IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**Civil Action No. 18-cv-5587**
v.	**Hon. Manish S. Shah**
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,	**Magistrate Judge Young B. Kim**
Defendants.	

RECEIVER'S RESPONSE TO OBJECTIONS TO JUDGE KIM'S ORAL RULING AND MINUTE ORDER ON RECEIVER'S FIRST FEE ALLOCATION MOTION

Despite the Court's admonishment against retreading previously overruled objections (Dkt. 1031 at 12 n.32), the latest objections do exactly that. They focus on whether the Receiver has proven a benefit. But the Court has repeatedly found that the Receiver's work has benefited and will continue to benefit the properties and the claimants, and granted a priority receiver's lien for two categories of those beneficial activities As such, Magistrate Judge Kim was not charged with determining whether each billing entry in those categories has been proven to be beneficial. Rather, the issue was whether the tasks falling within the Court's approved categories were allocated to the proper properties. (Dkt. 1030 at 11-14) The Receiver's allocation tables for each of the 108 properties and other submissions show that the Receiver has undertaken a substantial and *earnest effort* to fairly, reasonably, and accurately allocate fees in a manner that complies with the Court's orders and follows the Court's approved allocation methodology. (Dkt. 824, at 5) This is what Judge Kim correctly found. Based on this Court's prior rulings and the record before the Court on this issue, Magistrate Judge Kim's rulings must be sustained and the objections overruled.

BACKGROUND

After this motion was referred to Judge Kim, he conducted a hearing to initially determine who was objecting to the Motion. Most of the over 800 claimants have not objected to the Receiver's proposed allocations, well recognizing the unnecessary delays and costs in such an exercise. (*See* discussion in Dkt. 1184) Nor has the SEC objected; to the contrary, it supports the Receiver's position and Judge Kim's rulings. (*See* Dkt. 1407; *see also* Dkt. 1312 at 3*; SEC v. First Securities Co.*, 528 F.2d 449, 451 (7th Cir. 1976) (the SEC's position is given great weight)) The lack of objections by the overwhelming number of claimants and SEC underscore the success of the Receiver's efforts relative to the complexity of this Receivership. (*See also* Dkt. 1031 at 5 (complexity, benefit, quality are factors relative to a Receiver's fees) (citation omitted)) The only objection is from the institutional lenders who typically oppose all of the Receiver's efforts, and continue with their current objections, despite being cautioned about the benefit and efficacy of doing so.[1] (Dkt. 1031 at 12 n.32; Dkt. 1184)

The record supporting the Receiver's allocation motion is substantial. Prior to filing his allocation motion, the Receiver and his team spent more than 1,200 heretofore unbilled hours to review all billing entries, all of which were previously approved and separated into distinct categories. (Dkt. 1107 at p.11) They evaluated each entry along with a host of other information (Dkt. 1182, at 11-12) to distinguish between tasks that are within the approved categories for application of the receiver's lien and those that are not (taking care not to allocate tasks that provided a general benefit to the Estate and not to the properties or the secured claimants). (Dkt.

[1] The Objectors promote their efforts as beneficial to all secured creditors. (Objections, at 2) But they are not. Nobody else has objected, including those investor lenders whose counsel has appeared before the Court to make clear that they oppose the Objectors' efforts here. (*See also* Dkt. 1407 at 4-5) Further, the Objectors have been admonished for their wasteful and dilatory efforts. (Dkt. 1031 at 12 n.32; Dkt. 1184) And they cannot resurrect previously waived objections.

1107 at p.11) In so doing, the Receiver reviewed the tasks and, where appropriate, added specific property allocations for those not included in the original invoices description, a painstaking process that took several months to complete.

The Receiver's allocations also distinguished between properties to ensure that tasks were allocated only to those properties that benefited from the work. Among the Receiver's efforts was to remove or defer tasks that: (i) do not relate to the approved categories, (ii) did not relate to the properties or the secured claimants, or (iii) for which the determination of benefit is premature. In total, the Receiver excluded 7,831 tasks (25%) on one or more of these bases out of the 30,914 tasks in the first 13 fee applications (through 9/30/2021), including 1,799 tasks in the asset disposition, business operations, and claims billing categories (which are the three billing categories that most closely align with the categories that the District Court has approved for application of the receiver's lien).

