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, *et al.*,

Defendants.
_____/

REPORT AND RECOMMENDATION

Pending before the Court is the Receiver's Unopposed Fifteenth Quarterly Fee Application for Order Awarding Fees and Reimbursement of Costs to Receiver and His Professionals ("Fifteenth Quarterly Fee Application") (Doc. 1049). The Receiver seeks reimbursement of fees and costs to the Receiver and the professionals he retained for the period from July 1, 2023 through September 30, 2023. (*Id*. at 2). The Securities and Exchange Commission ("SEC") does not oppose the request. (*Id*. at 33). For the reasons below, the undersigned recommends that the Fifteenth Quarterly Fee Application be **GRANTED**.[1]

I. Background

The SEC brought this action against Individual Defendants Brian Davison ("Davison") and Barry Rybicki ("Rybicki") and Corporate Defendants EquiAlt LLC; EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; and EA SIP LLC (collectively,

[1] In adjudicating the Fifteenth Quarterly Fee Application, the undersigned draws heavily from the background and analysis sections of the Report and Recommendations (Docs. 582, 716, 780, 866, 935, 1017) on Receiver's prior motions for fees and costs, which the District Judge has adopted (Docs. 586, 731, 830, 889, 975, 1042).

"Corporate Defendants") for violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c); Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 regarding the alleged operation of a nationwide Ponzi scheme raising more than $170 million from 1,100 investors through fraudulent unregistered securities offerings (*see* Doc. 1). The SEC further alleged that Relief Defendants 128 E. Davis Blvd, LLC; 310 78th Ave, LLC; 551 3D Ave S, LLC; 604 West Azeele, LLC; 2101 W. Cypress, LLC; 2112 W. Kennedy Blvd, LLC; 5123 E. Broadway Ave, LLC, Blue Waters TI, LLC; BNAZ, LLC; BR Support Services, LLC; Bungalows TI, LLC; Capri Haven, LLC; EA NY, LLC; EquiAlt 519 3rd Ave S., LLC; McDonald Revocable Living Trust; Silver Sands TI, LLC; and TB Oldest House Est. 1842, LLC (collectively, "Relief Defendants") all received proceeds of the fraud without any legitimate entitlement to the money. Upon consideration of the Complaint (Doc. 1), the SEC's *ex parte* motion for temporary restraining order, asset freeze, and other injunctive relief (Doc. 4), and the SEC's *ex parte* motion to appoint a receiver (Doc. 6), the District Judge granted the request for a temporary restraining order, asset freeze, and other injunctive relief and appointed Burton W. Wiand ("Wiand" or the "Receiver") as the Receiver in this action over the Corporate Defendants and the Relief Defendants and each of their subsidiaries, successors, and assigns (Docs. 10, 11).[2]

[2] Subsequently, the District Judge granted the Receiver's motion seeking to expand the Receivership to include EquiAlt Qualified Opportunity Zone Fund, LP ("QOZ"); EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc. ("REIT"); EquiAlt Holdings LLC (sponsor of the QOZ and REIT); EquiAlt Property Management LLC (property manager of the QOZ and REIT); and EquiAlt Capital Advisors, LLC (manager of day-to-day operations for the QOZ and REIT) (Doc. 184). EquiAlt Fund I, LLC was also later added (Doc. 284).

The District Judge outlined the Receiver's duties and the basis for compensation for the performance of such duties, as follows:

> NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Burton Wiand, Esq. is hereby appointed the Receiver over the Corporate Defendants and Relief Defendants, each of their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:
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> 1. Take immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located, including but not limited to all offices maintained by the Corporate Defendants and Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;
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> 2. Investigate the manner in which the affairs of the Corporate Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;
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> 3. Initially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate. The Receiver is specifically authorized to retain for the purposes of the

receivership, forensic accountants (Yip and Associates), information technology consultants and counsel specializing in information technology research (Adam Sharp, E-Hounds, Inc. and Robert Stines of Freeborn & Peters LLP), RWJ Group, LLC, and investigators, and counsel in Phoenix, Arizona to assist in the service of the Order and securing of records and assets. The Receiver shall advise and seek the consent of the Court with respect to the institution of claims relating to vendors, professionals, investors, or financial institutions, or other litigation of a complex and significant nature that may involve commitment of significant assets or the incurrence of significant costs or expenses to the receivership;

4. Present to this Court a report reflecting the existence and value of the assets of the Corporate Defendants and Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Corporate Defendants and Relief Defendants;

5. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Corporate Defendants and Relief Defendants and exercising the power granted by this Order, subject to prior approval by this Court;

6. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service, accountants, or a private security firm;

7. Defend, compromise or settle legal actions, including the instant proceeding, in which the Corporate Defendants, the Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, without authorization of this Court up to a total amount of $50,000 for each claim; except, however, in actions where the Corporate Defendants or Relief Defendants are nominal parties, where the action does not effect a claim against or adversely affect the assets of Corporate Defendants or Relief Defendants, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Corporate Defendants or Relief Defendants;

8. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated,

of the Corporate Defendants or Relief Defendants and, upon[] order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

9. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

10. Have access to and review all mail of Corporate Defendants or Relief Defendants (except for mail that appears to be purely personal or in any respect attorney-client privileged communication to or from the individual Defendants) received at any office or address of Corporate Defendants or Relief Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the appointment of the Receiver provided for above:

11. The Corporate Defendants or Relief Defendants and all of their directors, officers, agents, employees, attorneys, attorneys-in- fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records or other property of the Defendants and Relief Defendants shall deliver forthwith upon demand such property, money, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Corporate Defendants and Relief Defendants;

12. The Receiver is authorized to open a bank account or accounts in the name of the Receivership to carry out the business of the Receivership and the Receivership Estate;

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16. The Receiver, and any counsel whom the Receiver may select, are entitled to compensation from the assets now held by or in the possession or control of or which may be received by the Corporate Defendants and Relief Defendants; said amounts or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court. The Receiver

is specifically authorized to retain Wiand Guerra King P.A. as attorneys for the Receiver;[3]

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28. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates;

29. The Quarterly Status Report shall contain the following:

    A. A summary of the operations of the Receiver;

    B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;

    C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;

    D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;

    E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and (ii) collecting such judgments);

    F. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,

[3] The firm name changed from Wiand Guerra King P.A. to Guerra & Partners, P.A. ("G&P") since entry of the Order Appointing the Receiver. Any reference in this Report and Recommendation to Wiand Guerra King P.A. or Guerra King, P.A. applies to G&P.

G. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

30. Subject to Paragraphs 31–37 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes;

31. Subject to Paragraph 32 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. Except as otherwise provided herein, the Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement;

32. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court;

33. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff;

34. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership;

35. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership;

36. Each Quarterly Fee Application shall:

> A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
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> B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

(Doc. 11 at ¶¶ 1-12, 16, 28-36).

In accordance with the directive in the Order Appointing the Receiver, the Receiver now submits his Fifteenth Quarterly Fee Application, seeking compensation for the fees and costs incurred for the performance of his duties as well as the fees and costs incurred by the Retained Personnel he hired to assist in the performance of such duties (Doc. 1049). The Receiver seeks an award of all fees and costs incurred from July 1, 2023 through September 30, 2023 in these amounts: (1) Receiver, in the amount of $76,419.56; (2) G&P, in the amount of $62,881.39; (3) Johnson, Newlon & DeCort ("JND"), in the amount of $56,624.83; (4) Jared J. Perez, P.A., in the amount of $5,985.00; (5) Yip Associates ("Yip"), in the amount of $17,466.60; (6) PDR CPAs ("PDR"), in the amount of $22,858.50; (7) E-Hounds, Inc. ("E-Hounds"), in the amount of $9,041.50; (8) Smith, Gambrell & Russell, LLP ("SGR"), in the amount of $922.00; (9) Omni Agent Solutions ("Omni"), in the amount of $22,490.75; and (10) The RWJ Group, LLC ("RWJ"), in the amount of $2,490.32 (*Id*. at 34). As noted, the SEC does not oppose the requested relief (*Id*. at 33).

II. Analysis

When determining relief in an equity receivership, district courts maintain broad powers and wide discretion. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citations

omitted). When a receiver reasonably and diligently discharges his or her duties, the receiver is entitled to compensation. *Id*. at 1577 (citation omitted); *see Stuart v. Boulware*, 133 U.S. 78, 82 (1890) ("Nor is there any doubt of the power of courts of equity to fix the compensation of their own receivers. That power results necessarily from the relation which the receiver sustains to the court; and, in the absence of any legislation regulating the receiver's salary or compensation, the matter is left entirely to the determination of the court from which he derives his appointment."). In determining whether a receiver merits a fee, the court must consider the circumstances surrounding the receivership, with the results obtained always relevant to the analysis. *Elliot*, 953 F.2d at 1577 (citation omitted); *see F.T.C. v. Worldwide Info Servs., Inc.*, No. 6:14-cv-8-Orl-41DAB, 2015 WL 144389, at *4 (M.D. Fla. Jan. 12, 2015) (citation omitted) (noting that courts may consider several factors in determining the reasonableness of a fee award to a receiver, including "(1) the results achieved by the receiver; (2) the ability, reputation and other professional qualities of the receiver; (3) the size of the estate and its ability to afford the expenses and fees; and (4) the time required to conclude the receivership."). In considering a fee award to a receiver, "the prosecuting agency's acquiescence to the requested fees militates strongly in favor of approving them." *F.T.C. v. Direct Benefits Grp., LLC*, No. 6:11-cv-1186-Orl-28TBS, 2013 WL 6408379, at *4 (M.D. Fla. Dec. 6, 2013) (citations omitted).

