

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	No. 18 C 5587
v.)	
)	Judge John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	
)	
Defendants.)	

ORDER

For the following reasons, the Receiver’s ninth, tenth, and eleventh interim applications and motions for Court approval of payment of fees and expenses of the Receiver and his retained professionals are granted.

I. Background

On August 15, 2018, the SEC filed a complaint against Defendants Equitybuild, Inc., Equitybuild Finance, LLC (collectively, “Equitybuild”), Jerome H. Cohen, and Shaun D. Cohen (collectively, “the Cohens”). *See* Compl., ECF No. 1. According to the complaint, the Cohens used the Equitybuild entities to operate a Ponzi scheme through which they fraudulently induced more than 900 investors to invest at least \$135 million in residential properties on the South Side of Chicago. *Id.* ¶ 1. As the Ponzi scheme collapsed under the increasing weight of obligations to make interest payments to investors, the Cohens allegedly refinanced the properties with new loans from traditional institutional lenders

(the “Institutional Lenders” or “Lenders”), without paying off the existing investors’ debts. *See* Receiver’s Mot. Approval Process Resolution Disputed Claims ¶¶ 1, 6, ECF No. 638. In doing so, Equitybuild often borrowed against the same property twice, creating a clash of claims between the individual investors and the Institutional Lenders. *Id.* ¶ 6.

Shortly after the SEC filed its complaint, the Court appointed a Receiver to marshal and preserve Equitybuild’s assets (the “Estate”). *See* Receivership Order, ECF No. 16. Over the past nearly three years, the Receiver has done just that: he has identified assets—including the South Side commercial residential real estate properties in which the Cohens induced their victims to invest—and liquidated them so as to limit potential liabilities and carrying costs for the Estate, with the goal of repaying the victims of the Cohens’ fraud to the greatest extent possible. To further that goal, and at the Court’s direction, the Receiver has also worked with stakeholders—such as the SEC, the Institutional Lenders, and certain individual investors—to develop a summary claim-priority adjudication process designed to resolve the competing claims against the Estate. *See* 2/9/21 Order Regarding Claims Resolution Process No. 2, ECF No. 941 (outlining procedures to adjudicate lien priorities).

Since the Receiver’s appointment, he has periodically submitted applications for the approval of certain fees and expenses. *See* Receiver’s Fee Appls., ECF Nos. 411, 487, 569, 576, 608, 626, 755, 778. The Receiver now seeks Court approval of fees and expenses incurred by the Receiver and his retained

professionals from the third quarter of 2020 through the end of the first quarter of 2021.

The Receiver's ninth interim application, ECF No. 885, covers the third quarter of 2020—the period from July 1, 2020, through September 30, 2020. The Receiver requests:

- **\$93,678.00** for the Receiver;
- **\$291,759.43** for Rachlis Duff & Peel, LLC (“RDP”)¹;
- **\$8,118.00** for BrookWeiner, LLC;
- **\$37,470.80** for Whitley Penn;
- **\$128.75** for Axos Fiduciary Services;
- **\$1,017.50** for Prometheum;

The Receiver's tenth interim application, ECF No. 945, covers the fourth quarter of 2020—the period from October 1, 2020, through December 31, 2020.

The Receiver requests:

- **\$87,438.00** for the Receiver;
- **\$318,955.81** for RDP²;
- **\$10,335.00** for BrookWeiner;
- **\$5,603.20** for Miller Kaplan;
- **\$120.00** for Axos;
- **\$990.00** for Prometheum.

The Receiver's eleventh interim application, ECF No. 993, covers the first quarter of 2021—the period from January 1, 2021, through March 31, 2021. The

Receiver requests:

- **\$52,572.00** for the Receiver;

¹ The Receiver represents that this amount will be reduced by the \$29,108.00 already received by RDP partner Andrew Porter as agency fees for the title examination work performed in connection with the closing of property sales during the third quarter of 2020.

² The Receiver represents that this amount will be reduced by the \$44,054.00 already received by RDP partner Andrew Porter as agency fees for the title examination work performed in connection with the closing of property sales during the third quarter of 2020.

- **\$194,337.70** for RDP;
- **\$5,953.50** for BrookWeiner;
- **\$5,988.00** for Miller Kaplan;
- **\$2,750.00** for Prometheus.

The Institutional Lenders have objected to all three of the Receiver's applications, and the SEC has filed briefs in support of the applications.

