UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 8:20-cv-00325-MSS-MRM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.
____/

PLAINTIFF'S OPPOSITION TO DAWN STALLMO AND SCOTT STALLMO'S MOTION TO INTERVENE TO TERMINATE NON-INVESTOR CLAWBACK LITIGATION

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") opposes the Motion to Intervene to Terminate Non-Investor Clawback Litigation (D.E. 807) (the "Motion to Intervene" or "Mot. __"), filed by proposed intervenors Dawn Stallmo and Scott Stallmo (collectively, the "Stallmos"), and states:

I. INTRODUCTION

The Stallmos moved to intervene pursuant to Rule 24(a) of the Federal Rules of Civil Procedure to allow them to "open discovery" on whether the assets thus far marshalled and being operated by the Receiver are sufficient to satisfy all of the outstanding debentures without the payment of interest. See

Mot., p. 4. If so, the Stallmos would then move the Court to instruct the Receiver to liquidate all assets and accounts currently in his possession, pay the existing claimants, terminate the receivership, and instruct the Receiver to dismiss all remaining actions, including an ongoing clawback action to which the Stallmos are defendants. *Id*.

On February 13, 2021, the Receiver brought a clawback action against 124 investors, including the Stallmos, who received more money back from the EquiAlt Entities (defined *infra*) than they invested, and thus were inequitably advantaged at the expense of hundreds of investors (the "Clawback Action").[1] That case is currently pending before Judge John Badalamenti in this District. In that action, the Receiver seeks to recover the false profits that these defendants received from the scheme that exceeded their investment.

As a defense to the Clawback Action, including most recently in opposition to the Receiver's motion for summary judgment, the Stallmos argue (as they do here in support of intervention) that the Receiver lacks authority to pursue his claims unless he demonstrates that the assets of the receivership are insufficient to repay all investors their principal. While the SEC believes this to be an incorrect statement of the law, this Court need not decide that issue as challenges to the Receiver's right to claw back false profits from investors, such

[1] *Wiand v. Adamek, et al.*, Case No. 21-cv-00360-JLB-CPT (M.D. Fla.).

as the Stallmos, should be pursued in the Clawback Action, not the SEC's enforcement action. The Stallmos cannot intervene in this action in hopes of finding a more favorable forum in an effort to short circuit the Receiver's Clawback Action and avoid summary judgment.

Putting aside the Stallmos' obvious forum shopping, the Motion to Intervene should be denied because Section 21(g) of the Securities Exchange Act of 1934 precludes intervention. Should the Court still entertain their purported bases for intervention, the Stallmos fail to substantively address all of the factors for intervention enumerated in Rule 24(a), and for this reason alone the Motion to Intervene should be denied.

II. BACKGROUND

From 2011 through December 2019, defendants Brian Davison ("Davison") and Barry Rybicki ("Rybicki") (collectively the "Insiders") raised over $168 million in 1,686 distinct transactions on behalf of one or more of the EquiAlt Entities[2] through the offer and sale of securities, debentures of the Funds, and REIT shares ("EquiAlt Securities") in the EquiAlt real estate development scheme as a part of a single, continuous Ponzi scheme (the "Scheme"). The sale of EquiAlt Securities in this case amounts to a Ponzi

[2] The "EquiAlt Entities" include: EquiAlt Fund, LLC ("Fund I"); EquiAlt Fund II, LLC ("Fund II"); EquiAlt Fund III, LLC ("Fund III"); EA SIP, LLC ("EA SIP") (collectively the "Funds"); EquiAlt Secured Income Portfolio REIT (the "REIT"); and EquiAlt LLC.

scheme because the revenues generated by the Funds were insufficient to pay investors their falsely promised monthly returns. The Insiders, who operated the Funds, used new investor funds to pay the earlier investors their falsely promised monthly returns, namely interest and/or principal payments.

On February 11, 2020, the SEC filed a complaint against the Insiders, the EquiAlt Entities (the Insiders and EquiAlt Entities are collectively referred to as "Defendants"), and various corporate entities that held real properties ("Relief Defendants") that were obtained through fraud during the commission of the Scheme. The SEC alleged that the Insiders, through their proliferation of a Ponzi scheme, violated Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. §§ 77(e)(a) and 77e(c); Section 17(a) of the Securities Act, 15 U.S.C. §§ 77(q)(a); Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78(j)(b); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10B-5; Section 20(a) of the Exchange Act, 15 U.S.C. §78(t)(a); and that Davison, Rybicki, and EquiAlt LLC had aided and abetted in violation of Section 15(b) of the Exchange Act. As relief, the SEC sought a temporary restraining order, preliminary injunctive relief, permanent injunction, asset freeze, appointment of a receiver, records preservation, sworn accounting, disgorgement, prejudgment interest, and civil money penalties.

On February 14, 2020, Burton W. Wiand was appointed by the Court the Receiver for EquiAlt Entities and Relief Defendants. On that same date, the

Court also entered a Temporary Restraining Order, freezing Defendants' and Relief Defendants' assets and requiring an accounting from the Insiders. The Receiver was given broad authority to investigate the EquiAlt Entities and to pursue claims against individuals who improperly received a benefit from the scheme, resulting in liability(ies) to the receivership. The Court, in granting the SEC's Motion for Preliminary Injunction (Doc. 184), held:

> [T]he evidence shows that the Defendants most likely operated as a Ponzi scheme using new investor funds to pay old investor obligations while simultaneously siphoning funds for their own benefit far and above any amount that anyone might reasonably believe was disclosed to investors.

Under his broad authority, on February 13, 2021, the Receiver brought the Clawback Action against a group of investors, including the Stallmos, who received from the Scheme more money than the amount they invested in the EquiAlt Entities. The Stallmos do not want to pay back their false profits and are litigating the issue in the Clawback Action. Indeed, on January 6, 2023, the Receiver filed a motion for summary judgment against the Stallmos, among other defendants, in the Clawback Action. The Stallmos opposed the Receiver's motion for summary judgment, claiming, among other things, that the Receiver lacked authority to bring the Clawback Action because there is sufficient equity in the assets available to the Receiver to satisfy all claimants. While the Receiver's summary judgment motion remains pending before Judge

Badalamenti, the Stallmos move to intervene in this action, asserting the same arguments made in their response to the Receiver's motion for summary judgment. Thus, the Stallmos are trying to have two different Courts decide the same issue.

III. LEGAL ARGUMENT

A. FAILURE TO CONFER IN GOOD FAITH

As a preliminary matter, prior to filing their motion, the Stallmos failed to confer with the SEC in good faith as required by Local Rule 3.01(g), which provides in pertinent part:

> Before filing a motion in a civil action, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, or to certify a class, **the movant must confer** with the opposing party in a good faith effort to resolve the motion.

(emphasis added).

Accordingly, prior to any consideration of the Stallmos' request to intervene in this action, the Court should dismiss the Motion to Intervene for their failure to comply with Local Rule 3.01(g).

B. THE CLAWBACK ACTION IS THE PROPER FORUM

The Stallmos seek to intervene to "assert that there is [sic] insufficient factual bases for an action under Section 726.109 of the Florida Fraudulent Transfer Act … in that there is sufficient equity in the assets available to the

Plaintiff to satisfy all claimants and that [this action] does not legally qualify as a 'Ponzi Scheme' which qualifies for an equitable 'Clawback action' …." See Mot. at pp. 2-3. In addition to well established authority barring intervention in an action for equitable relief instituted by the SEC (see Section C., *infra*), intervention is improper here because the Clawback Action is the proper forum for the Stallmos to seek relief. Indeed, the Stallmos have asserted the same arguments in defense to the Receiver's Clawback Action currently pending before Judge Badalamenti.

Specifically, as their Second Affirmative Defense to the Clawback Action, the Stallmos pleaded that "no transfer from any of the above named Defendants is necessary to satisfy the creditor's claim as there is sufficient equity in the assets available to satisfy all claimants." See Defendant's Answer to Complaint (D.E. 355), p. 4, a copy of which is attached as **Exhibit A**. Most recently, on January 25, 2023, the Stallmos asserted this defense in opposition to the Receiver's motion for summary judgment, arguing "… all investors could be paid their entire investment and until the receiver demonstrates a deficiency, it has no 'Clawback' cause of action." See Defendant's Response to Motion for Summary Judgment (D.E. 424), p. 11, a copy of which is attached as **Exhibit B**.

The Stallmos are defendants in an active federal lawsuit in which the same arguments being raised by the Stallmos in their Motion to Intervene are currently

being considered by that court. Thus, it would be improper here to allow intervention, particularly when a dispositive motion is pending in the Clawback Action.

C. SECTION 21(g) OF THE EXCHANGE ACT BARS THE STALLMOS FROM INTERVENING IN THE SEC'S ENFORCEMENT ACTION

Section 21(g) of the Exchange Act, 15 U.S.C. § 77u(g), bars third parties from intervening in enforcement actions by the Commission. Section 21(g) states:

> Notwithstanding the provisions of section 1407(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 or coordinated 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).