As the detailed allocation reports show, the Receiver did not divide all fees across all properties. (*See, e.g.,* Dkt. 1107; Dkt. 1230; Dkt. 1400 & Exs. 1-6) Moreover, contrary to the Objectors' arguments that there has been no effort to divide fees in a manner that shares the burden of the costs of the receivership between secured claimants and unsecured claimants (*e.g.,* Objections, at 4-5), the Receiver's removal and deferral of the tasks described above does just that. After submission of the various reports, extensive briefing, and two days of hearings, the Court overruled the objections. For the allocations that Judge Kim found should be corrected, the Receiver corrected them and filed a revised allocation report for each property. (Dkt. 1400 & Exs. 1-6)

ARGUMENT

A Rule 72(a) objection is reviewed under a clearly erroneous standard of review. In reviewing the Receiver's allocations, the Court is not required "to perform the impossible," nor does applicable law require it. *See SEC v. Elliott*, 953 F.2d 1560, 1578 (11th Cir. 1992). Rather, the Court is called upon to review the Receiver's allocations consistent with the Court's approved methodology and "on the best basis it can determine." *Id.* (citations omitted). The Objectors do not establish that the Magistrate Judge's decision is clearly erroneous.

I. The Objectors' Benefit Arguments Have Been Previously Overruled.

The heart of the Objectors' argument is that the Receiver has not shown a benefit to the properties supporting the allocation. But the issue of benefit has already been determined, repeatedly. (*See, e.g.,* Dkt. 1030 at 11 (citing Dkt. 258, at 17-18; Dkt. 467, at 2-7; Dkt. 839, at 11-12); *see also* Dkt. 1031 at 5 (work to preserve, operate, market, and sell the properties, and to implement the claims process, "***benefited the Estate as a whole, as well as all of the creditors*** collectively") (emphasis added)) The law provides that where a receiver's efforts confer a benefit on secured creditors, those efforts "merit fees from [the secured creditors'] collateral." *Elliott*, 953 F.2d at 1577. This is the law of this case.

The Objectors then suggest that "minimal authority and guidance exists" on the issues such that this Court ought to look to bankruptcy law or the decisions of other jurisdictions. (Objections, at 5) The argument is wrong, representing an oft-used tactic of the Objectors[2] to revisit previously

[2] The Objectors made this previously overruled argument in opposing both the receiver's lien (Dkt. 961 at 8) and fee applications. (*See, e.g.,* Dkt. 960 at 5; *compare* Dkt. 1389 at 5-6 *with* Dkt. 961 at 2-4)

decided issues in an attempt to elude the law established by *Gaskill*, *Elliott*, and the prior rulings of this Court.[3] It should be rejected again.

II. The Magistrate Judge's Decision to Grant the Receiver's Motion Is Not Clearly Erroneous.

In support of his motion, the Receiver presented comprehensive reports that allocated fees among 108 properties in excruciating and precise detail over 12,073 pages, down to the penny, and provided a fractional analysis of 30,914 separate billing tasks, representing 17,745.1 hours of work, along with comprehensive briefing explaining all of this work. (Dkt. 1400, Exs. 1-6; *see also* Dkt. 1107) The Receiver's extensively documented allocation efforts and detailed allocation reports go well beyond what was before the court in *Gaskill*. In that case, while confirming the appropriateness of the receiver's lien, the Seventh Circuit remanded the case because "neither the accountants' nor receiver's work summaries similarly break down their fees by category; instead, the petition lists only a total sum for all the accountants' or receiver's work on all receivership properties." *Gaskill*, 27 F. 3d at 253. Absent such detail, the Court could not determine "what portion of these fees relate to the … properties." *Id.* By contrast, here, the Receiver's invoices break down fees by category, and he has provided an individual allocation report for each of the 108 properties, specifying those tasks corresponding to the receiver's lien categories and following this Court's approved allocation methodology. (Dkt. 755 at 22-24; Dkt. 824 at 4-5)

The Objectors' response to this herculean effort is to woodenly argue that the Receiver has not met his burden. While the Objectors looked away, Judge Kim did not. The Magistrate Judge examined the record, informed by the guidance that mathematical precision is not necessary (Dkt. 1184) and that the Court need not do the impossible, but instead should allocate the fees "on the

[3] It is proper to allow payment of administrative expenses from the proceeds of secured collateral when the secured creditor caused the expense. (*See* Dkt. 1230 at p.26 n.15 & citations therein)

best basis it can determine." *Elliott*, 953 F. 2d at 1578. "What is required is that an earnest effort be made to devise a method of allocating the actual costs of the receivership to specific assets…." *Elliott*, 953 F.2d at 1578. That is the law. This is what the Receiver has done. That is what Judge Kim has done, and his decision sits squarely within the law.

