UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 23-24903-CIV-JB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.
_______________________________________/

RECEIVER'S REPLY IN SUPPORT OF MOTION (1) TO APPROVE DISBURSEMENT OF VALENCIA LIEN CLAIM FUND PROCEEDS FROM SALE OF UNIT 1201; AND (2) APPROVE SURCHARGE OF LENDER

Bernice C. Lee, as the Court-appointed Receiver ("Receiver") over the Receivership Companies,[1] submits this reply in support of the Receiver's Motion to (1) Approve Disbursement of Valencia Lien Claim Fund Proceeds from Sale of Unit 1201; and (2) Approve Surcharge of Lender ("Valencia Disbursement Motion") [Dkt. No. 548], and in reply to the Response and Limited Objection ("Lender Response") [Dkt No. 564] filed by non-party Valencia Acquisition 515, LLC ("Lender"). Other than the Lender Response, no other response or objection was filed to the Valencia Disbursement Motion.

[1] The Receivership Companies include: Location Ventures, LLC, URBIN, LLC, Patriots United, LLC; Location Properties, LLC; Location Development, LLC; Location Capital, LLC; Location Ventures Resources, LLC; Location Equity Holdings, LLC; Location GP Sponsor, LLC; 515 Valencia Sponsor, LLC; LV Montana Sponsor, LLC; URBIN Founders Group, LLC; URBIN CG Sponsor, LLC; 515 Valencia Partners, LLC; LV Montana Phase I, LLC; Stewart Grove 1, LLC; Stewart Grove 2, LLC; Location Zamora Parent, LLC; URBIN Coral Gables Partners, LLC; URBIN Coconut Grove Partners, LLC; URBIN Miami Beach Partners, LLC; and URBIN Miami Beach II Phase 1, LLC.

Through the Valencia Disbursement Motion, the Receiver seeks the following relief: (1) to authorize payment from the Valencia Lien Claim Fund of the principal balance of Lender's debt, plus interest at the contractual default rate for pre-receivership periods, and at the contractual non-default rate for post-receivership periods, plus documented lender expenses; (2) to authorize payment of an additional $406,998.70 on account of any additional amounts assertedly payable on Lender's claim, and to authorize the Receiver to retain such amount in satisfaction of the Receiver's surcharge claim as of March 31, 2026 against Lender's interest in the Valencia Property; (3) to deem the payments to satisfy the principal balance of Lender's claim such that no additional interest shall accrue; and (4) to preserve any additional claims by or against Lender.

In the Lender Response, the Lender makes the following arguments: (1) that it is entitled to default interest; (2) that the proposed payment should not be deemed to satisfy Lender's loan; and (3) that the Receiver's proposed surcharge should be charged as a litigation expense advanced by Lender and added to the loan balance. None of these arguments are a basis for denying the relief requested in the Valencia Disbursement Motion.

(1) Lender's Default Interest Claim.

Lender argues that the Receiver's request to deem the proposed payment to satisfy the principal balance of Lender's claim such that no further interest may accrue is an "end-around" on the Eleventh Circuit's decision in *Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017). In *Wells Fargo*, the Eleventh Circuit held that a court supervising a receivership did not have authority to extinguish a lender's secured claim as a result of the lender's failure to participate in a receivership claim process, but that the lien remains intact regardless of whether the creditor files a proof of claim. *Id.* at 1344-45. In so doing, it cited approvingly to Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 646 (3d ed. 1959) which notes, "The appointment of a receiver does not invalidate liens existing at the time the receiver is appointed, although it may affect or change the remedy or remedies which the lienholder may use to enforce his lien." *Id.* at 1345.