Courts have interpreted Section 21(g) to extend beyond consolidation and coordination, barring intervention into actions initiated by the SEC. *SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1 (M.D. Fla. Sept. 24, 2009) (quoting *SEC v. Cogley*, No. 98CV802, 2001 WL 1842476, at *5 (S.D. Ohio Mar. 21, 2001) ("[A]fter reviewing the legislative history, and reviewing other cases that have discussed this issue, this Court comes to the inescapable conclusion that Section 21(g) bars intervention.")); *SEC v. Univ. Lab Techs., Inc.*,

No. 07-80838-CIV, 2009 WL 723243, at *3 (S.D. Fla. Mar. 18, 2009) ("[Allowing intervention] opens the door to a serious, substantial evisceration of Section 21(g).").

Congress enacted Section 21(g) to allow efficient resolution of Commission actions. *Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1; *Univ. Lab Techs., Inc.*, No. 07-80838-CIV, 2009 WL 723243, at *3; *Cogley*, No. 98CV802, 2001 WL 1842476, at *5. Allowing third parties to intervene in Commission enforcement actions drains agency resources with excessive tangential litigation costs and impedes the Commission's mission, which is to protect all of the defrauded investors and the public at large. *See SEC v. Everest Mgmt. Corp.*, 475 F.2d 1236, 1240 (2d Cir. 1972); *Nadel*, No. 8:09CV-87-T-26TBM, 2009 WL 3126266, at *1. Indeed, when passing Section 21(g), Congress expressly referred to a case in which the Second Circuit Court of Appeals refused to allow intervention in a Commission enforcement action on policy grounds. S. REP. 94-75, at 76 (citing *Everest Mgmt. Corp.*, 475 F.2d at 1236). In denying the fraud victim's motion to intervene, the court in *Everest Management* held that "the complicating effect of the additional issues and the additional parties outweighs any advantage of a single disposition of the common issues." *Id.* at 1240. By citing an intervention case in the Senate report, Congress signaled that

using 21(g) to bar intervention fulfills the law's purpose and allows for speedy resolution of agency action.

The Stallmos' intent upon intervention to open discovery to quiz the Receiver while he is in the midst of the claim's process is a prime example of the "complicating effect" of additional issues and unnecessary encumbrances that Congress attempted to avoid by enacting Section 21(g). *Id.* As intervention in this SEC enforcement action is barred by Section 21(g) of the Exchange Act, the Motion to Intervene should be denied.

D. THE STALLMOS DO NOT HAVE A RIGHT TO INTERVENE

The Stallmos bring their Motion to Intervene as of right under Rule 24(a) of the Federal Rules of Civil Procedure. To intervene as of right, a party must establish that:

> (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing *Athens Lumber Co. v. FEC*, 690 F.2d 1364, 1366 (11th Cir. 1982)). The movant has the burden to show that each of these four elements are met. *See CFTC v. Heritage Capital Advisory Servs., Ltd.*, 736 F.2d 384, 386 (7th Cir. 1984). "Failure to satisfy even

one of [Rule 24(a)'s] requirements is sufficient to warrant denial of a motion to intervene as a matter of right." *Id*. As discussed below, the Stallmos have failed to meet this burden.

Rather than address Rule 24(a)'s requirements in their motion, the Stallmos instead argue against the adoption of the "Ponzi presumption" and challenge the Receiver's authority to claw back false profits under existing fraudulent transfer law. See Mot. pp. 6-14. While the Stallmos do touch on the first two elements—the timeliness of their motion and their interest in the receivership property—they fail to address, let alone establish, whether the disposition of the action may impede or impair their ability to protect that interest, or how their interest is represented inadequately by the existing parties to the suit. *See Chiles*, 865 F.2d at 1213.

As to timeliness, the Stallmos began defending against the Clawback Action in June 2021. After nearly two years defending against the Receiver's claims, only now, on the eve of summary judgment, do they seek to intervene to challenge the Receiver's authority to bring the Clawback Action. In addition to being an improper basis to intervene, the Stallmos' motion is in no way timely.

Further, the Stallmos did not and cannot establish how disposition of this action would impair or impede their ability to protect their claimed interest in

receivership property. The interests they seek to protect are the false profits paid to them out of subsequent investor funds. The Stallmos' right to retain these false profits is the subject of the Clawback Action, in which they are represented by counsel. Thus, the Stallmos cannot claim that their interests are unprotected.

Moreover, to the extent the Stallmos believe they are entitled to any part of the receivership estate, their claim should be made as part of the official claims process that this Court has sanctioned and the Receiver has outlined. The claims process is the proper way for any investors to bring their arguments as to why they are entitled to monies from the receivership estate, not intervention. *See Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d 584, 587 (10th Cir. 1984) ("Like the district court, we believe the claims procedures set up by the receiver will permit [the intervenor] to protect his claimed interest in assets presently under the control of the Receiver."). Indeed, to otherwise allow intervention by the hundreds of individual investors would make this action both unwieldy and waste the Receiver's limited assets.

The Stallmos' interests in their false profits are properly before the court in the Clawback Action. To the extent the Stallmos have additional interests, their interest should be presented to this Court as part of the claims process. The Motion to Intervene should be denied.

IV. CONCLUSION

For each of the forgoing reasons, the SEC respectfully requests the Court deny the Motion to Intervene.

DATED: March 7, 2023

Respectfully submitted,

s/Russell R. O'Brien
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/Russell R. O'Brien
Russell R. O'Brien

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON WIAND as Receiver for Equalt LLC, Equalt Fund II LLC, Equalt Fund III EA SIP LLC

PLAINTIFF

CASE NO. 8:21-cv-0360 TBP-CPT

DEFENDANT'S ANSWER TO COMPLAINT

HELEN ADAMIAN (Para. 12), HAMLET ADAMIAN (Para. 13) DAVID BLITZ (Para. 25), BLAKE MAHLER(Para. 73), DAWN STALLMO(Para. 114) SCOTT STALLMO (Para. 115) JAMES and ANN BARTUSEK(Para. 21)

DEFENDANTS

____)

Comes now Defendants in the above entitled matter, Helen Adamian, Hamlet Adamian, David Blitz, Blake Mahler, Dawn Stallmo, Scott Stallmo, James Bartusek and Ann Bartusek. All statutory references as made herein are made pursuant to the statutes as set forth in the Florida State "Uniform Fraudulent Transfer Act" also referred to as "The Act". Each of the above named Defendants answer and plead affirmatively to the complaint in the above matter as follows:

1. The above named Defendants are not insiders in any of the entities that are in receivership, nor are they officers, directors, employees, affiliates, subsidiaries or persons acting in concert with such entities or persons.

2. The above named Defendants did not receive false profits or profits of any type in any of the entities that are in receivership, nor are they officers, directors, employees, affiliates, subsidiaries or persons acting in concert with such entities or persons.

3. The above named Defendants do not have a common connection with any officer, director, employee, affiliate, subsidiary or person in connection with any entity now in receivership as alleged in the complaint.

4. The above named Defendants did not divert or misappropriate funds as part of any scheme as alleged in Paragraphs 197 and 199 of the complaint in the above entitled matter.

5. The above entitled Defendants did not transfer or create any debt or obligation which was fraudulent as to any creditor with actual intent to hinder, delay, or defraud any creditor any third party as alleged in violation of the Florida Statute Section 726.105(1)(a) as alleged in Paragraph 202 of the Plaintiff's Complaint in the above entitled matter.

6. The above entitled Defendants did not make any contract or arrangement where any party did not receive a reasonably equivalent value in exchange for the transfer or obligation as alleged in violation of the Florida Statute Section 726.105(1)(b) as alleged in Paragraph 203 of the Plaintiff's Complaint in the above entitled matter.

7. The above entitled Defendants did not make any contract or arrangement where any party did not receive a reasonably equivalent value in exchange for the transfer or obligation where the debtor was made to be insolvent as a result of the transfer or obligation under 726.106 as a alleged in paragraph 204 of the Plaintiff's complaint.

8. The above entitled Defendants are not liable under 726.108 as alleged in paragraph 205 of the Plaintiff's complaint.

9. The above entitled Defendants did not comingle any funds as alleged in paragraph 206 of the Plaintiff's complaint.

10. The above entitled Defendants did not unjustly retain a monetary benefit at the expense of another.

AFFIRMATIVE DEFENSES

11. As First Affirmative Defense, the above named Defendants claim that, as provided under Section 726.109 of The Act, that all transfers and obligation are not voidable under The Act in that each Defendant acted in good faith and for a reasonably equivalent value. (2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

12. As Second Affirmative Defense, the above named Defendants claim that, as provided under Section 726.109 of The Act, no transfer from any of the above named Defendants is necessary to satisfy the creditor's claim and there is sufficient equity in the assets available to the Plaintiff to satisfy all claimants.