II. Legal Standard

“In securities law receiverships, . . . the awarding of fees rests in the district judge's discretion, which will not be disturbed unless he has abused it.” *S.E.C. v. First Secs. Co. of Chi.*, 528 F.2d 449, 451 (7th Cir 1976). As a general matter, a receiver “who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred.” *S.E.C. v. Byers*, No. 08 CIV. 7104 DC, 2014 WL 7336454, at *5 (S.D.N.Y. Dec. 23, 2014); accord *S.E.C. v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992).

In determining whether the amount of compensation requested is appropriate, a court should consider “all of the factors involved in a particular receivership.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). Such factors include “the complexity of problems faced, the benefit to the receivership estate, the quality of work performed, and the time records presented.” *Byers*, 2014 WL 7336454, at *5 (quoting *S.E.C. v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)). When considering whether a receiver benefited the estate, courts bear in mind that such benefits “may take more subtle forms than a bare increase in monetary value.” *Gaskill*, 27 F.3d at 253 (quoting *Elliott*, 953 F.2d at 1577). Courts also look to the position of the SEC, which is given “great weight”

in determining whether fees should be awarded. *First Secs. Co.*, 528 F.2d at 451 (citation omitted).

III. Analysis

“[T]he complexity of problems faced, the benefit to the receivership estate, [and] the quality of work performed” are all factors that weigh in favor of granting the Receiver’s fee applications. *See Byers*, 2014 WL 7336454, at *5 (cleaned up).

As the Receiver documented in the instant fee applications, this case is complex, involving the preservation, operation, marketing, and sale of dozens residential real estate properties. In the fee applications, the Receiver outlines the efforts he and his retained professionals undertook to address health, life, and safety issues at the properties (such as open building code violations), prepare taxes, oversee property finances, report to creditors on the properties’ operating income and expenses, and market and sell certain of the properties. *See Receiver’s Ninth Fee Appl.* at 5–10, 13, ECF No. 885; *Receiver’s Tenth Fee Appl.* at 5–8, 11, ECF No. 945; *Receiver’s Eleventh Fee Appl.* at 5–9, 10–11, ECF No. 993. The Receiver also managed litigation brought against the Estate and prosecuted claims that may yield recoveries for the estate. *See Receiver’s Ninth Fee Appl.* at 11–13; *Receiver’s Tenth Fee Appl.* at 9–10; *Receiver’s Eleventh Fee Appl.* at 8–10. And the Receiver continued to negotiate with stakeholders, respond to claimants’ communications, and identify, compile, review, and organize claims submitted by creditors in order to facilitate the summary claim-priority adjudication process.

Receiver's Ninth Fee Appl. at 14–16; Receiver's Tenth Fee Appl. at 12–16; Receiver's Eleventh Fee Appl. at 11–14.

The Court finds that there is a significant and continuing need for the Receivership Assets to be managed by a neutral party until an orderly claims process is concluded, and that the Receiver's efforts described above have benefited and will continue to benefit the Receivership Estate. *See, e.g.*, 1/7/20 Order at 3, ECF No. 614; 6/9/20 Order at 3, ECF No. 710; 10/26/20 Order at 3, 4–5, ECF No. 824.³ Therefore, the Court overrules the Lenders' objections that the Receiver's fee applications are unreasonable and cannot be secured by a lien.⁴ *See, e.g.*, 10/26/20 Order at 2–5.

Next, the Court turns to the Lenders' argument that the total sum the Receiver seeks as compensation for himself and his retained professionals is unreasonable in light of the total value of the Estate. Setting conclusory assertions aside, the objecting Lenders have failed to show that the Receiver's requested fees are excessive.

³ Moreover, as the Court sets forth in more detail in its order granting the Receiver a priming lien, the actions taken to preserve, operate, maintain, and sell Estate real properties and participate in the summary claim-priority adjudication process have benefited and will benefit the creditors in addition to the Estate. *See Gaskill*, 27 F.3d at 251 & n.2; *Elliott*, 953 F.2d at 1576–77; *see also* Clark on Receivers § 638 (3d ed. 1959) (describing activities that confer a benefit on and are chargeable to a property).

⁴ The Court reaffirms that only the categories of fees discussed in its order granting the Receiver a priming lien merit a *first-priority* receiver's lien; whether fees and expenses incurred for other activities can surcharge the other lienholders is best left to the summary claim-priority adjudication process.