Further, once appointed, the receiver operates as an officer of the court and remains subject to the court's directions and orders, and, while in the discharge of his or her official duties, the receiver may obtain counsel for himself or herself, and counsel fees fall within the just allowances that the court may make. *Stuart*, 133 U.S. at 81. A receiver also is entitled to reimbursement for the actual and necessary expenses the receiver incurred in the performance

of his or her duties, although the receiver must support a claim for such expenses with sufficient information to allow a court to determine whether the expenses constituted actual and necessary costs of preserving the receivership estate. *Worldwide Info Servs., Inc.*, 2015 WL 144389, at *4 (citations omitted). Receiverships are not intended to generously reward court-appointed officers, however, especially when the receivership estate fails to recover sufficient assets to pay full restitution to the victims of the alleged fraud or misconduct. *F.T.C. v. Vacation Commc'n Grp., LLC*, No. 6:13-cv-789-Orl-37DAB, 2015 WL 2127724, at *4 (M.D. Fla. May 6, 2015) (citations omitted).

When determining the reasonableness of an award of fees to a receiver and any retained professionals, courts typically begin the analysis with the lodestar method, calculating the reasonable hourly rate in the relevant market and the reasonable number of hours expended. *Id*. at *3 (citations omitted); *see Worldwide Info Servs., Inc.*, 2015 WL 144389, at *4, n.3 ("In determining the reasonableness of professional fees, courts typically undertake a lodestar approach, which focuses on the reasonableness of the hourly rate and the reasonableness of the hours billed."); *see S.E.C. v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2008 WL 4144424, at *4 (M.D. Fla. Sept. 5, 2008); *cf. Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983) (discussing the lodestar method); *cf. Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299-1302 (11th Cir. 1988) (discussing the lodestar method). In determining the lodestar figure, a "reasonable hourly rate" consists of "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman*, 836 F.2d at 1299 (citations omitted). In this context, "market rate" means the hourly rate charged in the local legal market by an attorney with

expertise in the area of law who is willing and able to take the case, if indeed such an attorney exists. *Am. Civil Liberties Union of Ga. v. Barnes*, 168 F.3d 423, 437 (11th Cir. 1999).

After determining the reasonable hourly rate, courts must then determine the number of hours reasonably expended on the litigation. In submitting a fee petition, counsel must exercise proper billing judgment and thus exclude any hours that are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 434; *Norman*, 836 F.2d at 1301. "Both a receiver and his counsel must exercise proper billing judgment in seeking fees from the receivership estate, and should limit their work to that which is reasonable and necessary irrespective of the amount of money in the receivership estate." *Kirkland*, 2008 WL 4144424, at *5 (citation omitted). As to claims for professional services, the receiver must also provide evidence indicating the hourly rate is reasonable and commensurate with rates paid for similar services and that the time expended by such professionals was reasonable. *Id*. at *4. Requests for reimbursement of expenses from the receiver also must be supported by sufficient information to permit the court to determine that the expenses are actual and necessarily incurred. *Vacation Commc'n Grp., LLC*, 2015 WL 2127724, at *3 (citation omitted). Regardless, the Court is an expert with respect to fee applications and therefore may consider a fee award based on its own experience and knowledge concerning reasonable and proper fees and therefore may form an independent judgment as to value. *See Norman*, 836 F.2d at 1303 (citations omitted).

As the Court concluded with the prior requests, upon review of the Fifteenth Quarterly Fee Application, including the accompanying fee and costs records (Doc. 1049), the undersigned finds that the Receiver continued to properly perform his duties and employ professionals to help carry out those duties. Further, the Receiver and the Retained Personnel

discharged their duties in a diligent and reasonable manner and did not incur unnecessary fees or costs. Importantly, as noted above, the SEC does not oppose the Receiver's request for fees and costs (*Id*. at 33). The lack of any opposition by the SEC bears great weight in determining the reasonableness of the fees and costs to be awarded by the Court. *See S.E.C. v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008) (citation omitted) (stating that, in a securities receivership, the SEC's opposition or acquiescence to the fee application will be afforded great weight); *see Direct Benefits Grp., LLC*, 2013 WL 6408379, at *4.