13. As Third Affirmative Defense, that above named Defendants claim that, as provided under Section 726.109 of The Act, no assets were ever transfered to any of the above named Defendants.

14. As Fourth Affirmative Defense, the above named Defendants claim that, as provided under Section 726.110 All Causes of action are extiguished in that the Plaintiff failed to file the above entitled action within 4 years after the obligation was incurred or within 1 year after the transfer or obligation could reasonably have been discovered by the claimant, or within 4 years after the transfer was made or the obligation of the entity in receivership had completely satisfied the obligation.

Dated: September 22, 2021

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON WIAND as Receiver for Equalt LLC, Equalt Fund II LLC, Equalt Fund III EA SIP LLC

PLAINTIFF

CASE NO. 8:21-cv-0360TBP-CPT

vs.

DEFENDANT'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT
Federal Rule of Civil Procedure Rule 56

HELEN ADAMIAN (Para. 12), HAMLET ADAMIAN (Para. 13) DAVID BLITZ (Para. 25), BLAKE MAHLER(Para. 73), DAWN STALLMO(Para. 114) SCOTT STALLMO (Para. 115) JAMES and ANN BARTUSEK(Para. 21),SUDHAKER and JYOTIHKA PATEL(Para. 87)

DEFENDANTS

______________________________)

I

BACKGROUND

Defendants Helen and Hamlet Adamian, David Blitz, Blake Mahler, Dawn and Scott Stallmo, James and Ann Bartusek, Sudhaker and Jyotihka Patel each executed separate documents, which were identified as "Debentures", the terms of which were, except for the amount, identical to the document which is attached hereto marked as Exhibit "A". In summary,

the only transaction that occurred by and between any of the entitiesthat is in receivership was a "Debenture". None of The Responding partiestransferred or received an asset as part of the transaction.

I.

THE FUFTA

The Florida Uniform Fraudulent Transfer Act ("FUFTA") is contained in Florida Statute §§ 726.105, (FUFTA) states:

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor;

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur,or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

<u>(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.</u>

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

II.

WIAND vs. LEE IS NOT APPLICABLE

Wiand vs. Lee 753 F3rd 1201 was a case where, as here, a "clawback" action initiated by the receiver to recover profits from investors in a Ponzi scheme in order to compensate investors who were not lucky enough to have profited, transfer of receivership funds to the investor defendants was a transfer of "property of a debtor" as required by the Florida Uniform Fraudulent Transfer Act (FUFTA).The court held that under FUFTA, requires "[1] a creditor to be defrauded, [2] a debtor intending fraud, [3] and a conveyance of property which is applicable by law to the payment of the debt due. A fraudulent transfer must be of an "asset," which is defined as any "property of a debtor," excluding certain narrow exceptions. Fla. Stat. § 726.102(2).

In *Perkins vs. Haines* 661 F3rd. 623, the "Debtors" were operated as the instruments of a Ponzi scheme and a receiver ultimately filed voluntary petitions in the bankruptcy court seeking relief for each of the Debtors under Chapter 11 of the Bankruptcy Code. A consolidated plan of liquidation was approved and a person was appointed as Plan Trustee. The Trustee then instituted a number of adversary proceedings in the bankruptcy court seeking to avoid and to recover distributions that had been made to the investors in the Debtors. The Trustee claimed that transfers to the investors prior to the collapse of the Ponzi scheme were "fraudulent transfers" under 11 U.S.C. § 548(a)(1)(A) and applicable state law. The investors asserted an affirmative defense under 11 U.S.C. § 548(c), claiming that the transfers were "for value." The Trustee moved for partial summary judgment. The bankruptcy court denied the motion, effectively upholding the availability of the investors' affirmative defense and the Circuit Court on an issue of first impression affirmed.

The entire discussion was centered on a line of cases holding that transfers to redeem an equity investment in an insolvent entity (initially made free of fraud) cannot constitute a transfer "for value." (Citing *Consove v. Cohen* (In re Roco Corp.), 701 F.2d 978, 982 (1st Cir. 1983); *Schafer v. Hammond*, 456 F.2d 15, 17-18 (10th Cir. 1972); *Lytle v. Andrews,* 34 F.2d 252 (8th Cir. 1929); *M.V. Moore & Co. v. Gilmore*, 216 F. 99, 100-01 (4th Cir. 1914). In each of these decisions, investors *exchanged shares of stock for other security interests, notes, or real property, all at a time when the corporations were insolvent*. The courts held that the exchanges constituted fraudulent transfers because the stock returned to the corporations as part of the exchange was, at that time, virtually worthless due to the corporate insolvency. As such, the corporations received "less than a reasonably equivalent value." See *Roco Corp.*, 701 F.2d at 982; *Schafer*, 456 F.2d at 16-18; *Lytle*, 34 F.2d at 253-54.

The court noted that the only court to distinguish between equity investments and debt-based claims when applying the general rule to fraudulent transfer actions arising out of a Ponzi scheme was the Ninth Circuit which applied the general rule to equity investors in a Ponzi scheme, and rejected any attempts to distinguish between the forms of the investment. *AFI Holding*, 525 F.3d at 708-09. The court in the *Perkins* case stated that although circumstances of the exchange were cloaked in terms of a partnership interest, the court looked beyond the 'form' to the 'substance' of the transaction. Whether the debtor was insolvent at the time was irrelevant. The fact that McKenzie and the other investors held equity interests was also of no moment. The court in *Perkins* stated that the general rule that the application of a constructive trust theory applies in a Ponzi scheme setting regardless of whether the investors have an equity interest in, or some other form of claim against the legal entity constituting the instrument of the fraud.

The court in *Wiand v. Lee* 753 F.3d 1194, which was a "clawback" action initiated by a receiver to recover profits from investors in a Ponzi scheme in order to compensate investors who were not lucky enough to have profited, transfer of receivership funds to the investor defendants was a transfer of "property of a debtor" as required by the Florida Uniform Fraudulent Transfer Act (FUFTA) and otherwise satisfied the elements of actual fraudulent intent.The court stated that under Florida's FUFTA's actual fraud provision, proof that a transfer was made in furtherance of a Ponzi scheme established actual intent to defraud under Fla. Stat. § 726.105(1)(a) without the need to consider badges of fraud.

The *Wiand*case as well as all clawback actions, however,appeared to be based upon the court's power in Bankruptcy, which shall be discussed below.

Wiand vs. Lee was a case where the details of the manner in which the Ponzi scheme was carried out where that the perpetrator controlled Hedge Fund investments through two entities.

From at least December 1999 through January 2009, the perpetrator managed the Hedge Funds and misrepresented their performance. During this time period, the perpetrator maintained more than 700 investor accounts and raised at least $336 million from investors. Nadel misrepresented the net asset value and net profits of the Hedge Funds and Traders through monthly statements issued to investors. Hedge Funds and investors' funds from the Hedge Funds were commingled among Nadel's personal accounts and then combined into a single master trading account that was used to purchase securities. Profitable trades and unprofitable trades were assigned to the Hedge Fund accounts. Investors' funds were used to pay management fees and performance-incentive fees to the perpetrator based on the inflated performance and net asset value of the funds reported to the investors.

The perpetrator represented to investors that their individual accounts and the Hedge Funds, as a whole were generating profits even though the Hedge Funds were insolvent as early as 2000 and remained so until January 2009, when the scheme collapsed. The Hedge Funds were funded almost entirely from investors and required continuous infusions from investors to pay redemptions to earlier investors.

The Receiver filed a complaint seeking the return of "False profits" on behalf of the receivership entities in order to partially compensate those investors who suffered a net loss on their investments.

The magistrate judge issued a thorough report and recommendation that recommended granting summary judgment in favor of the Receiver and against the Lee Defendants but also recommended denial of an award of prejudgment interest to the Receiver. The magistrate judge found that the perpetrator operated both funds as a Ponzi scheme during the time these entities

made their distributions to the Lee Defendants, and that these distributions were therefore avoidable under FUFTA because they were made with the actual intent to defraud creditors.

The court in *Perkins v. Haines*, 661 F.3d 623stated on page 627, that in the case of Ponzi schemes, the general rule is that a defrauded investor gives "value" to the Debtor in exchange for a return of the principal amount of the investment, but not as to any payments in excess of principal. (Citing *Donell v. Kowell,* 533 F.3d 762, 770 (9th Cir. 2008); *Scholes v. Lehmann*, 56 F.3d 750, 757-58 (7th Cir. 1995). Courts have recognized that defrauded investors have a claim for fraud against the debtor arising as of the time of the initial investment and thus, any transfer up to the amount of the principal investment satisfies the investors' fraud claim (an antecedent debt) and is made for "value" in the form of the investor's surrender of his or her tort claim. Such payments are not subject to recovery by the debtor's trustee. (Cites omitted). Any transfers over and above the amount of the principal — i.e., for fictitious profits — are not made for "value" because they exceed the scope of the investors' fraud claim and may be subject to recovery by a plan trustee.