Prior to this Order, the Court approved the following fees and expenses after considering the Receiver's prior fee applications:

Approved Fees and Expenses

Time Period	Professional	Amount	Total Per Quarter
Q3 2018 ^{5,6}	Receiver	\$ 96,681.00	\$ 413,298.44
	Rachlis Duff & Peel ⁷	\$ 273,678.94	
	Kraus Law Firm	\$ 3,300.00	
	BrookWeiner	\$ 3,465.00	
	Whitley Penn LLP	\$ 27,635.00	
	Prometheum	\$ 8,538.50	
Q4 2018 ⁸	Receiver	\$ 120,471.00	\$ 553,968.43
	Rachlis Duff & Peel	\$ 392,385.09	
	BrookWeiner	\$ 21,642.50	
	Whitley Penn LLP	\$ 15,979.00	
	Lauren D.W. Tatar	\$ 3,490.84	
Q1 2019 ⁹	Receiver	\$ 106,392.00	\$ 547,767.04
	Rachlis Duff & Peel	\$ 418,673.37	
	BrookWeiner	\$ 21,102.00	
	Prometheum	\$ 1,599.67	
Q2 2019 ¹⁰	Receiver	\$ 99,138.00	\$ 525,216.64
	Rachlis Duff & Peel	\$ 403,111.76	
	BrookWeiner	\$ 18,502.50	
	Whitley Penn LLP	\$ 3,706.88	
	Prometheum	\$ 757.50	
Q3 2019 ¹¹	Receiver	\$ 90,948.00	
	Rachlis Duff & Peel	\$ 374,583.42	
	BrookWeiner	\$ 14,273.50	

⁵ The Receiver was appointed on August 17, 2018, so his fee application for the third quarter of 2018 only covers fees and expenses incurred from August 17, 2018, to September 30, 2018.

⁶ Receiver's First Fee Appl., ECF No. 411.

⁷ The Receiver's firm was previously named Rachlis Duff Adler Peel & Kaplan, but for convenience the Court refers to the firm by its current name throughout.

⁸ Receiver's Second Fee Appl., ECF No. 487.

⁹ Receiver's Third Fee Appl., ECF No. 569.

¹⁰ Receiver's Fourth Fee Appl., ECF No. 576.

¹¹ Receiver's Fifth Fee Appl., ECF No. 608.

	Prometheum	\$	2,007.50	
	Axos Fiduciary Services	\$	3,282.50	\$ 485,094.92
Q4 2019 ¹²	Receiver	\$	61,698.00	
	Rachlis Duff & Peel ¹³	\$	213,882.01	
	BrookWeiner	\$	18,246.40	
	Prometheum	\$	550.00	
	Roetzel & Andress ¹⁴	\$	3,415.00	\$ 297,791.41
Q1 2020 ¹⁵	Receiver	\$	79,092.00	
	Rachlis Duff & Peel ¹⁶	\$	271,375.91	
	BrookWeiner	\$	6,975.50	
	Axos Fiduciary Services	\$	3,031.25	
	Prometheum	\$	577.50	
	Kraus Law Firm	\$	1,050.00	\$ 362,102.16
Q2 2020 ¹⁷	Receiver	\$	98,982.00	
	Rachlis Duff & Peel ¹⁸	\$	340,810.47	
	BrookWeiner	\$	7,067.50	
	Axos Fiduciary Services	\$	4,507.50	
	Prometheum	\$	577.50	\$ 451,944.97
Total:				\$ 3,637,184.01

¹² Receiver’s Sixth Fee Appl., ECF No. 626.

¹³ The Receiver requested \$245,649.01, less \$31,767.00 already received by RDP as agency fees for the title examination work performed in connection with the closing of property sales during that quarter. *Id.*

¹⁴ The \$3,415.00 sought in the Receiver’s sixth fee application was paid with proceeds from the sale of the closing on the Naples property. Nonetheless, the Court declines to count the amount as a “deduction,” since Roetzel was ultimately paid out of Estate assets. *See* Receiver’s Reply Supp. Tenth Fee Appl. at 4, ECF No. 971.

¹⁵ Receiver’s Seventh Fee Appl., ECF No. 755

¹⁶ The Receiver requested \$277,478.16, less \$6,102.25 already received by RDP as agency fees for the title examination work performed in connection with the closing of property sales during that quarter. *Id.*

¹⁷ Receiver’s Eighth Fee Appl., ECF No. 778.

