to licensed broker-dealers (Funds 2 through 4); but Defendants knew that they were selling the EquiAlt Securities and receiving transaction based commissions for the sale of the EquiAlt Securities even though they were not licensed broker-dealers.” ¶ 27.</p>	<p>“Defendants also failed to adequately disclose to investors that their funds would be used to pay commissions to unlicensed third party sales agents.” ¶ 54.</p>
<p>“Defendants made uniform false representations and concealed or failed to disclose material facts concerning the Funds’ compliance with the federal and state securities laws, the safety and risks of the EquiAlt Securities and the financial performance and solvency of EquiAlt and the Funds, all with the intent to deceive prospective investors.” ¶ 81.</p>	<p>“Investors were misled about the safety and risk of their investments.” ¶ 57</p>
<p>“Among other material misrepresentations, the PPMs ... [f]alsely stated that ‘[t]he Company may utilize the services of one or more registered broker/dealers’ to sell the unregistered securities.” ¶ 30.</p>	<p>“Written sales materials provided to investors also stated that ‘payments to licensed brokers and/or finders may be made in compliance with applicable federal and state securities laws.’” ¶ 59</p>

Transfer of the Investor Class Action to Judge Scriven is particularly appropriate here because the Court has already granted this same relief concerning another class action lawsuit brought by Investor Plaintiffs represented by Undersigned Counsel that was related to the SEC Action. Specifically, after a group of investors filed suit against EquiAlt’s attorneys for their alleged role in the Ponzi scheme, they filed a notice of related action and motion to transfer the

case to Judge Scriven. *See Gleinn v. Wassgren*, No. 8:20-cv-01677-VMC-CPT, at ECF Nos. 5, 6 (M.D. Fla.). One day after the *Gleinn* plaintiffs filed the motion to transfer, Judge Covington—to whom the case was originally assigned—entered an order transferring the case to Judge Scriven for all further proceedings. *Id.* at ECF No. 7. The Investor Plaintiffs respectfully request that the Court act in accordance with this precedent by transferring this case to Judge Scriven.

Many additional factors support transfer to Judge Scriven. First, as noted above, the *Gleinn* action, which is in the settlement process, is currently pending before Judge Scriven. This is in addition to the SEC Action and the Receivership. Second, plaintiffs in the *Gleinn* action have agreed—to conserve resources, avoid confusion and save administrative expenses—that any proceeds recovered in the investor action will be administered through the Receivership, subject to Judge Scriven’s approval. The same will be true for any proceeds recovered against Armijo Defendants by the Investor Plaintiffs. Third, through their submission of the Proof of Claim, the Armijo Defendants have consented to the personal jurisdiction of the Court in the SEC Action. Thus, by transferring this action to Judge Scriven, the parties can avoid unnecessary jurisdictional disputes that will only delay justice for the Investor Plaintiffs. Fourth, Judge Scriven can more efficiently assure that discovery and documents already produced in the cases pending before her—including documents produced by Armijo—are immediately made available for use in the Armijo Action.

Finally, as noted on the Notice of Related Actions filed by Investor Plaintiffs in the Armijo action, the EquiAlt Receiver has instituted a lawsuit against many of the sales agents concerning their promotion of the EquiAlt Securities that is currently pending before Judge Merryday. *See Wiand v. Family Tree Estate Planning, LLC et al.*, No. 21-cv-00361-SDM-AAS (M.D. Fla.). While Plaintiffs submit that transfer to Judge Scriven is most appropriate given the facts outlined

above, Plaintiffs are also agreeable to transfer to Judge Merryday should the Court find that more appropriate.

CONCLUSION

For the foregoing reasons, Investor Plaintiffs respectfully request that the Court enter an order transferring this action to the Honorable Mary S. Scriven.

RESPECTFULLY SUBMITTED this 27th day of April, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on April 27, 2022, with the Court via CM/ECF system, which will send notification of such filing to all attorneys of record.

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