The court in *Donell v. Kowell*, 533 F.3d 762, beginning at page 770, explained the overall theory behind the “Ponzi scheme” non equity owning investor liability, The court stated there are two theories under which a receiver may proceed under UFTA: actual fraud or constructive fraud. Under § 3439.04(a)(1), codifying the "actual fraud" theory, the receiver alleges that the debtor (Ponzi scheme operator) made transfers to the transferee (the winning investor) with actual intent to hinder, delay, or defraud" the creditors (the losing investors). The mere existence of a Ponzi scheme is sufficient to establish actual intent" to defraud. In re AFI Holding, 525 F.3d at 704 (internal quotation marks omitted); Agritech, 916 F.2d at 535. Under the "constructive fraud" theory, the receiver alleges that the transfer of "profits" to the winning investor was made

without receiving a reasonably equivalent value in exchange for the transfer, because profits gained through theft from later investors are not a reasonably equivalent exchange for the winning investor's initial investment. Cites omitted). Proof that transfers were made pursuant to a Ponzi scheme generally establishes that the scheme operator was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

In the context of a Ponzi scheme, whether the receiver seeks to recover from winning investors under the actual fraud or constructive fraud theories generally does not impact the amount of recovery from innocent investors. Under the actual fraud theory, the receiver may recover the entire amount paid to the winning investor, including amounts which could be considered return of principal.

However, there is a "good faith" defense that permits an innocent winning investor to retain funds up to the amount of the initial outlay. See CAL. CIV. CODE § 3439.08(a); *Scholes*, 56 F.3d at 759; *Agritech*, 916 F.2d at 535. Under the constructive fraud theory, the receiver may only recover "profits" above the initial outlay, unless the receiver can prove a lack of good faith, in which case the receiver may also recover the amounts that could be considered return of principal. (Cites omitted).

The Seventh Circuit has suggested that the only practical distinction between these theories of recovery is the allocation of burdens of proof.

Drawing from this theory, federal courts have generally followed a two-step process. First, to determine whether the investor is liable, courts use the so-called "netting rule." See

Mark A. McDermott, Ponzi Schemes and the Law of Fraudulent and Preferential Transfers, 72 AM. BANKR. L.J. 157, 168-69 (1998) (surveying federal district court and bankruptcy cases). Amounts transferred by the Ponzi scheme perpetrator to the investor are netted against the initial amounts invested by that individual. If the net is positive, the receiver has established liability, and the court then determines the actual amount of liability, which may or may not be equal to the net gain, depending on factors such as whether transfers were made within the limitations period or whether the investor lacked good faith. If the net is negative, the good faith investor is not liable because payments received in amounts less than the initial investment, being payments against the good faith losing investor's as-yet unsatisfied restitution claim against the Ponzi scheme perpetrator, are not avoidable within the meaning of UFTA.

Second, to determine the actual amount of liability, the court permits good faith investors to retain payments up to the amount invested, and requires disgorgement of only the "profits" paid to them by the Ponzi scheme. Payments of amounts up to the value of the initial investment are not, however, considered a "return of principal," because the initial payment is not considered a true investment. Rather, investors are permitted to retain these amounts because they have claims for restitution or rescission against the debtor that operated the scheme up to the amount of the initial investment. Payments up to the amount of the initial investment are considered to be exchanged for "reasonably equivalent value," and thus not fraudulent, because they proportionally reduce the investors' rights to restitution. If investors receive more than they invested, payments in excess of amounts invested are considered fictitious profits because they do not represent a return on legitimate investment activity."

Although all payments of fictitious profits are avoidable as fraudulent transfers, the appropriate statute of limitations restricts the payments the Ponzi scheme investor may be

required to disgorge. Only transfers made within the limitations period are avoidable. The district court has identified the avoidable transfers, it has the discretion to permit the receiver to recoverpre-judgment interest on the fraudulent transfers from the date each transfer was made. Prejudgment interest should not be thought of as a windfall in any event; it is simply an ingredient of full compensation that corrects judgments for the time value of money.

At Page 773, the stated that the "Netting rule" was not used to determine the amount of liability but rather the existence of liability.

In this case we have a clear example of the netting rule. The receiver is in the overall process of marshalling and selling assets. The Eleventh Report of the Receiver (attached hereto as Exhibit "B") was filed on November 1, 2022 and showed that the Receiver has cash in hand in the sum of $63,027,050.96 and expects income of over $97 million. The receiver is also operating two breweries and has presented no documents indicating their value. The Receiver now has 1800 claims and has filed no document indicating how much each claim is worth and whether the claim is for principle or interest or both.

Thus, the receiver has access to over $150 million in cash and assets and is currently generating income of over $1M per month. Applying the netting rule as set forth above, all investors could be paid their entire investment and until the receiver demonstrates a deficiency, it has no "Clawback" cause of action. The essence of a "Clawback" action is that payments to investors up to the amount of the initial investment are considered to be exchanged for "reasonably equivalent value". As long as those payments are returned, no excess is consideredas fraudulent.

The fact that certain investors received interest payments, regardless of the time, can not be considered by the court or the receiver as unjust enrichments if all claimants receive their principle.

CONCLUSION

The “Clawback” action has its roots in the bankruptcy code and constructive fraud. In *Sale v. Ferrari Fin. Servs.* A case before United States District Court for the Southern District of Florida, Miami Division (September 25, 2020, DocketCase Number: 19-23563-CIV-MORENO, the court stated that where a corporation is operated by a Ponzi scheme, under *Wiand v. Lee*, 753 F.3d 1194, 1202 (11th Cir. 2014)). the money it receives from investors should be used for the corporation's stated purpose, and so when assets are transferred for an unauthorized purpose to the detriment of the defrauded investors, who are tort creditors of the corporation, the corporation itself is harmed. In the case of *Regions Bank v. Kaplan*a case before the United States District Court for the Middle District of Florida, Tampa DivisionDecided May 12, 2017, Case No.: 8:16-cv-2867-T-23AAS, the court stated that it is axiomatic that equitable relief is only available where there is no adequate remedy at law.Cases in which the remedy sought is the recovery of money damages do not fall within the jurisdiction of equity. (Citing *Rosen v. Cascade Int'l, Inc.*, 21 F.3d 1520, 1527 (11th Cir. 1994). *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322-24, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999) The court distinguished between suits demanding statutorily provided equitable relief from suits seeking "equitable assistance in the collection of a legal debt".

No one doubts the court’s authority to institute a receivership in order to marshal assets and give the amount of principle back to investors. The Defendants question however the receiver and the courts power to decide which investors are to be paid interest and which

investors are to be paid interest. Until the receiver is able to demonstrate that it will not be able to satisfy the claims of the investors as to the principal that each ahs paid, the receiver cannot determine that the power of equity should extend over the Responding Parties herein and the motion should be denied.

Dated: January 25, 2023

Charles M. Farano
Attorney for Defendants,Hamlet Adamian, Helen Adamian, David Blitz, Blake Mahler, Scott Stallmo, Dawn Stallmo, James and Ann Bartusek, Sudhaker and Jyotika Patel
Law Offices of Charles M. Farano
243A Lakeview Avenue
Placentia, California 92870
714.854.9860
cfarano@faranolaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 25, 2023, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system which will send notification of electronic filing to all counsel of record.

I HEREBY FURTHER CERTIFY that on January 25, 2023, I caused the foregoing to be served via US Mail upon the following individuals:

Dale Tenhulzen 1030 Washington St. Powell, WY 82435-3210	Lawrence M. Tiede 4836 Fiesta Lakes St. Las Vegas, NV 89130	

SHAWNA MOORE

Exhibit A

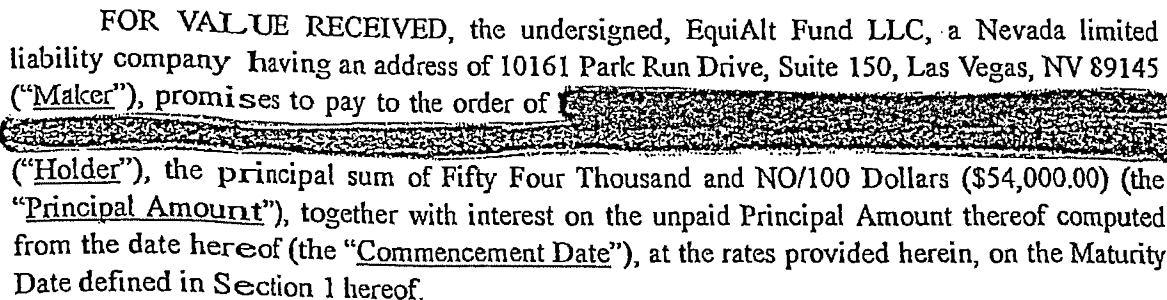
EXHIBIT A

FORM OF DEBENTURE

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE, AND IS ISSUED IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR RE-SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

<u>10% DEBENTURE</u>

$54,000.00 December 5, 2016



FOR VALUE RECEIVED, the undersigned, EquiAlt Fund LLC, a Nevada limited liability company having an address of 10161 Park Run Drive, Suite 150, Las Vegas, NV 89145 ("<u>Maker</u>"), promises to pay to the order of [redacted] ("<u>Holder</u>"), the principal sum of Fifty Four Thousand and NO/100 Dollars ($54,000.00) (the "<u>Principal Amount</u>"), together with interest on the unpaid Principal Amount thereof computed from the date hereof (the "<u>Commencement Date</u>"), at the rates provided herein, on the Maturity Date defined in Section 1 hereof.