¹⁸ The Receiver requested \$378,388.47, less \$37,578.00 already received by RDP as agency fees for the title examination work performed in connection with the closing of property sales during that quarter. *Id.*

As set forth below, the Receiver is seeking an additional \$1,044,053.69¹⁹ for fees and expenses incurred from the beginning of the third quarter of 2020 through the first quarter of 2021:

Fees and Expenses Sought in the Ninth, Tenth, and Eleventh Applications

Time Period	Professional	Amount	Total Per Quarter
Q3 2020	Receiver	\$ 93,678.00	\$ 403,064.48
	Rachlis Duff & Peel	\$ 262,651.43	
	BrookWeiner	\$ 8,118.00	
	Whitley Penn	\$ 37,470.80	
	Axos Fiduciary Services	\$ 128.75	
	Prometheum	\$ 1,017.50	
Q4 2020	Receiver	\$ 87,438.00	\$ 379,388.01
	Rachlis Duff & Peel	\$ 274,901.81	
	BrookWeiner	\$ 10,335.00	
	Miller Kaplan	\$ 5,603.20	
	Axos Fiduciary Services	\$ 120.00	
	Prometheum	\$ 990.00	
Q1 2021	Receiver	\$ 52,572.00	\$ 261,601.20
	Rachlis Duff & Peel	\$ 194,337.70	
	BrookWeiner	\$ 5,953.50	
	Miller Kaplan	\$ 5,988.00	
	Prometheum	\$ 2,750.00	
Total:			\$ 1,044,053.69

As shown in the above tables, when compared to previously approved applications, the Receiver's fees are lower on balance than many quarters' requested amounts. And the Court notes that the Receiver and the RDP firm, which account for a substantial portion of the requested fees each quarter, have significantly discounted their billing rates relative to their standard rates since the Receiver's appointment:

¹⁹ This number subtracts the amounts already received by RDP as agency fees for title examination work performed in connection with the closing of property sales during the third and fourth quarters of 2020. *See supra* nn. 1–2.

Professional	2018 Standard Rate ²⁰	2018 Rate Charged Estate	2020 Standard Rate ²¹	2020 Rate Charged Estate	2021 Standard Rate ²²	2021 Rate Charged Estate
Receiver	\$525	\$390	\$575	\$390	\$625	\$390
Partners	\$525	\$390	\$575	\$390	\$625	\$390
Of Counsel	\$525	\$390	\$575	\$390	\$585	\$390
Associates	\$325	\$260	\$575 ²³	\$260	\$585	\$260
Paralegals	\$165	\$140	\$195	\$140	\$205	\$140
Legal Assistants	\$140	\$110	\$160–\$140	\$110–\$95	\$170	\$110–\$95

Furthermore, the Receiver and RDP's average hourly billing rate for the quarters at issue here was on par with or lower than the average rate achieved in prior quarters:

Average Hourly Rate	2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Q1 2021
Including Receiver ²⁴	\$310–\$265 ²⁵	\$262 ²⁶	\$264 ²⁷	\$270 ²⁸	\$271 ²⁹	\$236 ³⁰
Not Including Receiver				\$245	\$250	\$213

²⁰ See Receiver's First Fee Appl., Ex. A at 2, ECF No. 411-1.

²¹ See Receiver's Ninth Fee Appl., Ex. A, at 2, ECF No. 885-1; Receiver's Tenth Fee Appl., Ex. A at 2, ECF No. 945-1.

²² See Receiver's Eleventh Fee Appl., Ex. A, at 2, ECF No. 993-1.

²³ Attorney Jodi Rosen Wine is Of Counsel at RDP, but she is billing the Estate at the rate that Associate Attorney Nicole Mirjanich billed in 2018. See Receiver's Ninth Fee Appl., Ex. A, at 2. No RDP associates billed time to the Estate for the period of time at issue in this Order. *Id.*

²⁴ The Receiver did not submit information distinguishing between the average billing rate including versus not including the Receiver until his ninth fee application.

²⁵ See Receiver's Combined Resp. Supp. Fifth & Sixth Fee Appls. at 8, ECF No. 703.

²⁶ See Receiver's Combined Resp. Supp. Seventh & Eighth Fee Appls. at 18, ECF No. 800.

²⁷ *Id.*

²⁸ See Receiver's Reply Supp. Ninth Fee Appl. at 11, ECF No. 923.

²⁹ See Receiver's Reply Supp. Tenth Fee Appl. at 3, ECF No. 971.

³⁰ See Receiver's Reply Supp. Eleventh Fee Appl. at 2, ECF No. 1003.