Then, rather than acknowledging that Judge Kim's ruling was bound by and followed this Court's prior rulings, the Objectors' wrongly assert that he "drew no lines whatsoever" and "awarded a priming lien on everything the Receiver requested," neither of which is accurate. (Objections, at 8) As noted, numerous lines were already drawn by the District Court's prior orders, the Receiver's allocation efforts by virtue of the SEC billing categories, the receiver lien categories, the deferral of numerous billing categories, the deferral of Group 1 avoidance work, and so forth. (*See, e.g.,* Dkt. 1107 at pp.2-3, 5, 7-8, 10-11; Dkt. 1255 at pp. 9-10) Further, Judge Kim ordered the Receiver to correct certain, specific lines (Dkt. 1381), which was done (Dkt. 1400 & Exs. 1-6). As to the priming lien, Judge Kim was not charged with determining whether or not to "award a priming lien" because the District Court had already done that. (Dkt. 1030)

Next, the Objectors claim that Judge Kim's supposed failures essentially transferred the entire fees of the receivership to the secured creditors. (Objections at 8) The Objectors' misleading argument is wrong and ignores the work done by the Receiver to distinguish between tasks in the categories the Court has found beneficial to the properties (and thus subject to the receiver's lien) and those that are not. They ignore that a significant portion of the fees that have not been allocated to the properties, or have been deferred, may be paid from unsecured funds. They also ignore that, when appropriate (because the work at issue benefited more than one property), fees have been divided across properties. Further, for every property in which the claims have been settled by agreement, the institutional lender claimants have waived their objections to

the Receiver's allocations to those properties. (Dkt. 1272, 1286, 1288, 1289, 1303, 1305, 1330, 1344, 1351, 1364, 1368, 1369, 1373, 1382, 1391) As such, it is ironic and troubling that these same Objectors argued only a few weeks ago that the unsecured claimants ought to bear all of those costs, a position that the Court rejected. (Dkt. 1371)

The Objectors make the related argument that Judge Kim erred because "fees that benefit the Estate or creditors as a whole should generally be charged to the Estate so long as there is no special reason to surcharge the property-specific account." (Objections, at 4 (citing 65 Am. Jur. 2d, Receivers, § 137 at 2; *Fisher v. Hamilton* (*In re Teknek, LLC*), 343 B.R. 850, 875 (Bankr. N.D. Ill. 2006))) That argument is based on several faulty premises. First, it again ignores that the reasons to charge the properties has been repeatedly documented and established by the Receiver's filings and Court's rulings on these issues. The record reflects, consistent with applicable law, the law of the case, and principles of equity, that the Court has ordered the Receiver to be paid for (1) expenses relating to the preservation, management, and liquidation of the real estate from the proceeds of sale of the properties benefitted, and (2) expenses relating to the implementation and management of an orderly summary claim-priority adjudication process from funds obtained from the liquidated properties which received the benefits of that work. *See Elliott*, 953 F.2d at 1576 (citing, *inter alia*, Clark on Receivers § 641 (3d ed. 1959) ("property which is benefitted by the receivership should bear its share of the costs and expenses of the receivership including receiver's fees")).

Second, the notion that no distinction has been made between fees allocated to the properties and those allocated to the Estate is simply false, as discussed above.

Third, the Objectors' citations do not support their arguments. They cite Am. Jur. 2d, Receivers, § 137 for the proposition that "[c]osts and expenses of a receivership are to be paid, as

a general rule, out of income first and, when income is inadequate, out of the property or corpus." But, here, the Estate has no income now that all of the properties have been sold. And as this Court is aware from prior motion practice, when the Receiver was using rental income to pay expenses to preserve and manage the real estate portfolio, they objected. The funds obtained pursuant to settlement – that they instead want to be used to pay fees – are not income generated by operation of the Estate, but merely a different corpus recovered by the Receiver. The Objectors also cite *In re Teknek, LLC*, 343 B.R. 850, 875 (Bankr. N.D. Ill. 2006). But that case supported the quoted statement upon which the Objectors rely with cases that upheld the payment of expenses pursuant to a first-priority receiver's lien against estate property. S*ee, e.g., City of Chicago v. Kideys*, 246 Ill. App. 3d 1077, 1081 (1st Dist. 1993).