1. <u>Maturity</u>. The Principal Amount and any unpaid interest due under this debenture (the "<u>Debenture</u>") shall be due and payable on December 1, 2019 (the "<u>Maturity Date</u>").

2. <u>Interest Rate and Payments</u>. Interest hereunder shall accrue as follows:

(a) From the Commencement Date, interest shall accrue on the unpaid Principal Amount at the rate of Ten and 00/100 percent (10%) per annum.

(b) The Maker shall pay to Holder Monthly payments, commencing January 1, 2017. Each payment hereunder shall be credited first to Holder's unpaid interest, and the balance, if any, to the reduction of the Principal Amount.

3. Prepayment. This Debenture may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Maker shall not be entitled, by virtue of any prepayment or otherwise, to a refund of interest, any other fees, points, charges and the like paid by Maker to Holder in connection with his Debenture.

4. Waiver. Maker hereby waives all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Maker further waives trial by jury. No extension of time for payment of this Debenture or any installment hereof, no alteration, amendment or waiver of any provision of this Debenture and no release or substitution of any collateral securing Maker's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker under this Debenture.

5. Default and Remedies. At the election of the holder of this Debenture, all payments due hereunder may be accelerated, and this Debenture shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Maker fails to pay on or before the date due, any amount payable hereunder; (2) Maker fails to perform or observe any other term or provision of this Debenture with respect to payment; or (3) Maker fails to perform or observe any other term or provision of this Debenture, which default is not cured within sixty (60) days of receipt of written notice. In addition to the rights and remedies provided herein, the holder of this Debenture may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

Any forbearance by the holder of this Debenture in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Debenture or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Debenture. The acceptance by the holder of this Debenture of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Debenture to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

6. Assignment of Debenture. If this Debenture is transferred in any manner by Holder, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof, provided, however, that any assignment by Holder must comply with applicable Federal and state securities laws, and Maker shall be entitled to demand an opinion of counsel opining that any transfer will comply with said laws.

7. Waiver of Offset. By its acceptance of Holder's funds and execution of this Debenture, Maker acknowledges, agrees and confirms that, as of the time of signing, it has no defense, offset or counterclaim for any occurrence in relation to this Loan.

8. Acceptable Currency. All payments of principal and interest hereunder are payable in lawful money of the United States of America.

9. Joint and Several Obligations. If more than one person signs this Debenture, each person signs as a Maker, unless otherwise stated and shall be fully, jointly, severally and personally obligated to keep all of the promises made in this Debenture, including the promise to pay all sums due and owing.

10. Miscellaneous. This Debenture shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns. This Debenture shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted. This Debenture shall be exclusively governed by the laws of the State of Nevada without regard to choice of law consideration. Maker hereby irrevocably consents to the jurisdiction of the courts of the State of Nevada and of any federal court located in Nevada in connection with any action or proceeding arising out of or relating to this Debenture. This Debenture may not be changed or terminated except upon the prior written agreement of the Holder. A determination that any portion of this Debenture is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Debenture to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

11. Jury Waiver. **MAKER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY MAKER OR THE HOLDER OF THIS DEBENTURE ON OR WITH RESPECT TO THIS DEBENTURE OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. MAKER AND HOLDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. MAKER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, MAKER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. MAKER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS DEBENTURE AND THAT HOLDER WOULD NOT EXTEND CREDIT TO MAKER IF THE**

WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS DEBENTURE.

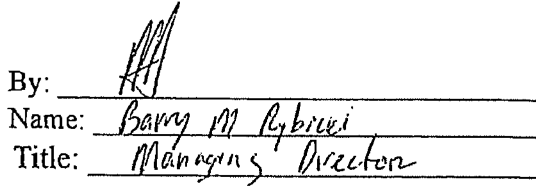
[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF, the Maker has executed this Debenture on the date first above written.

MAKER:

EquiAlt Fund LLC
a Nevada limited liability company

By: EquiAlt LLC
a Nevada limited liability company
its Manager



By: ______________________
Name: Barry M Rybicki
Title: Managing Director

EXHIBIT

B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v. CASE NO. 8:20-CV-325-T-35-MRM

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.
_______________________________________/

THE RECEIVER'S ELEVENTH QUARTERLY STATUS REPORT

Receivership Information and Activity from

July 1, 2022 through September 30, 2022

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INTRODUCTION

Burton W. Wiand, the Court-appointed receiver over the assets of the above-captioned corporate defendants and relief defendants (the "**Receiver**" and the "**Receivership**" or "**Receivership Estate**"), files this Eleventh Quarterly Status Report to inform the Court, investors, creditors, and others interested in this Receivership of activities this quarter as well as the Receiver's proposed course of action. For a complete report of the Receiver's activities to date, the Receiver refers the reader to his previous reports. [Docs. 84, 179, 217, 265, 319, 352, 441, 490, 563, 606] These reports can also be found on the Receiver's informational website, EquiAltreceivership.com. The Receiver will continue to update the website regarding the Receiver's most significant actions, important Court filings, and other items that might be of interest to the public. This Eleventh Quarterly Status Report, as well as all subsequent reports, will be posted on the Receiver's website.

OVERVIEW OF SIGNIFICANT ACTIVITIES DURING THIS REPORTING PERIOD

During the time covered by this Eleventh Quarterly Status Report, the Receiver and his professionals engaged in the following significant activities:

- Continued efforts to liquidate items from Rybicki settlement with SEC:
  - Listed four residential properties in Arizona;
  - Transported automobiles to Tampa for auction;

- Transported coins to Tampa for sale;
- Transported watches and one jewelry item to Sotheby's for December auction;
- Sold table ($1,090);
- Investigate marketing of sports memorabilia

* Received proceeds from Rybicki's Coinbase account ($8,057.67) as part of SEC settlement with Rybicki;
* Received Court approval for the transfer of title of twenty-five properties sold during the Third and Fourth Auctions;
* Conducted Fourth and Fifth Auctions, preparing for the upcoming Sixth Auction;
* Received payment of $4,789,131.50 from outstanding watch auction proceeds;
* Received $9,661.57 in proceeds from clawback settlements with investors;
* Received $9,000.00 in proceeds from clawback settlement with sales agents;
* Extensive motion practice with Brian Davison regarding his failure to turn over platinum coins pursuant to the terms of the Court's Final Judgment;

- Continued to negotiate with sales agent defendants in *Wiand v. Family Tree Financial Planning* case. In total, the Receiver has reached settlements with all but four agents and their related entities;
- In the *Family Tree* case, produced two expert reports and defended the depositions of those experts as well as the deposition of the Receiver;
- Continued review of over 1800 proof of claim forms submitted by investors and other creditors;
- Continued efforts in conjunction with class action counsel in the *Gleinn, et al. v. Wassgren, et al.* case toward resolution of the lawsuits against Paul Wassgren, Fox Rothschild and DLA Piper;
- Continued working with partners on the operations of Commerce Brewing and related entities. The company continues to make strides toward completing its production facilities and a tasting room. The brewery is in production and sales are increasing. In order to advance the completion of the tasting room in an effort to generate revenue, the Receiver has proposed to finance its completion. The financial commitments of the Receiver to Commerce Brewing have been met. The company is now paying rent on a reduced basis. Anticipated increased production and the expiration of rent concessions will lead to the receipt of substantial rents from the project as it goes forward.

The above activities are discussed in more detail in the pertinent sections of this Eleventh Quarterly Status Report.

ACTIONS TAKEN BY THE RECEIVER

Since his appointment, the Receiver has taken steps to fulfill his mandates under the Order Appointing Receiver. These continuing efforts are reported in the previous Quarterly Status Reports. This section describes actions taken in this Quarter.