Wells Fargo only specifically addresses whether a secured creditor is deemed to forfeit its lien by failing to participate in a receivership claim process. It does not address whether the secured creditor's remedies may be impacted by the receivership, and through its reference to the Clark treatise, impliedly suggests that they very well may be affected. The authorities cited in the Valencia Disbursement Motion identify one of the potential effects: as held in *Vanston*, and followed in *Equitybuild*, the creditor's entitlement to continue asserting interest accrual may be cut off by the appointment of a receiver. *Vanston Bondholders Protective Comm. v. Green,* 329 U.S. 156, 163 (1946); *Sec. & Exch. Comm'n v. Equitybuild, Inc.*, No. 18 CV 5587, 2024 WL 3069682 (N.D. Ill. Jun. 20, 2024), *aff'd*, 161 F.4th 1020 (7th Cir. 2025), *reh'g denied*, No. 24-2254, 2026 WL 71248 (7th Cir. Jan. 8, 2026). Far from being "outdated," as Lender argues, *Vanston* is specifically relied upon by the Seventh Circuit in the recently decided *Equitybuild* case to evaluate the particular issue at hand here: calculation of interest on a secured claim in a receivership case.

Equitybuild, like *Wells Fargo*, recognizes that a receiver "takes the property in the estate subject to the 'liens, priorities or privileges existing or accruing under the laws of the state.'" *Equitybuild*, 2024 WL 3069682, *5 (citations omitted). But – contrary to Lender's reference to bankruptcy statutes and cases[2] – *Equitybuild* also recognizes that receiverships are not exclusively governed by the bankruptcy priority scheme: "Equitable receiverships inhabit a middle ground

[2] *E.g.*, 11 U.S.C. § 506(b); *In re Sundale, Ltd.*, 410 B.R. 101 (Bankr. S.D. Fla. 2009); *In re Sublett*, 895 F.2d 1381 (11th Cir. 1990: *In re Delta Res., Inc.*, 54 F.3d 722 (11th Cir. 1995). [Dkt. No. 564 at 3].

where, in an effort to craft a fair and reasonable distribution plan, some legal principles and contractual rights are respected, and others are not." *Id.* In *Equitybuild*, the court effectively disallowed *all* claims for interest on secured claims. Here, the Receiver proposes only to limit Lender's recovery of *default-rate* interest, and only for *post-receivership* periods. That limitation, which in effect prohibits the post-receivership assertion of defaults against the Receivership Companies, is also consistent with the injunctive provisions of the Receivership Order itself, which prohibits any post-receivership action by a creditor to enforce or accelerate any claim or agreement or pursue or continue any action or proceeding against the Receivership Companies [Dkt. No. 28, ¶¶ 23, 26-28].

Lender argues that reference to *Vanston* is misplaced because it applied an equitable analysis that pre-dated the Bankruptcy Code. [Dkt. No. 564 at 5]. But as explained in *Equitybuild*, the Bankruptcy Code does not dictate distributions in a federal equity receivership. *Equitybuild*, 2024 WL 3069682, *5-8. Lender further argues that *Equitybuild* is distinguishable because there, the security interests "were themselves the Ponzi scheme." [Dkt. No. 564 at 5-6]. But the *Equitybuild* court applied its decision to both "individual investors" whose investments were "part of the fraud scheme" where multiple mortgages were placed on the same property, and "institutional lenders" who were "the only lender in a transaction" and secured their loan with a mortgage on a particular property. *Id.* at *1-2, 6-8.[3] Lender seeks to distinguish *Sec. & Exch. Comm'n v. Capital Cove Bancorp LLC*, No. SACV 15-980-JLS (JCx), 2015 WL 9701154, *11-12 (C.D. Cal. Oct. 13, 2015) by asserting that it was based upon a finding that the lien was subject to a bona fide dispute. [Dkt. No. 564 at 4]. But the *Capital Cove* court's discussion of the "bona

[3] "This [prohibition on interest] applies to all secured claimants, whether they be Individual Investors or Institutional Lenders." *Id.* at *8.

fide" dispute was in reference to its authority to sell the property free and clear of liens, *Capital Cove*, 2015 WL 9701154 at *4-8 – not its discussion of its stay of post-receivership default interest, which is based on "equitable considerations" and makes no reference to a bona fide dispute over the lien. *Id.* at *11-12.[4]

In any event, the Valencia Disbursement Motion does not seek to conclusively extinguish any claim for additional interest that Lender may assert. To the contrary, it preserves Lender's ability to assert such claim (subject to all defenses thereto), and provides that the Valencia Lien Claim Fund will continue to collateralize any such claim to the extent such claim is ultimately allowed. Paragraph 25 of the Motion provides:

> Lender may still pursue a claim against the remaining funds in the Valencia Lien Claim Fund for any additional interest asserted to have accrued up to the date of this Motion in excess of the Payoff Amount, or for any other attorneys' fees or costs asserted to be due under the Loan, subject to any and all defenses, objections, and setoffs, legal or equitable, that may be asserted against such claims ("Additional Lender Claims").