As pointed out by the Receiver, the average billing rates achieved for the first quarter of 2021 were the lowest average billing rates achieved for any quarter of this Receivership. And, on top of the discounts and efficiencies achieved by RDP, the Court notes that the Estate's accountants have also discounted their usual rates by 20%. See Receiver's Ninth Fee Appl., Ex. A, at 3–4; Receiver's Tenth Fee Appl., Ex. A, at 3–4; Receiver's Eleventh Fee Appl., Ex. A, at 3, 5.

After considering the rates set forth above, the professionals' level of skill, the Court's familiarity with billing rates at Chicago law firms, and the complexity of this case, the Court finds that the fees and expenses of the Receiver and his retained professionals are reasonable and appropriate. Furthermore, the objecting Institutional Lenders do not identify time entries that "reflect inflationary billing practices." See *S.E.C. v. Cap. Cove Bancorp LLC*, No. SACV15980JLSJCX, 2016 WL 6078324, at *4 (C.D. Cal. June 29, 2016).³¹ As such, the Court finds that this is not a case where an "across-the-board percentage cut[] either in the number of hours claimed or in the final lodestar figure" is necessary to exclude non-compensable hours from the fee application. See *id.* (quoting *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013)).³²

³¹ The Court further notes that, throughout the three briefs the Institutional Lenders filed objecting to the Ninth, Tenth, and Eleventh fee applications, they simply point to the total fees and expenses and complain that it is too high. They have not presented any particularized arguments that the fees requested are unreasonable. For example, the Lenders do not argue that any professional's hourly rate is unreasonable in light of his or her skill or experience level. Nor have the Lenders identified any specific billing entries they assert are duplicative, or any specific projects which they believe took too long or were inappropriately staffed.

³² As the SEC notes, and as this Court has observed before, the Receiver and his legal professionals have devoted significant resources responding to various motions, objections,

Nonetheless, even when interim fees are otherwise appropriate, a court may hold back a portion of the requested fees “because until the case is concluded the court may not be able to accurately determine the ‘reasonable’ value of the services for which the allowance of interim compensation is sought.” *Id.* at *2 (cleaned up). Courts are mindful “to avoid even the appearance of a windfall” when awarding

and inquiries made by lenders. And these efforts substantially increased the amount of fees the Receiver incurred. *See, e.g.*, 10/26/20 Order at 3; SEC’s Reply Supp. Receiver’s Seventh Interim Fee App. at 2, ECF No. 797 (“In less than two years, the lenders have filed more than fifty substantive motions, objections, and appeals that were adversarial to the Receiver.”). The Court notes that the Institutional Lenders’ insistence on repeating objections that have been previously overruled is not helpful. There is a difference between preserving an objection and wasting judicial resources and Estate resources. The Lenders complain about the Receiver’s fees, but then require the Receiver to respond to dozens of objections raising arguments that have been foreclosed by the law of the case.

For example, as the Court has previously emphasized, the Lenders are not entitled to act as first-priority secured lienholders before that status has been adjudicated in the summary claim-priority adjudication process. *See* 12/11/20 Order at 12, ECF No. 899 (“Again, whether Fannie Mae or Citibank are first-priority secured creditors remains an open question.”). And the Court has repeatedly found that management by a neutral receiver and adjudication of lien priority in the summary process are more efficient and beneficial to the Estate and the Estate’s creditors than individual foreclosure actions, abandonment, and bankruptcy. *See* 4/23/19 Hr’g Tr. at 7–14, 32–36, 49, ECF No. 444; 4/23/19 Order, ECF No. 344 (rejecting abandonment argument); 7/2/19 Hr’g Tr. at 10:17–20, ECF No. 471 (Magistrate Judge Young B. Kim: “This is not a foreclosure situation We are doing what we can to balance the interest of everyone involved.”); 12/9/2019 Order, ECF No. 597 (denying motion of certain lenders for leave to permit bankruptcy cases for receivership entities and stating that the “Court is not persuaded that modifying the receiver order to encourage or require transferring this case to bankruptcy would promote timeliness or efficiency, particularly given the current stage of the proceedings and the work the Receiver has already completed”).