I. The Financial Status of the Receivership Estate

A. Fund Accounting

Attached as Exhibit 1 is a cash accounting report showing the amount of money on hand from July 1, 2022, less operating expenses plus revenue, through September 30, 2022. This cash accounting report does not reflect non-cash or cash-equivalent assets. Thus, the value of all property discussed below is not included in the accounting report. From July 1, 2022 through September 30, 2022, the Receiver collected $322,317.80 in business income, $1,835,568.06 in business asset liquidation, $4,789,131.50 in personal asset liquidation with $888,964.29 in business asset expenses and $33,032.70 in federal and state tax payments. The ending fund balance is $70,903,869.73.

B. Bank Accounts

1. Receivership Money Market Account

Monies collected and deposited in the Receiver's ServisFirst money market account are as follows:

- Ongoing receipt of settlement payments for investor clawback settlements: $9,661.57;
- Ongoing receipt of settlement payments for claims against Sales Agents: $9,000.00;
- Proceeds from Sotheby's auctions: $4,789,131.50;
- Funds from Rybicki's Coinbase account: $8,057.67;
- Utility Refund from 12321 Gulf Blvd: $3,581.67;
- Net proceeds from the sale of the following properties:

Property	Net Proceeds
8718 Mallard Reserve (3rd Auction)	$160,222.45
812 29th Street NW (3rd Auction)	$150,406.26
1277 Sylvia Avenue (3rd Auction)	$370,264.16
3210 E. 8th Avenue (3rd Auction)	$346,454.67
3102 Moog Road (3rd Auction)	$203,934.56
6715 Parkside Dr (4th Auction)	$178,982.59
1013 N. Garden Ave. (4th Auction)	$421,721.67
Total	**$1,831,986.39**

In addition to these deposits, there were several withdrawals:

- $62,830 to Ryan Rybicki for the turnover of 7407 E. Taylor Street; and
- $1,617,301.25 for purchase of 3rd Avenue property in St. Petersburg to complete ownership of block of properties.

2. Accounts at ServisFirst

Since the Court approved the pooling of assets and liabilities, the Receiver and his team have worked to consolidate and close certain of the bank accounts held by the Receiver at ServisFirst. The Receiver continues to hold the following bank accounts at ServisFirst on behalf of the Receivership Entities. The total balance for these accounts as of September 30, 2022 is $20,893,615.72.

Account No.	Account Title	09/30/22 Balance
XXXXXXXX7593	EquiAlt, LLC	$8,611.05
XXXXXXXX6843	EquiAlt, LLC Operating	$4,957.47
XXXXXXXX6850	Receivership Account	$20,089,476.91
XXXXXXXX1975	EquiAlt Property Management	$565,838.23
XXXXXXXX1983	EquiAlt Property Management (money market)	$208,995.07
XXXXXXXX1959	EquiAlt Secured Income Portfolio REIT, Inc.	$15,736.99
Total		$20,893,615.72

3. Accounts at Bank of America, N.A.

There are only four accounts still held at Bank of America. The disposition of these accounts is referenced in the settlement with Brian

Davison. As the Receiver and Mr. Davison have still not completed the turnover of all Mr. Davison's assets, these accounts are still frozen.

Account No.	Account Title	Original Frozen Balance
XXXXXXXX8041	The Brian D. Davison Revocable Trust	$322,480.86
XXXXXXXX4008	EquiAlt Secured Income Portfolio Limited Partnership	$380.20
XXXXXXXX5126	EquiAlt Property Management, LLC	$0.00
XXXXXXXX4011	EquiAlt Secured Income Portfolio	$380.20

4. Investments and Investment Accounts

On July 27, the Receiver received the liquidated proceeds from one of the holdings in Rybicki's Coinbase account ($8,057.67). There is one remaining position, XRP, which has to be transferred to another cryptocurrency dealer before it can be liquidated.

The Davisons' Merrill Lynch account is still frozen given the dispute between the Receiver and Brian Davison regarding his deficient turnover. The value of the accounts as of June 30, 2022, was $1,739,472.78. Under the terms of the Assignment related to the Davison settlement, Davison is to receive $500,000 from this account.

5. Cash Management Activities

As the Receivership has continued to gather cash from the sale of assets and operations, the Receiver looked for other options so that the cash held by the Receivership would yield more return for the benefit of the investors. These funds must be held by the Receivership until distributions can be made when the claims process is completed. As reported last quarter, to increase the yield on the Receivership funds, the Receiver transferred $50,000,000 to Charles Schwab & Co. to invest in treasury securities. This investment, which will mature in February, is more secure than the bank deposits, and the yield on the investment will be over 2.5% and will provide the Receivership with over $800,000 of additional cash when the treasury securities mature.

In late October, the Receiver made a similar investment of $20,000,000 for the benefit of the Receivership. This investment will mature in March 2023. The Receiver is planning to purchase additional Treasury securities as a method of asset protection and to enhance the yield on the Receivership's cash holdings pending distribution. The Receiver believes the activities will earn significant monies for the Receivership Estate.

II. Disposition of Receivership Real Property

A. Receiver's Auction of Real Property

After two successful online auctions of real property, the Receiver sought and received the Court's approval to hold a series of auctions to sell seventy-

seven (77) properties over a number of months. (Doc. 574) The third online auction was held from June 13-23, 2022. Of the sixteen properties that were offered during the auction, six met their reserve price. The Court approved the transfer of these properties on August 8, 2022 (Doc.609). With the exception of 1208 N. Delaware, all of these properties have closed, resulting in net proceeds to the Receivership of $1,231,282.13. The buyer of 1204 N. Delaware cancelled the contract on that property. In doing so, she forfeited the $30,000 deposit to the Receivership. Three of the properties that did not meet reserve from this auction (7204, 7206, and 7208 S. Kissimmee St., Tampa) sold through private sales approved by the Court (Doc. 701) in October. The gross proceeds from those sales will be $1,080,000.

A fourth online auction was held from July 18, 2022 to July 28, 2022. Of the nineteen properties in this auction, sixteen met reserve. The Court approved the transfer of title for those properties on September 14, 2022 (Doc. 640). The closings for those properties are currently being scheduled. Anticipated gross proceeds are almost $3.5 million.

The Receiver's fifth auction was held September 5-15, 2022. Nineteen of the twenty-four properties in this auction met reserve. The Court approved the transfer of title of these properties on October 17, 2022. (Docs. 677-695) The sale of one of those properties cancelled and that property will be added to the

next auction. Gross proceeds for the sale of the eighteen properties will be $2.7 million. Closings are been scheduled on these properties. The Receiver has scheduled an additional auction to liquidate the remaining properties that the Court has authorized to be sold at auction. Because of the efficiency, economy and success of these auctions, the Receiver will soon be filing a motion with the Court to approve the sale of another sixty properties through periodic online auctions.

B. Private Sales of Real Property

During this quarter, the Receiver sought approval from the Court for the sale of the following properties. Bell Ridge was approved in August (Doc. 608) and the others were approved in October (Docs. 699, 700, 701) Closings on these properties will result in the following gross proceeds to the Receivership:

Property	Gross Proceeds
1500 Bell Ridge	$2,260,000.00
12100 Seminole Blvd.	$296,000.00
7204 S. Kissimmee Street	$360,000.00
7206 S. Kissimmee Street	$360,000.00
7208 S. Kissimmee Street	$360,000.00
500 Murfreesboro Rd., Franklin, TN	$505,000.00
Total	**$4,141,000.00**

C. Efforts to Sell and Develop EquiAlt Properties

In addition to continuing the successful auction of the Receivership properties, the Receiver has listed and is actively marketing six single family

homes in Murfreesboro and Franklin, Tennessee. One of these properties is currently under contract. Also, as leases expire, the Receiver continues to refresh and rehabilitate properties for sale in Florida.

The Receiver continues to work with the City of St. Petersburg to obtain the required permits to convert two multi-family Treasure Island properties into condominiums. Whether the Receiver decides to pursue the conversion or merely is able to sell the properties as conversion-ready, the process will prove a benefit to the Receivership.

Finally, as noted in earlier Status Reports, the Receiver has negotiated a structured sale of commercial land in downtown St. Petersburg on Third Avenue South. The Receivership owns nine vacant lots (36,000 sq. ft.) in downtown St. Petersburg on the north side of 3rd Avenue South. The holding comprises all of the southern half of the block except for one lot (Parcel No. 19-31-17-74466-052-0170), mid-block, which is currently owned by MLF 2, Ltd. ("Non-Owned Lot"). The Receiver sought and received the Court's approval to purchase the Non-Owned Lot for $1,750,000. (Doc. 527). That motion was granted on March 3, 2022 (Doc. 527). That purchase closed on July 29, 2022. The Receiver listed the Combined Properties at $18 million, entertained numerous bids and interested buyers, and has the Combined Properties under contract for $20,250,000. The purchasers conducted their due diligence but negotiated an extension on the closing of the deal into 2023. As part of these

extension negotiations, the purchaser deposited an additional $500,000 into escrow, $200,000 of which non-refundable. The Receiver anticipates this transaction will close in the early part of 2023. As part of the recent negotiations, the Receiver is now able to accept back up offers on the property.

