

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-MSS-NHA

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

Defendants,

128 E. DAVIS BLVD, LLC, 310 78TH
AVE, LLC, 551 3D AVE S, LLC, 604
WEST AZEELE, LLC, BLUE
WATERS TI, LLC, 2101 W.
CYPRESS, LLC, 2112
W. KENNEDY BLVD, LLC, BNAZ,
LLC, BR SUPPORT SERVICES, LLC,
CAPRI HAVEN, LLC, EANY, LLC,
BUNGALOWS TI, LLC, EQUIALT
519 3RD AVE S., LLC, MCDONALD
REVOCABLE LIVING TRUST, 5123
E. BROADWAY AVE, LLC, SILVER
SANDS TI, LLC, TB OLDEST
HOUSE EST. 1842, LLC,

Relief Defendants.

**REPORT OF RECEIVER'S SPECIAL COUNSEL REGARDING FEES, COSTS
AND MOTION AUTHORIZING PAYMENT**

This Report and Motion is filed by Guy M. Burns, with the firm Johnson Pope Bokor Ruppel & Burns, LLP, as Special Litigation Counsel (“Special Counsel”) hired by the Receiver and as approved by this Court on July 1, 2020.

By this filing, Receiver’s Special Counsel reports on the final fee and cost calculation and the payment of Special Counsel’s fees and costs from settlement funds that are expected to be received in March 2024.

Special Counsel was contacted by the Receiver in the summer of 2020. After discussions and a preliminary review, the Special Counsel proposed to represent the Receiver on a contingency basis against DLA Piper LLP (US), Fox Rothschild, LLP and Paul Wassgren (hereinafter the “Lawyer Defendants”). Special Counsel sent the Receiver a proposed engagement letter on June 18, 2020.

On June 26, 2020, the Receiver filed a motion with the Court attaching the proposed fee engagement letter agreement with Special Counsel, which set forth the proposed contingent fee schedule. In summary, the schedule provided for fees ranging between 10-33%, depending upon the amount of any recovery and the timing of the resolution. The schedule also provided for an additional 5% fee in the event of an appeal. Essentially, an earlier resolution triggered a lower contingency fee.

On July 1, 2020, the Court entered an Order approving the hiring of Special Counsel and in its Order this Court confirmed the contingent attorney fee that was proposed in the letter of June 18, 2020. Special Counsel then filed suit against the Lawyer Defendants in Los Angeles, California.

The case against the Lawyer Defendants was subsequently settled in an amount of \$44 million. As was reported to the Court, that settlement was allocated 50% to the Receiver's claims against the Lawyer Defendants, and 50% was allocated to the claims of certain investors who had filed a putative class against the Lawyer Defendants. Accordingly, 50% of the \$44 million settlement (\$22 million) was allocated to the Receiver's recovery and is subject to the contingency fee payable to the undersigned Special Counsel. Under the previously Court-approved contingency fee, Special Counsel was entitled to a fee of 20% of \$22 million. The total fee is calculated to be \$4,400,000.

On January 5, 2023, the Receiver filed a motion for the approval of the settlement with the Lawyer Defendants. That motion contained a review of the fee obligations and reported that Special Counsel for the Receiver had, at that point, advanced or was expected to advance approximately \$25,000 in costs. On

May 15, 2023, the Court issued its Final Order approving the settlement, including the requested fees and costs.

Thereafter, an appeal to the Eleventh Circuit Court of Appeals was taken by Robert Armijo as to portions of the Final Order. This appeal triggered an additional 5% fee (\$1,100,000) for Special Counsel. After settlement negotiations with Mr. Armijo, the Armijo appeal was dismissed on January 11, 2024. Prior to the dismissal, the Receiver negotiated a settlement of certain claims both for and against Mr. Armijo and his corporate entity, Joseph Financial, Inc. (hereinafter the "Armijo Settlement"). As a result of the Armijo Settlement, Special Counsel for the Receiver agreed to waive its entitlement to an additional 5% (\$1,100,000) fee and to also give a credit to the Receiver with an additional \$118,000 toward the Armijo Settlement. The terms of the Armijo Settlement were reported to the Court in a filing on November 13, 2023. The Armijo Settlement, including the Armijo credit, was approved by the Court on November 15, 2023.

After the motion of January 5, 2023 estimating Special Counsel's cost at \$25,000, Special Counsel has continued to expend costs for the case including the cost of a notice publication program, as well as continued mediation costs, including costs associated with the resolution with the Armijo claims. The total

costs expended by Special Counsel are \$37,512.09, a copy of that Bill of Costs is attached to this Report and Motion as Exhibit 1. Of this cost amount, \$7,500 was advanced by Special Counsel to local California counsel for expected Court costs. Of that amount, \$1,250.42 remains unused, and the final invoice to the Receiver includes a credit for \$1,250.42.