Going forward, the Lenders are admonished that, to the extent they seek to preserve arguments the Court has already rejected, they should do so in a summary fashion that incorporates citations (with pinpoint cites) to previous filings that have thoroughly laid out the objection. And pursuant to their attorneys’ duty of candor to the tribunal, *see* Am. Bar Assoc. Model R. 3.3(a)(2), the Lenders must simultaneously set forth citations to the Court’s prior rulings on each argument. If the Lenders believe that an objection should be revisited in light of new facts or changed circumstances, then the Lenders must clearly set forth the reasons the Court should depart from its prior rulings. This practice will serve to redirect the resources of Receiver, the Court, and the other stakeholders in this case to the Lenders’ new and potentially meritorious arguments, instead of forcing everyone to retread the same ground every few months.

fees to a receiver, especially where, as here, “hundreds of investors and creditors have been defrauded and victims are likely to recover only a fraction of their losses.” *See Byers*, 2014 WL 7336454, at *6 (cleaned up). Furthermore, “[h]oldback provisions are commonly used to . . . incentivize timely resolution.” *S.E.C. v. Lauer*, No. 03-80612-CIV, 2016 WL 3225180, at *2 (S.D. Fla. Mar. 31, 2016)

Thus far, the Court has not held back any of the Receiver’s requested fees. And, indeed, the Court rejected the Institutional Lenders’ previous entreaties to hold back a percentage of the Receiver’s fees based on the Receiver’s representation that “the estate is not insolvent, given the current cash in hand as well as, *inter alia*, sales proceeds and escrow funds that are scheduled to be received in the near future.” *See, e.g.*, 6/9/20 Order at 4 (citing Receiver’s Combined Resp. Supp. Fifth & Sixth Fee Appls. at 10).

But now the Receiver appears to recognize the possibility that the Estate’s funds may be insufficient to fully compensate all of its secured creditors. *See, e.g.*, Receiver’s Ninth Interim Fee Appl. at 18–19, ECF No. 885 (requesting that future compensation and expenses be paid “from the Receiver’s operating account, *to the extent that there are sufficient funds now or in the future*” and “[t]o the extent that funds are insufficient,” requesting that they be paid pursuant to the receiver’s lien (emphasis added)). Additionally, as noted above, the Receiver stopped paying previously approved fees due to a lack of liquidity in the Estate, and, as a consequence, \$2,063,884.22 in approved fees—out of \$3,637,184.01 total approved

fees—have not been paid. *See* Receiver’s Ninth Fee Appl., Ex. B, ECF No. 885-1 at 8 (showing \$2,063,884.22 fees unpaid as of November 30, 2020).

Due to this change in circumstances, the Court exercises its equitable discretion to mandate a 20% holdback on the fees (but not expenses) sought pursuant to the Receiver’s Ninth, Tenth, and Eleventh Fee Applications. Furthermore, pursuant to the Court’s order approving a priming lien for certain categories of expenses, if the Receiver seeks to pay fees approved by this order from the sales proceeds of *encumbered* real estate, then the amount the Receiver is entitled to draw is subject to an additional 20% holdback.³³

IV. Conclusion

For the reasons set forth above, the Court grants the Receiver’s ninth, tenth, and eleventh fee applications. The Court also imposes a holdback of 20% of the fees (but not expenses) requested in the ninth, tenth, and eleventh fee applications. The Receiver may pay such fees and expenses out of the Estate’s operating account to the extent that it has sufficient liquid funds. Consistent with the Court’s October 26, 2020, Order, the Court approves a receiver’s lien in conformity with the framework laid out in that order, as well as the Court’s order granting the Receiver a priming lien for certain categories of fees. The Receiver is

³³ For example, consider the \$93,678.00 in fees incurred by the Receiver for services rendered in the third quarter of 2020. Pursuant to this Order, the entire \$93,678.00 amount is approved, subject to a 20% holdback. Thus, if the Receiver can pay that amount out of the Estate’s operating account, then he will receive an interim payment of \$74,942.40. But (assuming the entire amount falls into the two categories that the Court approved in its order regarding a priming lien), if the Receiver seeks to pay his fee pursuant to the Receiver’s lien, then the \$74,942.40 amount would be reduced by an additional 20% holdback, and the Receiver would receive only \$59,953.92.

not authorized to pay any fees approved by this Order out of the sales proceeds of encumbered assets unless it belongs to the two categories outlined in the Court's order granting a priming lien, and until the Receiver obtains court approval of a proposed allocation of such fees to a particular property.

IT IS SO ORDERED.

ENTERED: 8/17/21

A handwritten signature in black ink, appearing to read "John Z. Lee", written in a cursive style.

John Z. Lee
United States District Judge