The Objectors also wrongly assert "Magistrate Judge Kim disregarded [*Elliott*], … [and] ignored the principles of *Elliot* and its progeny, as well as the law of security interests, including his own ruling, that "state law determines security interests in real property, and 'a receiver appointed by a federal court takes property subject to all liens, priorities, or privileges existing or accruing under the laws of the state.'" (Objections, at 6-7 (citations omitted)) Judge Kim did not disregard and ignore the principles of *Elliott*. What is clear from the transcript is that Judge Kim appropriately found this case is factually distinguishable from *Elliott* in significant and meaningful ways. But the import of that distinction is *not* as the Objectors argue that he ruled *Elliott* was not applicable law – instead, he made clear he was following and had no intention of contravening the District Court prior decisions (which follow *Elliott*). (*See* discussion of *Gaskill*, *supra*, at p.5)

Their argument that Judge Kim ignored his own ruling is also wildly misleading because neither the issue of a receiver's lien nor the allocation of fees to the properties was before Judge Kim at that time. (Objections, at 7 (referencing Dkt. 223, citing *SEC v. Wells Fargo Bank, N.A.*,

848 F.3d 1339, 1344 (11th Cir. 2017)) Nor were these matters at issue in the *Wells Fargo* decision. Rather, the issue Judge Kim was addressing, then, was related to the Receiver's use of rental income to pay for the obligations of any other property in the Estate's portfolio. He was not considering or addressing the Receiver's right to be paid pursuant to a receiver's lien or the proprietary of applying it to secured collateral. In fact, if anything, that ruling relating to use of rents is consistent with the fee allocation and expense accounting framework implemented by the Receiver and approved by the Court in its prior rulings. That is, ensuring that each property pay for the fees and expenses allocated to such property.

The Objectors' related argument and suggestion that "the Receiver's rights, if any, in the sale proceeds are subject to the secured creditors' preexisting security interests … is the law of the case and the law of federal equity receiverships" (Objections, at 7) is disingenuous and ignores this Court's prior rulings.[4] The priority of the receiver's lien was not at issue in connection with the sales motions and corresponding orders the Objectors now cite. (*Id.*) Furthermore, the Objectors' argument that Magistrate Judge Kim failed to apply "this Court's prior ruling regarding the secured creditors' security interests attaching to the sale proceeds" is baseless. (Objections, at 7) There is no prior ruling that put their alleged security interests ahead of the receiver's lien.[5]

[4] For example, the Objectors choose to ignore the precedential value of the Court's recent approval of the Receiver's 17th Fee Application, for which the Court reviewed and approved the "allocations to specific properties based on the adequately detailed supporting materials filed with the Seventeenth Application." (Dkt. 1366 at 2) The Court clearly stated with respect to that application that it "is satisfied that the present application has been appropriately allocated to first-priority tasks and specific properties." (Id. at 2)

[5] Additionally, their argument ignores that their interests and priority as claimants have not yet been established. (Dkt. 1031 at 12 n.32 ("[A]s this Court has previously emphasized, the Lenders are not entitled to act as first-secured lienholders before that status has been adjudicated in the summary claim-priority adjudication process.")) The language in the sales approval orders only preserved the rights of any secured creditors in the sales proceeds. It did not determine whether any particular creditor was in fact secured, nor the relative priority of their interest, nor that any such interest contravened the Court's orders on the priority of the receiver's lien.

The opposite is true—the Court's rulings on the priority of the receiver's lien expressly established that the receiver's lien has priority over their secured interests. (*See, e.g.,* Dkt. 1030; Dkt. 1371)

III. The Objectors' Examples of Supposed Errors by Judge Kim Lack Merit.

Alleged Misuse of Rents. The objectors criticize Judge Kim's reliance on the fact that the Court did not order the Receiver to segregate rent funds when he was appointed, but on the contrary the Order Appointing Receiver imposed upon the Receiver a duty to take custody of Receivership Assets including "all rents," (Dkt. 16, ¶¶ 8A, 8B) and further instructed the Receiver to "conduct the business of the Receivership Defendants in such manner, to such extent and for such duration as the Receiver may deem to be necessary or appropriate," using assets (such as rent) "for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver." (*Id.* ¶¶ 6, 8H)