The Special Counsel has rendered a final invoice to the Receiver in the amount, after all costs and credits, of \$4,318,261.67. A copy of the final invoice is attached hereto as Exhibit 2. This invoice will become due when the Receiver collects the final settlement funds which are expected to be received in March 2024.

Special Counsel requests this court enter an order authorizing the Receiver to make payment of \$4,318,261.67, in full and final payment of all obligations from the Receiver to Special Counsel, at such time as the Receiver collects the settlement from the Lawyer Defendants'.

CERTIFICATION UNDER LOCAL RULE 3.01(g)

The undersigned counsel has conferred with the Receiver prior to filing this Report and Motion and he has no objection to the Order requested.

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2024, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, thereby serving this document on all attorneys of record in this case.

Dated: February 15, 2024

Respectfully submitted,

/s/ Guy M. Burns _____

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BURNS, LLP

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*Special Litigation Counsel to Receiver,
Burton W. Wiand*

EXHIBIT 1

9:37 AM Johnson, Pope, Bokor, Ruppel & Burns, LLP Report: TIME 12
Client Detailed Time And Expense Report Req'd By: laceyt
 Parameter Set: HISTORY01 Date Range (Time): Beginning of Time to 2/13/2024 (Disb): Beginning of Time to 2/13/2024 Currency: USD

051041	BURT WIAND, RECEIVER	Bill Tkpr: 013	GUY M BURNS	8/15/2023
Matter: 146692	QUIALT RECEIVERSHIP	Resp Tkpr: 013	GUY M BURNS	Matter Last Billed:

Detailed Disbursements Section (Matter)

Tkpr	Date	Check	Disb Code	Amount	Status	Disbursement Description	Disb ID
013	5/9/2021	2287798406021610	35	23.00	W	LA Court fee to attend hearing LA Court fee to attend hearing GUY BURNS	1464567
013	5/20/2021	MAY 2021	43	5,000.00	W	UPFRONT COST #146692 RAINES FELDMAN MAY 2021	1464198
013	7/1/2021	1425033843	26	637.50	W	JAMS invoice JAMS, INC. 1425033843	1466837
013	7/19/2021	5791466	26	8,300.00	W	JAMS MEDIATION DEPOSIT JAMS, INC. 5791466	1466836
013	9/16/2021	2387217310262003	13	15.00	W	Court Connect for hearing Court Connect for hearing GUY BURNS	1469419
013	12/31/2021	5908780	26	790.46	W	mediation deposit JAMS, INC. 5908780	1471818
013	8/1/2022	425033843-REP#24	26	2,065.00	W	mediation fee JAMS, INC. 1425033843-Rep#24	1480168
013	1/25/2023	2990933601301908	23	16,494.58	W	Posting notice of settlement in 5 newspapers Posting notice of settlement in 5 newspapers GUY BURNS	1486036
013	6/30/2023	3232389308141911	72	228.00	W	Admission to 11th Cir. Ct. of Appeals Admission to 11th Cir. Ct. of Appeals GUY BURNS	1493057
013	2/1/2024	01062111792.96	26	490.00	W	JAMS mediation fee - David Geronemus 9/2022 follow-up JAMS, INC. 01062111792.96	1499150
442	7/30/2020	7-083-96321	19	49.90	W	FEDEX	1457980
442	7/31/2020	7-091-06988	19	46.44	W	FEDEX	1458117
442	8/3/2020	7-091-06988	19	187.49	W	FEDEX	1458120
442	9/4/2020	9/4/20	70	2,500.00	W	DIAMOND MCCARTY, LLP	1458479
442	9/4/2020	7-129-44242	19	20.27	W	FEDEX	1458818
442	2/11/2021	1/1/21-1/31/21	12	25.00	W	TRANSUNION	1461356
442	3/5/2021	BB&T/ED/3/2021	21	51.25	W	STATE BAR OF CALIFORNIA	1461768
442	8/3/2021	7-456-19861	19	66.83	W	FEDEX - 7.29.21 FEDERAL EXPRESS CORPORATION 7-456-19861	1466730
442	8/3/2021	7-456-19861	19	110.75	W	FEDEX - 7.30.21 FEDERAL EXPRESS CORPORATION 7-456-19861	1466732
442	8/10/2021	7-462-71861	19	101.27	W	FEDEX - 8.2.21 FEDERAL EXPRESS CORPORATION 7-462-71861	1466942

EXHIBIT 2



**JOHNSON
POPE**
BOKOR
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COUNSELORS AT LAW

TAMPA ■ CLEARWATER ■ ST. PETERSBURG

File No. 146692

FINAL INVOICE

Wiand v. Wassgren, et al.
Case No. 20STCV49670
Superior Court, County of Los Angeles

Gross Fee (20% of \$22,000,000)	\$4,400,000.00
Costs Advanced	37,512.09
Cost Credit held by CA Counsel	(\$1,250.42)
Armijo Settlement Contribution	(\$118,000.00)
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	\$4,318,261.67