

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Case No. 8:20-cv-00325-MSS-MRM

v.

BRIAN DAVISON, et al.,

Defendants.

_____ /

**ROBERT ARMIJO'S OBJECTION TO DECLARATIONS OF THOMAS
PARADISE, CHARLES DEEM, AND PAUL WASSGREN**

Robert Armijo ("Armijo") objects to the self-serving declarations filed by Thomas Paradise, of Fox Rothschild LLP (Doc. No. 911-1), Charles Deem, of DLA Piper LLP (US) (Doc. No. 911-2), and Paul Wassgren (Doc. No. 911-3). These declarants all state, in nearly verbatim declarations, that even though the Settlement Agreement allows DLA and Fox to waive the requirement of a bar order (Doc. No. 760-9, Settlement Agreement, § B(4)), DLA and Fox in fact would *not now* waive the requirement of a bar order, and instead would terminate the Settlement Agreement if the Court were to deny the requested bar order. (Doc. Nos. 911-1, ¶ 9; 911-2, ¶ 9.) Armijo objects to the court's consideration of these declarations on the following grounds.

First, the declarations were filed subsequent to the Joint Motion for Approval of Settlements (Doc. No. 760), subsequent to Movants' Reply Brief (Doc. No. 875), and subsequent to the hearing on the Joint Motion (Doc. No. 895). Accordingly, Armijo was not given a fair opportunity to respond to the declarations.

Second, the declarations do not have any probative value. Even if district courts had the authority to enter bar orders in the context of equity receiverships (they don't, *Digital Media Solutions, LLC v. South University of Ohio, LLC*, 59 F.4th 772, 774 ["the district court lacked the authority to issue the bar order"]), and even if district courts could bar independent claims (they can't, *AAL High Yield Fund v. Deloitte & Touche LLP*, 361 F.3d 1305, 1311 (11th Cir. 2004)), and even if two of the largest law firms in the world could somehow show that it would be fair and equitable to bar the claims of a non-consenting, non-settling third party (whose personal and professional reputation the Lawyer Defendants irrevocably damaged) without providing *any* evidence as to the firms' available assets or insurance or potential liability (they can't, *Matter of Munford*, 97 F.3d 449, 452-456), it would still be Movants' burden to show that the bar order is essential to the settlement. That burden cannot be met. The requested bar order clearly was not essential to the Lawyer Defendants' settlement because the Settlement Agreement expressly allows the Lawyer Defendants to waive the requirement of a bar order, and proceed with the settlement, even if the Court denies the bar

order. (Doc. No. 760-9, Settlement Agreement, § B(4).) It was only at the Court's direction, and after they had been informed that entry of the bar order was likely, that the Lawyer Defendants filed declarations stating that they would "not exercise [their] option under Section II.B.4. of the Settlement Agreement to waive the condition in the Settlement Agreement that requires entry of the Bar Order." (Doc. Nos. 911-1, ¶ 9; 911-2, ¶ 9.) *Of course* the Lawyer Defendants are going to say that *now*, given that they've been directed to do so and have been assured that the bar order will enter upon saying so.

Whether a bar order was truly an essential element of a settlement should be determined based on the facts and circumstances as existed *at the time the settlement was entered into*, not based on self-serving declarations submitted only in an attempt to *later* "check the box" to obtain the extraordinary relief of a bar order. The Settlement Agreement makes clear that a bar order was not essential given the Lawyer Defendants' *preserved right* to waive such a requirement and still enforce the bar order. The Lawyer Defendants' self-serving declarations *at this juncture* - wherein they even acknowledge that they have the "option under Section II.B.4 of the Settlement Agreement to waive the condition in the Settlement Agreement that requires entry of the Bar Order" - are irrelevant to the inquiry before the Court and should be disregarded.

Dated: May 11, 2023

Respectfully submitted,

/s/ Adriaen M. Morse Jr.

Adriaen M. Morse Jr. (DC Bar # 483347)

Pro Hac Vice

SECIL Law PLLC

1701 Pennsylvania Ave., N.W., Suite 200

Washington, D.C. 20006

T: (202) 417-8232

M: (571) 314-5469

E: amorse@secillaw.com

Counsel for Robert Joseph Armijo

/s/ James A. McFaul

James A. McFaul (Cal. Bar # 248670)

DUNN DESANTIS WALT &

KENDRICK, LLP

750 B Street, Suite 2620

San Diego, CA 92101

T: (619) 573-4488

F: (619) 255-4868

E: jmcfaul@ddwklaw.com

Co-counsel for Robert Joseph Armijo

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and that copies were sent, via U.S. Mail and email, to the following:

Burton W. Wiand
Law Office of Burton W. Wiand, P.A.
114 Turner Street
Clearwater, FL 33756
Burt@BurtonWWiandPA.com

Guy M. Burns
Johnson, Pope, Bokor, Ruppell & Burns, LLP
401 East Jackson Street, Suite 3100
Tampa, FL 33601
guyb@jpfirm.com

Katherine C. Donlon
Johnson, Newlon & DeCort
3242 Henderson Blvd., Suite 210
Tampa, FL 33609
kdonlon@jclaw.com

John K. Villa
Williams & Connolly LLP
680 Maine Avenue, SW
Washington, DC 20024
jvilla@wc.com

Stephen C. Richman
Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
srichman@gunster.com

Simon A. Gaugush
Carlton Fields
Corporate Center Three
at International Plaza
4221 W. Boy Scout Boulevard, Suite 1000
Tampa, FL 33607
sgaugush@carltonfields.com

Howard M. Bushman
The Moskowitz Law Firm, PLLC
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
howard@moskowitz-law.com

Andrew S. Friedman
Bonnett, Fairbourn, Friedman & Balint, P.C.
7301 N. 16th Street, Suite 102
Phoenix, AZ 85020
afriedman@bffb.com

/s/ Adriaen M. Morse Jr.

Adriaen M. Morse Jr.