Given the nature of EquityBuild's business, the income and expenses of this receivership related almost entirely to the real estate holdings that were essentially the sole assets of the estate. Thus, it is not surprising that the majority of the Receiver's efforts related to the maintenance and liquidation of those assets. The Objectors lump all types of work related to conducting the business, such as the supervision of and payments to property managers, the allocation of expenses among the properties, and the Receiver's motions to restore funds from one property to either the Receiver's account or other properties together under their "the Receiver's improper use of rents from one property to pay the expenses of another" umbrella.[6] But the Receiver's work was far

[6] The tasks to which the Objectors object as related to allegedly improper use of rents from one property to pay the expenses of another include 265 tasks highlighted grey on Ex. C to Dkt. 1210, and an indeterminable number of tasks highlighted in grey on Ex. D (because Ex. D is available only in PDF format, it is not possible to filter by color). The highlighted tasks go far beyond the alleged "improper use of rents from one property to pay expenses of another," however, and

broader than this, as is easily confirmed by reading the specific task entries objected to on this basis. And even the work that did directly relate to the Receiver's "Rent Restoration Motions" involved much more than that. (*See, e.g.*, Dkt 749-1, Ex. 2, showing that of the $1,587,866.14 cumulative amount reimbursable from properties, only $391,830,42 was used for the restoration of rents to property accounts).

Claims Adjudication Fees and Claims Collection. This case is unique in that almost all of the creditors claimed secured interests in Estate assets. It is unlike the typical case where the majority of investors are unsecured, and a few select creditors hold security interests in select assets of the estate. Instead, real estate holdings were essentially the sole assets of the EquityBuild estate, and almost all of the creditors claim secured interests in those assets. The costs of "the implementation and management of an orderly summary claim-priority adjudication process" are therefore overwhelmingly property-specific (there are little or no priority disputes among unsecured claimants). As this Court has recognized: "The point of allocating was to attempt to preserve the distinction between claimants with property−specific interests from other unsecured claimants, but not to create an opportunity for secured claimants to shift Receiver's fees onto the unsecured." (Dkt. 1371) The Objectors are attempting to do just that—shift the cost of "collecting" the claims and implementing and managing the claims process onto the minority of claimants who are found to be unsecured. The Magistrate Judge's ruling, which stopped the Objectors' efforts, should be sustained.

include all manner of work relating to the Receiver's efforts in discharging the Receiver's duties to preserve, manage, and liquidate the properties and untangle the morass of claims left behind by the Cohens.

And there is no reason to delay payment for tasks related to the Group 1 priority dispute. Indeed, in granting the Receiver's 17th fee application, this Court agreed. (Dkt. 1366) The Magistrate Judge's ruling should stand in this respect as well.

Allegedly Indiscriminate Allocations. The specific tasks objected to as "indiscriminate allocations" relate to the following work performed on June 6, 2020:

> Assemble all files relating to any administrative or housing court proceedings pertaining to any receivership properties between 2018 and the present (2.4) (allocated to 106 Chicago properties)
>
> Begin preparation of spreadsheet listing all properties, associated litigation matters, judgment amounts, judgment dates, and payment status (3.2) and reorganize same (1.4) (allocated to 79 properties)

The above descriptions make clear that the work involved searching records for all of the Estate properties to compile information relating to the City's administrative and housing court proceedings. Even if a property was determined to have no violations, this work benefited the property by confirming that it could be sold free and clear of City of Chicago liens. The specific workbook of spreadsheets that are the subject of these entries consists of 9 separate spreadsheets, which compile information regarding over 300 administrative and municipal matters against the properties in EquityBuild's portfolio.

Title Work. As Judge Kim recognized, in this complicated matter, "[t]he receiver had to ensure there wasn't going to be any blowback, there wasn't going to be any subsequent litigation from not having done the examination more carefully." (2/8/23 Tr. at 37) The Receiver diligently performed his duties by ensuring that complexities stemming from the sheer number of municipal judgments, potentially unauthorized mortgage releases, liens, quitclaims from purchaser-investors back to EquityBuild, errors in sloppily-prepared EquityBuild deeds, and other assorted liens associated with EquityBuild's ownership were addressed. This work indisputably related to the

liquidation of the specific property charged, and, consistent with the Court's prior rulings, the Receiver should be compensated from that property.

