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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

No. 3:16-cv-00438-PK

RECEIVER'S REQUEST FOR APPROVAL
OF SECOND INTERIM FEE APPLICATION

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INTERIM FEE APPLICATION

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v.

AEQUITAS MANAGEMENT, LLC;
 AEQUITAS HOLDINGS, LLC;
 AEQUITAS COMMERCIAL FINANCE,
 LLC; AEQUITAS CAPITAL
 MANAGEMENT, INC.; AEQUITAS
 INVESTMENT MANAGEMENT, LLC;
 ROBERT J. JESENİK; BRIAN A. OLIVER;
 and N. SCOTT GILLIS,

Defendants.

Local Rule 7-1

Owing to the complexity and volume of the Receiver's Request for Approval of Second Interim Fee Application, the Receiver has not sought to confer with the other parties or counsel as would normally be required under Local Rule 7-1.

I. RELIEF REQUESTED

The Court-Appointed Receiver in this action, Ronald F. Greenspan, respectfully requests the Court's approval to pay the interim fees and expenses of the Receiver and the professional service firms that have rendered services on behalf of the Receivership Entity for the period from July 1, 2016 through September 30, 2016 (the "Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the Report of the Receiver filed on November 10, 2016 (the "November Report")¹ as well as each firm's summary invoice.² As the Court is aware, this is a very complex and otherwise difficult case. The information contained in the November Report and the

¹ Dkt. 298-1.

² Greenspan Declaration, Exhibits B-G.

invoices demonstrates both the necessity of the services provided, as well as the reasonableness of the resulting fees and expenses.

The Court has previously approved the engagement of each of the professional service firms. In accordance with the request of the Commission, all of the firms have discounted their standard hourly rates. The fees and expenses submitted for approval by the Court are consistent with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (the “Instructions”). In accordance with the direction set forth in the Order Appointing Receiver, the Receiver provided the Commission complete copies of the detailed invoices of all of the firms prior to the filing of this Application. Prior fees and expenses requested, allowed, and paid by the Receivership Entity are set forth in detail below.

II. BACKGROUND

On March 10, 2016, the Commission filed a Complaint (the “Complaint”) against the Entity Defendants as well as Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis (collectively the “Individual Defendants”), for alleged violation of Federal Securities Laws in what the Commission describes as a “Ponzi-like” scheme.³ The Commission alleges that the Individual Defendants, all principals of one or more of the Entity Defendants, defrauded investors and also misused investor funds to pay operating expenses and to repay earlier investors.⁴ The Commission further alleges that “[b]y the end of 2015 [Aequitas] owed investors \$312 million and had virtually no operating income to repay them.”⁵

³ Dkt. 1.

⁴ Dkt. 1, ¶¶ 1-7.

⁵ Dkt. 1, ¶ 5.

On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Ronald F. Greenspan was appointed as Receiver for the Entity Defendants and 43 related entities on an interim basis (the “Interim Order”). On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the “Final Receivership Order”).⁶ In very general terms, the Receiver is directed to marshal and preserve assets of the Receivership Entity.

Due to the complexity of this receivership and the Receiver’s goal to keep the various constituencies apprised of progress being made, the Receiver filed his first report and recommendations to the Court on September 14, 2016 (the “Initial Report”).⁷ The Initial Report covered the period ending June 30, 2016. The November Report represents the report and recommendations to the Court for the quarter ending September 30, 2016. The content of the Second Interim Fee Application, like the focus of the November Report is to provide an update on various aspects and progress of the Receivership.

A. The Receiver continues to focus on stabilization, preservation, and monetization of assets.

The Receiver and his professionals remain focused on the stabilization of the Receivership Entity to preserve value and facilitate asset monetization. From the beginning of the Receivership through the quarter ending September 30, 2016, the Receiver has sold assets and collected receivables totaling approximately \$120 million. Operationally, employee headcount remained constant from the beginning of the quarter to the end of the quarter at 17

⁶ Dkt. 156.

⁷ Dkt. 246.

(from pre-receivership levels of 129 in December 2015).