D. Rybicki Real Estate

Pursuant to Mr. Rybicki's settlement with the SEC and his Assignment with Receiver, the following Arizona properties were turned over to the Receiver:

- 3527 Lawrence Lane, Phoenix, AZ 85051;
- 4303 W. Vista, Glendale, AZ 85301; and
- 7320 E. Solano, Scottsdale, AZ 85250

The Vista property is under contract for $310,000 which is before the Court for approval. (Doc. 672). The Receiver recently obtained bids to rehab the property at Lawrence Lane which is in a state of disrepair. The Receiver is currently evaluating whether to renovate this property or sell it as is. The Solano property is still listed. Also in this quarter, the Receiver closed on the purchase of the house owned by Barry Rybicki's son, Ryan, at 7407 E. Taylor St., Scottsdale, AZ 85257. This house is also now listed by the Receiver.

III. Disposition of Receivership Personal Property

A. Davison Watches, Jewelry, and Coins

Pursuant to the Court's approval of the Receiver's choice of Sotheby's as his auction house for the sale of Mr. Davison's watches and jewelry (Doc. 419), Sotheby's recommended certain watches for sale in four different locales – Hong Kong (October 2021), Las Vegas (October 2021), Geneva (November 2021), and New York (December 2021). The remaining watches (with one exception) were auctioned at Sotheby's Important Watches auction in New York on June 15, 2022. Buyers for four of the watches sold at that auction backed out of the purchases. Those items will be re-auctioned during Sotheby's auction in December. The total proceeds received this quarter for the other items sold in June were $4,789,131.50.

As previously reported, Mr. Davison's turnover of personal property, specifically coins, was deficient, in that he agreed to turn over 480 platinum American Eagle coins but instead produced 480 silver American Eagle coins, a difference in value of approximately $450,000. He has refused to deliver platinum coins or their value or provide any explanation for his delivery of silver rather than platinum coins as he agreed. Additionally, he only turned over 58 of the American Eagle gold coins rather than 61 coins referenced in his Assignment. The Receiver has filed a motion with the Court to enforce Davison's obligations and the matter is currently pending before the Court.

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B. Rybicki Personal Items

As part of his Assignment of assets with the Receiver, Rybicki turned over to the Receiver watches (ten Rolexes), jewelry, coins, sports memorabilia and a large table. Sotheby's will be handling the sale of the watches and one jewelry item in December. The Receiver has filed a motion with the Court to retain Hindman to sell the other jewelry. (Doc. 705). The Receiver was able to sell the table under consignment for $1,090.15. The Receiver continues to assess options for selling the sports memorabilia turned over by Mr. Rybicki.

C. Vehicles

The Receiver will soon be filing a motion with the Court to approve the online auction of the following three vehicles:

- 2019 Porsche Turbo S Cabriolet;
- 1981 Land Rover Defender; and
- 1977 Ferrari 208 GTB.

As with the earlier sale of some of Mr. Davison's vehicles, the Receiver intends to market these vehicles through DuPont Registry and sell the vehicles through auction after receiving Court approval.

D. Miscellaneous Items

The Receiver is in possession of various miscellaneous items from the EquiAlt office space as well as the Cypress warehouse. Team members have been cataloguing these items to prepare them for sale to benefit the

Receivership Estate. The Receiver anticipates filing a motion to approve this sale in the coming quarter.

IV. Retention of Other Professionals

Pursuant to the Order Appointing Receiver (Doc. 11), the Receiver has retained the following professionals for specific, limited assistance related the ongoing business operations of the Receivership Entities (links provided to their biographies):

- *Tampa corporate attorney Shaka Scott of the firm Dinsmore & Shohl*. Mr. Scott has provided invaluable assistance to the Receiver in drafting the paperwork for the turnover of various corporate entities from the Defendants to the Receiver as well as the plethora of LLCs and other corporate entities involved in properties owned by the Receivership;
- *Scottsdale real estate attorney Daniel Kloberdanz of the firm Kozub Kloberdanz*. Although the Receiver has used the services of Weiss Brown in Arizona related to the original receivership order, given the turnover of the Rybicki properties, the Receiver needed real estate expertise that Weiss Brown could not offer. Mr. Kloberdanz has been certified by the State Bar of Arizona as a Real Estate Specialist for 22 years. He negotiated the eviction of the tenant from the Solano property, handled the closing of the Taylor property and was helpful in the turnover and securing of all of these properties for the benefit of the Receivership;

- *Nashville real estate lawyer Matthew Noggle of Gardner Title & Escrow.* Given the Receiver's real estate holdings in Johnson City, Franklin and Murfreesboro, he needed to retain someone with expertise in Tennessee real estate law to navigate the listing and closings of these Receivership properties.
- *Tampa attorney Matthew Mueller of Fogarty, Mueller & Harris*. Matt Mueller is a former trial attorney with the Department of Justice (Tax Division) and Assistant U.S. Attorney in the Middle District with a specialty in white collar crime and taxation. The Receiver has asked Mr. Mueller to act as counsel for a certain former EquiAlt employee pursuant to that person's employment agreement. This representation includes testimony in related matters as well as representation in dealings with the Department of Justice.

V. Operating Businesses

As noted in earlier Status Reports, the Receiver has transferred the property management activities of EquiAlt and the employees involved to an entity in which Tony Kelly has a minority interest. This has simplified the management of the Receivership and has reduced expenses.

As these events go forward, the role of PDR-CPAs, the accountants for the Receiver, will increase. This increase in the work of PDR-CPAs is in part

due to the fact that the continuing activities of the Receivership will require significant tax services.

At the end of September 2022, the Receivership had over $70 million of cash on hand. These funds are sufficient for current operation including taxes, repairs, necessary renovations, personnel expense, insurance and general maintenance. Currently, the Receivership Entities are in the aggregate cash flow positive with the rental income of the properties covering EquiAlt's operational costs. As property sales progress, it should be anticipated that expenses in the future will exceed revenues. The outsourcing of the property management activities should to some extent remedy this problem as the Receivership moves forward. It will also greatly reduce the administrative tasks of the Receivership and should allow the Receivership to close all but three of its bank accounts.

In addition to the real property operations of the Receivership Entities, the Receiver continues to manage the Receivership's interests in Commerce Brewing and another brewery Bolero Snort LLC. These businesses are developing, with Bolero Snort LLC being the more mature. The Receiver has determined to hold these properties for the time being while significant attention is placed on liquidation of the non-business real estate assets. It is his belief that they are becoming more valuable. More information regarding these businesses is included in earlier status reports.

VI. Pending and Contemplated Litigation

A. Pending Litigation

1. Clawback Litigation

The investor clawback action, *Wiand v. Adamek, et al.*, Case No. 8:21-cv-360-TPB-CPT, is ongoing. This past quarter, the Receivership received continuing settlement payments in the amount of $9,661.57. Also, the Receiver filed a motion with the Court to approve his settlement with defendant investor Steven Hotchkiss. (Doc. 635) This motion is still pending. The remaining parties have agreed to use Judge Greg Holder as the mediator for the remaining claims. Those mediations are currently being scheduled. Currently, Clerk's Defaults have been entered against 49 Investor Defendants in the amount of $731,193.76. The Receiver's legal team will proceed with filing for default judgments against these defendants.

In the sales agent clawback case, *Wiand v. Family Tree Estate Planning*, Case No. 8:21-cv-361-SDM-AAS, the Receiver continues his attempts to settle claims with the Defendants. The Receiver will be seeking approval from the Receivership Court under the terms of the settlement agreements. There are currently only four individual defendants (plus their corporate affiliates) who remain in the case – Robert Armijo, John Marques, Patrick Runninger and James Gray. The Receiver has filed motions for summary judgement against Armijo, Marques and Runninger. Armijo's response is due November 11, 2022.

Mr. Runninger did not respond to the motion and Mr. Marques' time to respond will soon expire. The Receiver is continuing settlement discussions with Mr. Gray.

Also this quarter, the Receiver was deposed in the sales agent case as were the Receiver's experts, Phil Feigin and Maria Yip.

2. Class Action and Receiver's Action Against Law Firm Defendants

As discussed in more detail in the Receiver's Sixth Quarterly Status Report, both Class Action Investors (the *Gleinn* case) and the Receiver have asserted claims against attorney Paul Wassgren and his former law firms, DLA Piper, and Fox Rothschild, who provided legal services to certain Receivership Entities. The *Gleinn* case is pending in the Middle District of Florida and the Receiver's action is pending in state court in California. The parties in these two cases participated jointly in a mediation in August 2021. Although a final settlement was not reached, the parties did not impasse. The parties reached and signed a settlement agreement, but the agreement is subject to certain contingencies. The Receiver and the investors counsel are continuing to work through the issues with the help of the mediator in hopes of completing a favorable settlement for the Receivership Estate. The courts in both cases have issued a stay while the parties continue these efforts.