A. Receiver

As for the Receiver's fees, the Receiver indicates that he reduced his standard hourly rate from $500 to $360 and seeks a total of $76,419.56 for work performed for 184.30 hours expended on Receivership activities, 1.1 hours expended on recovery of false profits from investors, and 0.5 hours expended on clawback litigation against non-investors from July 1, 2023 through September 30, 2023, including an award of $6,800.00 for 54.4 hours of paralegal work[4] at a rate of $125 per hour and costs in the amount of $2,695.56 (Doc. 1049 at 11-12; *see also* Docs. 1049-2, 1049-3, 1049-4, 1049-5).

Based on the undersigned's own experience and the rates typically awarded to court-appointed receivers in the Middle District of Florida (*see* Docs. 586, 731), the requested hourly rate of $360 is reasonable. *See, e.g.*, *F.T.C. v. First Choice Horizon LLC*, Case No. 6:19-cv-1028-

[4] Courts only reimburse work of paralegals and law clerks when such individuals perform work traditionally done by attorneys. *Jean v. Nelson*, 863 F.2d 759, 778 (11th Cir. 1988) (concluding that a district court properly reimbursed the time spent by paralegals and law clerks where the work was that normally done by an attorney). In this instance, review of the time records for the paralegal (Doc. 1049-3) indicates that the work performed by the paralegal constituted legal work normally performed by an attorney rather than clerical work. Accordingly, the undersigned recommends awarding the fees requested for work performed by the paralegal, as both the requested rate and the time expended on such work are reasonable.

Orl-40LRH, 2020 WL 1431526, at *2-3 (M.D. Fla. Jan. 15, 2020), *report and recommendation adopted*, 2020 WL 1431601 (M.D. Fla. Jan. 31, 2020) (considering several factors in concluding that an hourly rate of $350 was reasonable for a court-appointed receiver in the Middle District of Florida); *F.T.C. v. MOBE Ltd.*, Case No. 6:18-cv-862-Orl-37DCI, 2018 WL 4782327, at *3 (M.D. Fla. Sept. 17, 2018), *report and recommendation adopted*, 2018 WL 4774960 (M.D. Fla. Oct. 3, 2018) (finding a rate of $330 per hour a reasonable rate for compensating a court-appointed receiver in the Middle District of Florida); *F.T.C. v. Life Mgmt. Serv. of Orange Cnty., LLC*, Case No. 6:16-cv-982-Orl-41TBS, 2017 WL 4861467, at *3 (M.D. Fla. Aug. 9, 2017), *report and recommendation adopted*, 2017 WL 4877460 (M.D. Fla. Oct. 30, 2017) (finding a rate of $325 per hour a reasonable rate for compensating a court-appointed receiver in the Middle District of Florida and finding reasonable 129.2 hours expended by such receiver). Furthermore, the hours expended by the Receiver and his paralegal during the period from July 1, 2023 through September 30, 2023 are reasonable and do not appear excessive, redundant, or unnecessary at this point.

As detailed more fully in the Receiver's Fifteenth Quarterly Status Report (Doc. 1043), the Receivership involves more than 1,100 investors, $170 million in investments, and more than 200 properties. During the relevant period, the Receiver and the Retained Personnel closed on 11 properties sold through the Receiver's court-approved online auctions for net proceeds of $3,054,536.40; closed on one private sale of receivership property, receiving net proceeds of $178,666.96; conducted a Ninth Online Property Auction (selling 15 properties) and continued preparations for additional periodic online auctions as approved by the Court; received proceeds from Sotheby's watch auction for 13,225.00; received $60,496.24 in proceeds from the clawback settlements with investors; received $109,000.00 in proceeds from

clawback settlement with sales agents; obtained judgments in five investor clawback cases for a total of $200,795.60; negotiated and submitted a motion for the approval of a settlement with sales agent Robert Armijo; and continued working with partners on the operations of Commerce Brewing and related entities to complete the construction of the tasting room and continue to increase production and sales (Doc. 1049 at 2-4).