[Dkt. No. 548 at 10]. The relief sought by the Valencia Disbursement Motion is a determination that as a result of the payment proposed thereby, no *additional* interest may be asserted to accrue on Lender's claim after the Receiver's tender of such payment through the Motion. The Lender Response does not address or challenge the propriety of that proposal.

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[4] Lender also questions the Receiver's citation to *SEC v. Harbor City Capital Corp.*, No. 6:21-cv-694-CEM-DCI, 2023 WL 1105282, *6 (M.D. Fla. Jan. 30, 2023), claiming the court there denied a motion to limit the lender's default interest. [Dkt. No. 564 at 5]. But while the *Harbor* City court noted that the receiver had cited cases supporting limitation on post-receivership default interest, *Id.* at *6, it denied the motion without prejudice because it was "somewhat unclear what effect granting the Motion would have" or the interest rate or timeframe the receiver sought to apply. *Id.* Notably, the motion was subsequently resolved through an order which provided for the lender to receive interest at the contract, non-default interest rate. *See* Case No. 6:21-cv-00694-CEM-DCI Dkt. No. 149 (attached as Exhibit "A").

(2) Satisfaction of the Loan.

Lender argues that the payment proposed in the Valencia Disbursement Motion should not be deemed to satisfy the loan because it does not address Lender's claim for attorneys' fees, additional interest, or any other amounts asserted to be due under the loan documents, and therefore "kills Lender's security" on the remainder of its collateral. The Valencia Disbursement Motion did not address Lender's claim for attorneys' fees because the most recent payoff statement provided by Lender did not include a quantification of or support for the attorneys' fees. The Receiver may well dispute Lender's assertion of an indemnity claim in connection with the Mironest Litigation, and may dispute the substantial fees exceeding $350,000 asserted in Lender's response (which the Receiver understands includes a substantial "reserve" for fees not incurred).

But those issues need not be addressed now, because once again, Paragraph 25 of the Valencia Disbursement Motion provides that any such claim is preserved and may be asserted against the Valencia Lien Claim Fund – subject to any and all defenses, objections, and setoffs that may be asserted by the Receiver with respect to such claims.

(3) Receiver's Surcharge.

Finally, Lender asserts a "limited objection" to the Receiver's proposed surcharge, asserting only that the surcharge should not come out of Lender's default interest but instead be charged as a litigation expense advanced by Lender and added to the loan balance. [Dkt. No. 564 at 7]. Lender cites no authority in support of its assertion that the surcharge should be added to its loan balance. And Lender does not dispute that the Receiver has authority to seek to surcharge secured creditors for the administration of property that is subject to liens; that the court has discretion to award the receiver fees if the receiver's actions have benefited the property, and determine who should pay such costs; that Lender impliedly, if not expressly, consented to the

Receiver's administration of the Valencia Property through these receivership proceedings; that the Receiver and her professionals incurred the fees and costs reflected in Exhibit C to the Valencia Disbursement Motion in connection with the administration of the Valencia Property, and that those fees and costs are reasonable; and that Lender has benefited from that administration, including through the Receiver's maintenance and preservation of the Valencia Property, through the marketing and sale of Units 1104 and 1201, through the payment of the Unit 1104 Disbursement to Lender, and through the disbursement proposed in the Valencia Disbursement Motion.

The Receiver's actions provided a benefit to Lender, and the Court has discretion to provide that the Lender pay for that benefit. As proposed in the Valencia Disbursement Motion, the Lender's payment for that benefit only comes after the Lender has fully recovered pre-receivership interest at the default rate and post-receivership interest at the non-default rate. The Court's imposition of the surcharge against Lender is fully consistent with the authorities relied upon in the Valencia Disbursement Motion, including *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1576 (11th Cir. 1992).