VII. Claims Process and Communications with EquiAlt Investors.

The Receiver's team is winding down their review of over 1800 proof of claim forms that were received. The Receiver has begun his determination of claims and the legal team is beginning to draft the Claims Determination motion. Once that motion is approved by the Court, and the time for objections and their resolution has expired, the Receiver will make his first distribution to the defrauded investors, hopefully in February 2023.

VIII. The Next Ninety Days.

The Order Appointing Receiver requires each Quarterly Status Report to contain "[t]he Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations." Doc. 11 ¶ 29.G. At this stage, the Receiver recommends continuation of the Receivership for the (1) continued liquidation of properties as they are available and suitable for sale; (2) continued management of Receivership business assets including certain breweries; and (3) continuing the claims determination process and ultimately the distribution of funds to defrauded investors.

Respectfully submitted,

/s/ Burton W. Wiand
Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Katherine C. Donlon
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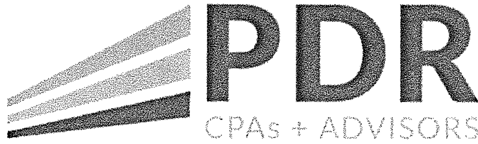
EXHIBIT 1



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REPORT OF STANDARDIZED FUND ACCOUNTING REPORT

EquiAlt, LLC et al. Receivership
Tampa, FL

We have compiled the standardized fund accounting report for Burton W. Wiand as Receiver for EquiAlt, LLC et al., cash basis, from the period of July 1, 2022 to September 30, 2022 and from inception to September 30, 2022, included in the accompanying prescribed form (Civil Court Docket No 8:20-cv-325-T-35AEP). We have not audited or reviewed the accompanying standardized fund accounting report and accordingly, do not express an opinion or any assurance about whether the standardized fund accounting report is in accordance with the form prescribed by the Civil Court Docket No. 8:20-cv-325-T-35AEP)

EquiAlt LLC Receivership is responsible for the preparation and fair presentation of the standardized fund account report in accordance with requirements prescribed by the Civil Court Docket No 8:20-cv-325-T-35AEP and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the standardized fund accounting report.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist EquiAlt LLC Receivership in presenting financial information in the form of a standardized fund accounting report without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the standardized fund accounting report.

This standardized fund accounting report is presented in accordance with the requirements of the Civil Court Docket No. 8:20-cv-325-T-35AEP, which differ from accounting principles generally accepted in the United States of America. This report is intended solely for the information and use of the Civil Court Docket No 8:20-cv-325-T-35AEP and is not intended and should not be used by anyone other than this specified party.

Oldsmar, Florida
October 28, 2022

Standardized Fund Accounting Report for
Burton W. Wiand as Receiver for EquiAlt, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-325-T-35AEP
Reporting Period 07/01/2022 to 09/30/2022

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 07/01/2022):			$ 66,431,630.94
	Increases in Fund Balance:			
Line 2	Business Income	322,317.80		
Line 3	Cash and Securities*			
Line 4	Interest/Dividend Income	42,319.35		
Line 5	Business Asset Liquidation	1,835,568.06		
Line 6	Personal Asset Liquidation	4,789,131.50		
Line 7	Third-Party Litigation Income	26,944.11		
Line 8	Miscellaneous - Other	1,443.15		
	Total Funds Available (Line 1 - 8):		7,017,723.97	73,449,354.91
	Decreases in Fund Balance:			
Line 9	**Disbursements to Investors**			
Line 10	**Disbursements for Receivership Operations**			
Line 10a	Disbursements to Receiver or Other Professionals	4,935.00		
Line 10b	Business Asset Expenses	888,964.29		
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses	1,618,553.19		
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses	-		
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments	33,032.70		
	Total Disbursements for Receivership Operations		2,545,485.18	2,545,485.18
Line 11	**Disbursements for Distribution Expenses Paid by the Fund**			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator			
	Independent Distribution Consultant (IDC)			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	**Disbursements to Court/Other:**			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11)			2,545,485.18
Line 13	**Ending Balance (As of 9/30/22)**			70,903,869.73

Standardized Fund Accounting Report for
Burton W. Wiand as Receiver for EquiAlt, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
Reporting Period 07/01/2022 to 09/30/2022

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 14	**Ending Balance of Fund - Net Assets:**			
Line 14a	Cash & Cash Equivalents			70,903,869.73
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			-
	Total Ending Balance of Fund - Net Assets			70,903,869.73
OTHER SUPPLEMENTAL INFORMATION:		**Detail**	**Subtotal**	**Grand Total**
	Report of Items Not To Be Paid by the Fund			
Line 15	**Disbursements for Plan Administration Expenses Not Paid by the Fund:**			
Line 15a	Plan Development Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund		-	
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund		-	
Line 15c	Tax Admistrator Fees & Bonds Not Paid by the Fund:			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	**Disbursements to Court/Other Not Paid by the Fund:**			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund		-	
Line 17	**DC & State Tax Payments**			
Line 18	**No of Claims**			
	# of Claims Received This Reporting Period ______			
	# of Claims Received Since Inception of Fund ______			
Line 19	**No of Claimants/Investors:**			
Line 19a	# of Claimants/Investors Paid This Reporting Period ______			
	# of Claimants/Investors Paid Since Inception of Fund ______			

Receiver:
By: ______
Title
Date ______

Standardized Fund Accounting Report for
Burton W. Wiand as Receiver for EquiAlt, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-325-T-35AEP
Reporting Period Since Inception to 09/30/2022

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (as of 02/14/2020			$ -
	Increases in Fund Balance:			
Line 2	Business Income	14,276,607.19		
Line 3	Cash and Securities*	5,287,430.34		
Line 4	Interest/Dividend Income	241,448.27		
Line 5	Business Asset Liquidation	49,814,908.82		
Line 6	Personal Asset Liquidation	19,704,691.05		
Line 7	Third-Party Litigation Income	2,779,735.59		
Line 8	Miscellaneous - Other	208,797.09		
	Total Funds Available (Line 1 - 8):		92,313,618.35	92,313,618.35
	Decreases in Fund Balance:			
Line 9	**Disbursements to Investors**			
Line 10	**Disbursements for Receivership Operations**			
Line 10a	Disbursements to Receiver or Other Professionals	3,913,365.41		
Line 10b	Business Asset Expenses	13,456,142.93		
Line 10c	Personal Asset Expenses	1,270,445.08		
Line 10d	Investment Expenses	1,671,450.23		
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees	50,000.00		
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses	50,000.00		
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments	1,048,344.97		
	Total Disbursements for Receivership Operations		21,409,748.62	21,409,748.62
Line 11	**Disbursements for Distribution Expenses Paid by the Fund**			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator			
	Independent Distribution Consultant (IDC)			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	**Disbursements to Court/Other:**			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11)			21,409,748.62
Line 13	**Ending Balance (As of 9/30/2022)**			70,903,869.73

Standardized Fund Accounting Report for
Burton W. Wiand as Receiver for EquiAlt, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
Reporting Period Since Inception to 09/30/2022

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 14	**Ending Balance of Fund - Net Assets:**			
Line 14a	Cash & Cash Equivalents			70,903,869.73
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund - Net Assets			70,903,869.73

OTHER SUPPLEMENTAL INFORMATION:		Detail	Subtotal	Grand Total
	Report of Items Not To Be Paid by the Fund			
Line 15	**Disbursements for Plan Administration Expenses Not Paid by the Fund:**			
Line 15a	Plan Development Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund		-	
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund		-	
Line 15c	Tax Admistrator Fees & Bonds Not Paid by the Fund:			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	**Disbursements to Court/Other Not Paid by the Fund:**			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund		-	
Line 17	**DC & State Tax Payments**			
Line 18	**No of Claims**			
	# of Claims Received This Reporting Period			
	# of Claims Received Since Inception of Fund			
Line 19	**No of Claimants/Investors:**			
Line 19a	# of Claimants/Investors Paid This Reporting Period			
	# of Claimants/Investors Paid Since Inception of Fund			

* **Changes from 2nd Quarter to reclass to correct Line**
$205,000 (Davidson personal vehicle) from Business Asset Liquidation to Personal Asset Liquidation
$114,999.99 (Sight Shore House investment) from Business Asset Liquidation to Other Misc Income
$27.45 (Davison vehicle insurance refund) from Misc Other to Personal Asset Liquidation
$325,781.87 (Rybicki funds) from Personal Asset Liquidation to Third Party Litigation Income
$71,584.96 (Rybicki funds) from Misc Other to Third Party Litigation Income

Receiver:
By: ______________________
Title
Date ______________________