As a result, the 184.30 hours expended by the Receiver, the 54.4 hours expended by the paralegal, and the costs incurred, including costs for notary services and automobile insurance and tag renewal, from July 1, 2023 through September 30, 2023, are fair and reasonable considering the activities performed and the results achieved. Accordingly, the Receiver should be awarded fees and costs in the amount of $76,419.56.

B. G&P

With respect to legal services, the Receiver retained G&P, which the District Judge specifically authorized in the Order Appointing the Receiver (Doc. 11 at ¶ 16). The Receiver now seeks $60,129.00 in fees and $2,752.39 in costs for services provided by G&P (Doc. 1049 at 14-15). The attorney fee schedule provided by G&P includes the following proposed rates for the Receivership: $350 for members/partners; $240 for associates; and $135 for paralegals (*Id.*; *see also* Doc. 1049-6). The fee records indicate that the hourly rates requested include the following:

Professional	**Position**	**Experience**	**Hours**	**Rate**	**Fees**
Maya Lockwood	Of Counsel	23 years	146.70	$240.00	$35,208.00
Amanda Stephens	Paralegal		93.10	$135.00	$12,568.50
Kimberly Paulson	Paralegal		91.50	$135.00	$12,352.50
				TOTAL:	$60,129.00

(Doc. 1049 at 15; *see also* Doc. 1049-7). These numbers reflect work performed liquidating assets for the benefit of the Receivership, investigating and pursuing additional assets for the Receivership, and administering the claims process (*see* Doc. 1049 at 14).

Upon review, all the requested hourly rates are reasonable. *See F.T.C. v. Hardco Holding Grp. LLC*, No. 6:17-cv-1257-Orl-37TBS, 2017 WL 4772624, at *4-5 (M.D. Fla. Oct. 3, 2017), *report and recommendation adopted*, 2017 WL 4700396 (M.D. Fla. Oct. 19, 2017) (finding an hourly rate of $210 for an attorney with two years' experience on the high side but not unreasonable; an hourly rate of $325 for an associate with seven years' experience reasonable and at or below that charged by attorneys of comparable experience and skills in the Middle District of Florida; an hourly rate of $400 for an attorney with twelve years' experience and particularized expertise reasonable; and a discounted hourly rate of $400 for a partner with twenty one years' experience reasonable*); Life Mgmt. Serv. of Orange Cnty., LLC*, 2017 WL 2869535, at *2-4, *report and recommendation adopted*, 2017 WL 4877460 (concluding that hourly rates charged for legal services rendered on behalf of a court-appointed receiver in the amounts of $310, $360, and $410 were reasonable and an hourly rate of $125 for legal work performed by paralegals was reasonable). And the hours expended by counsel and the paralegals do not appear unnecessary, excessive, or redundant but rather reflect a reasonable amount of time spent on this matter. Given that both the hourly rate and the hours expended are reasonable, attorneys' fees should be awarded for work performed by G&P. Accordingly, G&P should be awarded $60,129.00 in fees.

G&P also seeks reimbursement in the amount of $2,752.39 for costs, encompassing costs for online research and website-related expenses (Doc. 1049 at 15). The costs appear to have been necessarily incurred for the Receiver and the Retained Personnel to carry out their

duties. Such costs are thus fair and reasonable and should be awarded. Thus, G&P should be awarded costs in the amount of $2,752.39. In total, fees and costs should be awarded in the amount of $62,881.39 for work performed by G&P, which represents $60,129.00 in fees and $2,752.39 in costs.

C. JND[5]

The Receiver retained the law firm of JND to assist as co-counsel (*see* Doc. 278), which the Court approved (Doc. 282). As an accommodation to the Receiver and to conserve the resources of the Receivership Estate, JND has agreed to follow the reduced rates for attorneys and paralegals provided in the G&P fee schedule (Doc. 1049 at 16; *see also* Doc. 1049-6). Based on those rates, the Receiver now seeks fees for professional services rendered by JND from July 1, 2023 through September 30, 2023 in the amount of $55,148.00 in fees as follows:

Professional	**Position**	**Experience**	**Hours**	**Rate**	**Fees**
Katherine Donlon	Partner	28 years	91.9	$350.00	$32,165.00
Mary Gura	Paralegal		109.60	$135.00	$14,796.00
				TOTAL:	$46,961.00

(Doc. 1049 at 15-20; *see also* Docs. 1049-8, 1049-9, 1049-10).

