

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-MSS-UAM

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.

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**INVESTOR PLAINTIFFS' JOINDER IN RECEIVER'S UNOPPOSED  
MOTION TO APPROVE SETTLEMENT WITH ROBERT JOSEPH  
ARMIJO, JOSEPH FINANCIAL INVESTMENT ADVISORS, LLC,  
AND JOSEPH FINANCIAL INC.**

The Investor Plaintiffs<sup>1</sup> hereby join in the unopposed motion of Receiver Burton W. Wiand (“the Receiver’s Motion”) to approve the proposed settlement (“the Armijo

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<sup>1</sup> The Investor Plaintiffs are as follows: Richard Gleinn; Phyllis Gleinn; Cary Toone; John Celli; Maria Celli; Eva Meier; Georgia Murphy; Steven J. Rubinstein, as trustee for the Rubinstein Family Living Trust dated 6/25/10; Tracey F. Rubinstein, as trustee for the Rubinson Family Living Trust dated 6/25/10; Lisa Gioia, as successor trustee for the Greenberg Family Trust; Bruce R. Hannen; Geraldine Mary Hannen; Robert Cobleigh; Rory O’Neal; Marcia O’Neal; and Sean O’Neal, as trustee for the O’Neal Family Trust dated 4/6/2004.

Settlement”) among the Receiver, the Investor Plaintiffs, and Robert Joseph Armijo, Joseph Financial Advisors, LLC and Joseph Financial Inc. (“the Armijo Defendants”). (Doc. 1018).

### **I. Procedural Background**

On May 15, 2023, this Court approved the settlement (“the Law Firm Settlement”) reached among the Receiver, the Investor Plaintiffs, and DLA Piper, Fox Rothchild, and Paul Wassgren (“the Lawyer Defendants”). (Doc. 915). Once final, the Law Firm Settlement will generate gross settlement proceeds to the Receivership Estate of \$44 million. After payment of attorney’s fees to the Receiver’s special counsel and the Investor Plaintiffs’ counsel and reimbursement of certain litigation costs, the net return to the Receivership Estate is approximately \$34 million (“the Settlement Funds”).

The Law Firm Settlement included a bar order (“the Bar Order”) precluding any claims against the Lawyer Defendants related to the EquiAlt case. (Doc. 915 at 14-22). Sales agent Robert Armijo objected to the imposition of a Bar Order due to his pending lawsuit against the Lawyer Defendants, in which he seeks to recover millions of dollars in claimed damages. This Court overruled Mr. Armijo’s objections and approved the Law Firm Settlement (Docs. 914 and 915). Mr. Armijo appealed both this Court’s decisions on June 12, 2023 (“the Armijo Appeal”). (Doc. 932).

Entry of the Bar Order by this Court and a final appellate determination sustaining the Bar Order are express and essential conditions to the Law Firm Settlement, conditions that the Lawyer Defendants have advised they will not waive.

Accordingly, the Lawyer Defendants are not required to pay the Settlement Funds unless and until the Armijo Appeal is resolved in a manner that does not materially modify the Bar Order. For the reasons set forth in the Receiver's Motion, the Armijo Appeal is thus adversely impacting the Receivership Estate, especially for the Investor Plaintiffs awaiting distribution of the Settlement Funds. Investor Plaintiffs in this joinder furthermore wish to emphasize the significant risks of continued litigation against the Armijo Defendants, which reinforce the appropriateness of prompt Court approval of the Armijo Settlement.

## **II. The Risks to the Investor Plaintiffs of Continued Litigation**

Beginning in 2020, various investors who purchased EquiAlt debentures for which Mr. Armijo served as an unlicensed sales agent filed several actions against the Armijo Defendants, asserting claims under applicable state common law and statutory securities laws. *Rubenstein, et al. v. EquiAlt, LLC, et al.*, Case No. 8:20-cv-00448-WFJ-TGW (M.D. Fla.) (putative class action); *O'Neal et al. v. Joseph Financial, Inc. et al.*, Case 8:22-cv-00939 (M.D. Fla.) (putative class action); *Meier et al. v. Joseph Financial, Inc. et al.*, Case No. 37-2022-00001632-CU-NP-CTL (Cal. Superior Court) (individual action) (collectively, "the Investors Armijo Actions"). The Investor Armijo Actions against the Armijo Defendants were voluntarily dismissed pursuant to tolling agreements ("the Tolling Agreements") which preserved against statute of limitations defenses the Investor Plaintiffs' right to bring new actions against the Armijo Defendants in the event those claims were not resolved through settlements or otherwise.

Meanwhile, the Investor Plaintiffs also filed an action against the Lawyer Defendants ultimately captioned *Richard Gleinn and Phyllis Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT (M.D. Fla.) (“the Investors Lawyer Action”). Plaintiffs in the Investors Lawyer Action obtained extensive discovery from the Lawyer Defendants and numerous third-party witnesses, ultimately gaining access to more than a million documents. Plaintiffs in the Investors Lawyer Action also engaged in extensive motion practice before the Lawyer Settlement was reached.

Counsel for the Investor Plaintiffs thus had ample opportunity through their investigation and extensive formal discovery to analyze and evaluate their claims against the Armijo Defendants and the Lawyer Defendants. Through their investigation and discovery, Counsel for the Investor Plaintiffs uncovered no evidence of fraud or intentional misconduct perpetrated by the Armijo Defendants, and have concluded that Mr. Armijo’s alleged conduct largely involved technical violations of applicable securities statutes. Counsel for the Investor Plaintiffs are also cognizant that the SEC in its action against the Armijo Defendants did not allege that the Armijo Defendants engaged in conduct involving actual fraud.

In exchange for releasing their significant claims against the Lawyer Defendants, the Armijo Defendants have agreed to the Armijo Settlement, thereby providing certainty of recovery to the investors who suffered financial losses through their purchase of the EquiAlt debentures. Given (a) the risks associated with prevailing on their claims against the Armijo Defendants, (b) the risks associated with the Armijo

Defendants' pending appeal of the Bar Order (which if successful could scuttle the Lawyer Settlement), and (c) the inevitable delays associated with continued litigation, the Investor Plaintiffs have concluded that the Armijo Settlement is in the best interests of the Receivership and the EquiAlt investors.

As such, the Armijo Settlement is fair, adequate, and reasonable, and the product of good faith negotiations after an adequate investigation by the Investor Plaintiffs. *See, e.g., SEC v. Alleca*, No. 1:12-CV-03261-ELR, 2021 WL 4843987, at \*12 (N.D. Ga. Sept. 9, 2021) (approving proposed settlement under the *Sterling* factors); *SEC v. 1 Glob. Cap. LLC*, No. 18-CV-61991, 2018 WL 8050527, at \*3 (S.D. Fla. Dec. 27, 2018) (same).

### **III. Conclusion**

Based on the foregoing, the Investor Plaintiffs wholeheartedly join in the Receiver's Motion and respectfully request that the Court promptly approve the Armijo Settlement.

Respectfully submitted this 28<sup>th</sup> day of September, 2023.

By: /s/ Andrew S. Friedman  
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*Counsel for Investor Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all attorneys of record.

By: /s/ Andrew S. Friedman  
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