(4) Judicial Notice.

With regard to Lender's request for judicial notice, to the extent Lender seeks judicial notice that the "Foreclosure Litigation" and "Mironest Litigation" were filed, the Receiver does not dispute that the Court may take judicial notice that those actions exist. However, Lender's Response does not identify any particular records or facts therein which it seeks to have the Court judicially notice; and moreover, judicial notice of pleadings filed in another court is limited to taking notice of the fact that such pleadings were filed, not of the truth of any matters asserted therein. *See, e.g.*, *U.S. v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *Barley v. Islamorada, Village* *of Islands*, 794 F.Supp. 3d 1226, 1245 (S.D. Fla. 2025) (court may take judicial notice of documents filed in another court "only to establish what those documents contain, not the veracity of their contents") (quoting *Navarro v. City of Riviera Beach*, 192 F.Supp. 3d 1353, 1364 (S.D. Fla. 2016)). Accordingly, any judicial notice must be limited to the existence of those actions, and if appropriately identified, any particular filings therein.

Conclusion

For the foregoing reasons, the Receiver respectfully requests that the Lender's limited objections be overruled, and that the Court grant the Valencia Disbursement Motion.

Respectfully submitted,

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Counsel for Bernice C. Lee, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 27th day of August, 2026 via CM/ECF upon all counsel of record.

By: /s/ *David L. Rosendorf*
David L. Rosendorf

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. **Case No. 6:21-cv-694-CEM-DCI**

HARBOR CITY CAPITAL CORP., HARBOR CITY VENTURES, LLC, HCCF-1 LLC, HCCF-2 LLC, HCCF-3 LLC, HCCF-4 LLC, HCCF-5 LLC, HARBOR CITY DIGITAL VENTURES, INC., HCC MEDIA FUNDING, LLC, JONATHAN P. MARONEY, CELTIC ENTERPRISES, LLC, and TONYA L. MARONEY,

Defendants.

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ORDER

THIS CAUSE is before the Court on Receiver's Motion for Clarification and Other Relief ("Motion," Doc. 137) and Receiver's Emergency Amended Motion for Clarification and Other Relief ("Amended Motion," Doc. 145). The United States Magistrate Judge issued a Report and Recommendation (Doc. 148), recommending that the Motion be denied as moot and that the Amended Motion be granted in part and denied in part.

After review in accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72, and noting that no objections were timely filed, the Magistrate Judge's recommended disposition is accepted. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 148) is **ADOPTED** and made a part of this Order.
2. Receiver's Motion for Clarification and Other Relief (Doc. 137) is **DENIED as moot**.
3. Receiver's Emergency Amended Motion for Clarification and Other Relief (Doc. 145) is **GRANTED in part** and **DENIED in part**.
    a. All liens attached to or that otherwise impact the Property are transferred from the Property to the proceeds from the sale of the Property. Specifically, the Property shall be sold free and clear of liens, claims, and encumbrances.
    b. The Property is to be sold pursuant to the contract previously reviewed and approved by this Court. (*See generally* Oct. 25, 2022 Order, Doc. 118).
    c. Proceeds from the sale of the Property sufficient to satisfy all liens previously existing shall be held in the trust account of Real Title.

d. Real Title shall utilize the proceeds from the sale of the Property to satisfy those liens to which the Receiver has no objection, including those previously identified in Receiver's Motion to Approve Private Sale of Property (Doc. 111).

e. Real Title shall release funds to Benworth that amount to the remaining principal of the mortgage note and interest on the underlying mortgage at the stated rate of the mortgage: 9.75%.

f. Real Title shall retain in escrow the remaining proceeds from the sale of the Property.

g. Real Title shall not disburse nor otherwise distribute these remaining sale proceeds absent further Order of this Court.

h. The liens will attach to the proceeds of the sale of the Property with those liens, claims, and encumbrances to maintain the same force, effect, and priority against the sales proceeds as existed at the time of the closing of the sale.

i. The Amended Motion is otherwise **DENIED**.

DONE and **ORDERED** in Orlando, Florida on April 26, 2023.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party