Upon review of the billing records and the Fifteenth Quarterly Status Report, the hours expended are fair and reasonable for the services performed and present no redundancies or unnecessary time spent on this matter (Docs. 1049-8, 1049-9, 1049-10). During the relevant period, JND assisted the Receiver with investigating the fraud and related activities, liquidating Receivership assets, investigating and pursuing additional assets for the

[5] The firm name changed from Johnson, Cassidy, Newlon & DeCort (*see* Doc. 975 at 3) to Johnson, Newlon & DeCort ("JND") since entry of the Order Appointing the Receiver (*see* Doc. 936).

Receivership, and administering the claims process, along with work on the two discrete projects relating to recovery of false profits from investors and clawback litigation against non-investors (Doc. 1049 at 18-20).

Further, as discussed above, the rates charged are reasonable for the Middle District of Florida. *See Hardco Holding Grp. LLC*, No. 6:17-cv-1257-Orl-37TBS, 2017 WL 4772624, at *4-5, *report and recommendation adopted*, 2017 WL 4700396; *Life Mgmt. Serv. of Orange Cnty., LLC*, 2017 WL 2869535, at *2-4, *report and recommendation adopted*, 2017 WL 4877460. In addition, JND incurred costs in the amount of $1,206.32 for certified copies, publication costs, delivery services, and a certificate of good standing (Doc. 1049 at 17). Accordingly, JND should be awarded $48,167.32, which includes $46,961.00 in fees and $1,206.32 in costs.

D. Jared J. Perez, P.A.

The Receiver also retained the services of Jared J. Perez, P.A. (Doc. 610). The District Judge approved the retention of those services (Doc. 639). As an accommodation to the Receiver and to conserve the resources of the Receivership Estate, Mr. Perez has agreed to follow the reduced rates for attorneys provided in the G&P fee schedule (Doc. 1049 at 20-21; *see also* Doc. 1049-6). Based on those rates, the Receiver now seeks fees for professional services rendered by Jared J. Perez, P.A. from July 1, 2023 through September 30, 2023 in the amount of $5,985.00 in fees as follows:

Professional	**Position**	**Experience**	**Hours**	**Rate**	**Fees**
Jared J. Perez	Partner	17 years	17.1	$350.00	$5,985.00
				TOTAL:	$5,985.00

(Doc. 1049 at 21; *see also* Doc. 1049-11).

For the reasons discussed *supra* with JND, the undersigned finds the hours expended and the hourly rate fair and reasonable given the work performed by Jared J. Perez, P.A. Therefore, Jared J. Perez should be awarded $5,985.00.

E. Yip

With respect to the non-legal professional services obtained, the Receiver retained the services of Yip, a forensic accounting firm specializing in insolvency and restructuring, Ponzi schemes, fraud investigations, insolvency taxation, business valuation, and litigation support, to assist with the cash in/cash out analysis for establishing a claims process, among other things (Doc. 1049 at 21-22). The District Judge specifically authorized the retention of Yip in the Order Appointing the Receiver (Doc. 11 at ¶ 3). As detailed more fully by the Receiver, Yip "has been instrumental to the Receiver in investigating and analyzing the financial status of the Receivership Entities and the investment scheme at issue in this case," including, but not limited to, the tracing of investor proceeds to various assets and properties and substantially completing the process of gathering the investors' investments and distributions for the claims process (Doc. 1049 at 22; *see also* Doc. 1049-12). As the Receiver indicated throughout these proceedings, most of the costs associated with forensic accounting services occur on the front end of the Receivership and would not be duplicated later but would result in greater efficiency as the claims process and filing of clawback actions commenced.

To that end, the Receiver now seeks an award of $17,455.50 in fees as follows:

Professional	**Position**	**Experience**	**Hours**	**Rate**	**Fees**
Maria Yip	Partner	30 years	2.3	$495.00	$1,138.50
Danny Zamorano	Manager	6	66.6	$245.00	$16,317.00
				TOTAL:	$17,455.50

(Doc. 1049 at 22; Doc. 1049-12).

Such hourly rates are reasonable considering the experience levels of each professional and the results achieved by Yip thus far. *See F.T.C. v. Nationwide Connections, Inc.*, Case No. 06-80180-Civ-Ryskamp/Vitunac, 2009 WL 10669124, at *8-9 (S.D. Fla. Apr. 14, 2009), *report and recommendation adopted*, 2009 WL 10668438 (S.D. Fla. Apr. 24, 2009) (awarding a forensic accounting firm used by a court appointed receiver fees in the amount of $32,333.50 for 143.7 hours of forensic accounting work at a blended rate of approximately $225 per hour). Nor do the hours appear inflated, excessive, or unnecessary for the work performed during this period. In addition, Yip incurred costs in the amount of $11.10 (Doc. 1049 at 22). Accordingly, Yip should be awarded $17,466,60, which includes $17,455.50 in fees and $11.10 in costs.