Finally, the Objectors argue the Receiver should have gone through all 30,000 allocations to find similar errors to those he corrected. The Receiver and the Magistrate Judge were justified in addressing the specific objections raised by the Objectors, and should not be required to review other task allocations not raised by the Objectors, particularly in light of the earnest and significant efforts made to create the allocations. Moreover, the Receiver did go back through the time entries to identify tasks relating to insurance renewals or payments to ensure that this work was not allocated to any properties that been sold, and made corrections as warranted. (Dkt. 1400, Ex. 5)

As extensively detailed in his fee applications, the Receiver has not billed (at this time) any of his and his counsel's staggeringly time-consuming work of preparing invoices, allocating tasks to properties, and filing and defending fee applications and fee allocation motions (including the motion at bar). The time spent to correct the objected-to entries that the Receiver conceded were in error was in no way justified by the $239.51 net change to the allocations (Dkt. 1400 at 3) The Objectors make the conclusory assumption that additional errors exist, and bootstrap on that assumption the argument that the Receiver should yet again redo the work to achieve perfection. But this is not what is required, as this Court and others have held. *Elliott,* 953 F.2d at 1578. The Receiver's efforts have been diligent, earnest, and above and beyond that which is required.

IV. The Objectors' Error Ratio Argument Is Flawed and Lacks Any Reliability.

Despite acknowledging at the hearing before Judge Kim that their approach is flawed (Feb. 10, 2023 Hearing Tr. at 124, 127), the Objectors manufacture another insincere narrative in their

effort to extrapolate a supposed 30% error rate to all of the Receiver's allocations.[7] That idea is based on a statistical fallacy, premised on an incredibly small subset of subjectively selected and self-fulfilling examples. The argument lacks intellectual or statistical reliability, and the SEC notes that the ratio is "wildly deceiving." (Dkt. 1407 at 3) The Objectors make no apology for, and do not even recognize, that the dataset against which they are identifying a supposed error rate is a set of 72 examples that they themselves cherry-picked as containing errors. Rather than show that 30% of *all 30,915 tasks* (the true denominator) in the first thirteen fee applications are wrong, it proves practically the opposite, which is that there is a higher error rate in their supposedly best examples. And because the Receiver *corrected* each of the allocations that serve as the numerator to their errant statistical ratio, the true error percentage based on their denominator dataset is 0%.

Finally, as a further measure of protection for possible errors, the District Court already imposed a 20% holdback of fees awarded pursuant to the Receiver's lien. (See Dkt. 1030, at 15) As Judge Kim recognized, this is adequate security to protect against any possible errors that may be located and corrected going forward.

V. The FHFA's Objection Has Been Overruled.

Despite having had their objection already decided by the Magistrate Judge, followed by their own Rule 72 appeal to this Court who affirmed the order (Dkt. 1258, 1325), FHFA files another objection reiterating its prior overruled objections and joining the other objections. The

[7] To begin with, the Objectors do not even explain where this 30% figure came from. They cite to Ex. 2 of their submission as support for the idea that it shows "12 of 40 non-duplicative errors." (Objections, at 12) But their Ex. 2 is a chart that lists 72 tasks; and, as noted, these are cherry-picked examples. Further, while he did not accept it, the error rate identified by the Magistrate Judge based on the skewed arguments presented by the Objectors was 16% (12 of the 72 entries objected to), not 30% (2/8/23 Tr. at 97-98).

FHFA's objection is superfluous, having already been resolved by this Court, but in any event should be overruled for the same reasons and those set forth herein.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Receiver's prior fee applications, the supporting briefs filed by the SEC and the Receiver, and the Receiver's motion for approval to pay certain previously approved fees and costs, as well as this Court's prior rulings on fees and fee allocations, the Receiver respectfully requests that the Court affirm Magistrate Judge Kim's order; overrule the objections; and grant such other relief as the Court deems equitable and just.

Dated: March 10, 2023

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplaw.net
jwine@rdaplaw.net

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Receiver's Response To Objections To Magistrate Judge Kim's Oral Ruling And Minute Order On Receiver's First Fee Allocation Motion, via ECF filing, to all counsel of record on March 10, 2023.

I further certify that I caused true and correct copies of the foregoing to be served upon the following individuals or entities by electronic mail:

- All known EquityBuild investors; and
- All known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form).

I further certify that the Receiver's Response To Objections To Magistrate Judge Kim's Oral Ruling And Minute Order On Receiver's First Fee Allocation Motion will be posted to the Receivership webpage at: http://rdaplaw.net/receivership-for-equitybuild

/s/ Michael Rachlis

Michael Rachlis
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplaw.net