F. PDR

The Receiver also retained the services of PDR to assist with accounting and tax matters (Doc. 1049 at 23-24). The District Judge approved the retention of PDR and limited its role to internal Receivership accounting, financial reporting, tax preparation and filing, and internal accounting for EquiAlt (*see* Doc. 85). The District Judge directed the Receiver to advise as to the maximum number of hours anticipated to be incurred by PDR, and should it become apparent that PDR's hours would exceed the anticipated maximum, the Receiver should submit a motion to that effect (*Id.*). In approving the retention of PDR, the District Judge approved the following hourly rates for PDR employees working on this matter: $320 for partners/principals; $210 for managers; $180 for senior associates; and $125 for staff members (*Id.*). Subsequently, the Receiver submitted the anticipated maximum number of hours for PDR, indicating that a principal of PDR agreed to a maximum of $15,000 for PDR's

services for each of the first three months and then a maximum of $6,000 for each month thereafter (Doc. 87 at 3).[6]

The Receiver seeks an award of $22,858.50 in fees for accounting, auditing, consulting, and tax services provided by PDR during the relevant period. (Doc. 1049 at 23-24; Doc. 1049-13). The requested fees include reasonable rates in the following amounts: $320 for Partner William Price, $210 for Manager Matthew Low, $155 for Manager Gail Heinold, and $125 for Staff Members Sharon O'Brien and Taylor Jones. (Doc. 1049 at 23-24; Doc. 1049-13). Further, upon review, the 136.80 hours expended on accounting and tax matters by PDR appear reasonable. (Doc. 1049 at 23-24). Accordingly, fees should be awarded in the amount of $22,858.50 for the work performed by PDR.

G. E-Hounds

For computer forensics services to assist the Receiver in securing and analyzing electronic data, the Receiver retained E-Hounds, which the District Judge authorized in the Order Appointing the Receiver (Doc. 11 at ¶ 3). Specifically, E-Hounds assists with the collection and preservation of electronic records, including email records, GoDaddy records, DropBox files, and computer equipment and with updating and maintaining the proprietary review platform (Doc. 1049 at 24-25). The Receiver seeks an award of $9,041.50 for services rendered and costs incurred by EHounds, which includes $3,570.00 in monthly platform charges and $3,375.00 for additional platform users (*Id*. at 25). The billing records also

[6] A previously assigned Magistrate Judge recommended and the District Judge adopted a modification of these limits given PDR's expanded role (*see* Docs. 582, 586). While the undersigned recommends that the fees be adjusted again for purposes of this Fifteenth Quarterly Fee Application, the District Judge, who approved the initial budget for PDR's services (Docs. 85, 87), may require a more formal request with a new proposed budget to adjust the budget going forward.

indicate that EHounds charged $350.00 per hour for 1.7 hours of expert services and $195 per hour for 7.7 hours of technician work (*Id.* at 25; *see also* Doc. 1049-14). The hourly rate charged, the hours expended, and costs incurred are all reasonable for the work performed collecting and preserving electronic data. *See, e.g., SEC v. Kinetic Inv. Grp.*, Case No. 8:20-cv-394-MSS-SPF (M.D. Fla.) (Docs. 73 & 101); *CFTC v. Oasis Int'l Grp. Ltd.*, Case No. 8:19-cv-886-VMC-SPF (M.D. Fla.) (Docs. 203 & 207). Fees and costs in the amount of $9,041.50 for work performed, services provided, and costs incurred by E-Hounds should be awarded.

H. SGR

The Receiver retained Robert Stines for legal services regarding information technology, data collection, and potential privacy and confidentiality issues, which the District Judge specifically authorized in the Order Appointing the Receiver (Doc. 11 at ¶ 3; *see also* Doc. 541 at 16-17). Mr. Stines was with the firm Freeborn & Peters LLP but is now associated with SGR (Doc. 879). Mr. Stines provided "counsel and assistance to the Receiver related to EquiAlt's websites, domain names, investor portals, internet and email accounts, and encrypted data on servers and laptops." (Doc. 1049 at 25-26). For this work, the Receiver requests an award in the amount of $922.00 for work performed by SGR from July 1, 2023 through September 30, 2023 (*Id.*). The billing records indicate that SGR billed for 2.60 hours of Mr. Stines's time at a rate of $345.00 per hour and for 0.2 hours of paralegal Virginia Williams's time at a rate of $125.00 per hour (*Id.* at 26; Doc. 1049-15). The undersigned finds the hourly rates reasonable given that the District Judge already approved Mr. Stines's services at such a rate and the paralegal rate is less than what the Court has already found reasonable for other Retained Personnel. Additionally, the hours expended appear fair and reasonable given the services performed and the experience held by Mr. Stines. *See Hardco*

Holding Grp. LLC, 2017 WL 4772624, at *4-5; *Life Mgmt. Serv. of Orange Cnty.*, LLC, 2017 WL 4861467, at *3. The requested fees in the amount of $922.00 for SGR's services, therefore, should be awarded.

I. Omni

The Receiver retained Omni to assist with the logistical aspects of the claims process (*see* Doc. 335), which the District Judge approved (Doc. 347). According to the Receiver, "Omni is an information management company that provides administrative services and technology solutions to simplify claims administration." (Doc. 1049 at 26). Omni assists with the logistical aspects of the claims process, including mailing, determining the correct addresses for returned mail, addressing clerical deficiencies, assisting with data entry for the returned Proof of Claim Forms, and processing distributions (*Id*. at 26-27). The Standard Services Agreement between the Receiver and Omni indicates that, except as otherwise stated therein, services rendered by Omni will be billed at rates ranging from $135 to $205 per hour, representing a 5% discount (*see* Doc. 335-5), which the District Judge adopted in authorizing the Receiver to retain Omni (Doc. 347 at 4).

The Receiver now seeks fees in the amount of $22,490.75 for time expended by several individuals on the claims administration process (Doc. 1049 at 26-27; Doc. 1049-17). Upon review of the time records, none of the hours expended on case administration and the claims process appear excessive, redundant, or unnecessary (Doc. 1049-17). Further, the fee amounts fall within the agreed-upon rates that the District Judge already approved. Accordingly, fees in the amount of $22,490.75 should be awarded to Omni.

J. RWJ

The Receiver retained RWJ, an asset management and investigation firm, to assist with investigations and overseeing ongoing business operations and property recovered by the Receiver (Doc. 1049 at 27-28). The District Judge specifically authorized the retention of RWJ in the Order Appointing the Receiver (Doc. 11 at ¶ 3). The Receiver now seeks an award of $2,367.00 in fees for work performed by RWJ in this matter. (Doc. 1049 at 28; Doc. 1049-18). The billing records indicate that RWJ billed for one employee, Roger Jernigan, for 26.3 hours of work performed at a rate of $90.00 per hour. As indicated by his biography, Roger Jernigan holds more than 30 years' experience in law enforcement and maintains more than 11 years' experience assisting on receivership matters (Doc. 122-11 at 6-7). Such experience is integral in performing RWJ's work, including overseeing day-to-day property management and supervision, employee management and supervision, and property identification, preparation, and assessment. Both the hourly rate and the hours expended appear fair and reasonable given the services performed and the experience held by Roger Jernigan. *See generally, SEC v. Kirkland*, No. 6:06-cv-183- Orl-28KRS, 2008 WL 3981434, at *3 (Aug. 21, 2008), *report and recommendation adopted at* 2008 WL 4533931 (M.D. Fla. Sept. 29, 2008) (approving a rate of $150 per hour for investigative services). RWJ also incurred $123.32 in costs, including postage and mileage fees. The requested fees and costs in the amount of $2,490.32 for RWJ's services should be awarded.

III. Conclusion

For these reasons, the undersigned **RECOMMENDS**:

1. The Receiver's Unopposed Fifteenth Quarterly Fee Application for Order Awarding Fees and Reimbursement of Costs to Receiver and His Professionals (Doc. 1049) be **GRANTED**; and

2. Fees and costs be awarded in the following amounts:

   a. The Receiver, in the amount of $76,419.56;

   b. G&P, in the amount of $62,881.39;

   c. JND, in the amount of $56,624.83;

   d. Jared J. Perez, P.A., in the amount of $5,985.00;

   e. Yip, in the amount of $17,466.60;

   f. PDR, in the amount of $22,858.50;

   g. E-Hounds, in the amount of $9,041.50;

   h. SGR, in the amount of $922.00;

   i. Omni, in the amount of $22,490.75; and

   j. RWJ, in the amount of $2,490.32.

IT IS SO REPORTED in Tampa, Florida, this 14th day of November, 2023.

SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to the proposed findings and recommendations or request an extension of time to do so. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. Failure of any party to timely object in accordance with the provisions of § 636(b)(1) waives that party's right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1.