B. The Receiver recommends that the Receivership continue for the benefit of creditors and investors.

It remains the Receiver's recommendation that the Receivership be continued. The conditions under which the Receivership was imposed still exist. As of September 30, 2016, the Receivership was less than one hundred sixty-five days old. While much has been accomplished, there is still much more to do. Based on the lifecycle of a typical receivership, this Receivership is still in the first stage – the stabilization and monetization of assets. The Receiver must continue to focus efforts on monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. As more progress is made in the stabilization and monetization of the assets, the Receiver anticipates being able to commence soon the investigation stage to (i) develop a historical factual understanding which will assist the Receiver to develop a proposed distribution plan and assist investors to evaluate such plan, and (ii) ferret out additional claims and causes of actions for the benefit of the investors. As the Receiver concludes the investigation stage, based on the investigation results, the Receiver may, with the approval of the Court, initiate the litigation stage, pursuing recovery from third parties for the benefit of the Receivership Entity. The final stage of the receivership is the development and execution of the distribution plan to be approved by the Court.

The various loan portfolios and numerous operating companies owned by the Receivership require daily management until they are monetized and/or closed down. The Receiver and his team fill the management gap left after the termination of the Individual Defendants and the departures of other management and staff. Absent that day-to-day, hands-on management, the Receivership Entity's, and, ultimately, the investors' value would languish.

Feedback from SEC staff and the Aequis investors regarding our progress thus far has been overwhelmingly positive. The Receiver believes he has their support and encouragement to continue his efforts, and that they also support the continuation of the Receivership.

C. The Receiver recommends that the stay of litigation remain in place for a minimum of an additional ninety days.

Pursuant to the directive contained in paragraph 24 of the Final Receivership Order, the Receiver and certain of his professional team investigated the impact on the Receivership Estates if Ancillary Proceedings were to be brought against registered investment advisers in which the Receivership Entity has an ownership interest. In furtherance of the overarching goal of maximizing the recovery to investors and other creditors in general, as opposed to maximizing the recovery to a particular subset of investors, the Receiver recommends that the stay of litigation remain in place for a minimum of ninety additional days as outlined in detail in the November Report.

The Receiver is also in the process of developing a plan to govern discovery directed to the Receiver and the Receivership Entity in Ancillary Proceedings and those actions authorized in Paragraph 23 of the Final Receivership Order. While there are multiple ways to deal with discovery requests, the Receiver seeks an approach that would (1) aid in the Receiver's investigation and (2) minimize cost for the Receivership and third-party litigants consistent with providing them full information.

D. The following qualified professional service firms have been engaged by the Receiver to aid in the discharge of his duties and responsibilities to the Receivership Entity.

On March 16, 2016, pursuant to the Interim Order, the Receiver engaged FTI Consulting,

Inc. (“FTI”), as well as the law firms of Pepper Hamilton LLP (“Pepper”), Schwabe, Williamson & Wyatt PC (“Schwabe”) and Pachulski Stang Ziehl & Jones LLP (“Pachulski”) on an interim basis. On April 14, 2016, pursuant to the Final Receivership Order, the Receiver engaged FTI, Pepper, Schwabe and Pachulski on behalf of the Receivership Entity.

On July 18, 2016, pursuant to the Order Granting Receiver’s Application To Employ Counsel, the Receiver employed the Law Offices of Stanley H. Shure (“Shure”), Akin Gump Strauss Hauer & Feld LLP (“Akin”), Morrison & Foerster LLP (“MoFo”) and Ater Wynne LLP (“Ater”) *nunc pro tunc* to March 10, 2016.

1. FTI Consulting - Receiver, Financial Advisor and On-Site Management

The Receiver is employed as a Senior Managing Director of FTI, which bills and collects for the Receiver’s time and expenses. To support the Receivership, the Receiver has retained FTI and has access to FTI professionals. FTI is serving as financial advisor to the Receiver and providing daily, on-site management supervision over the operations of the Receivership Entity. Additionally, FTI has been instrumental in preparing assets for market and running certain sale processes – saving the Receivership Entity the significant investment banking fees that otherwise would have been paid in those situations.

2. Pepper Hamilton - Securities and Exchange Commission Counsel

Pepper represents the Receiver in connection with SEC-related matters, including the SEC Complaint and discovery promulgated thereunder. Pepper also represents the Receiver regarding other ongoing regulatory inquiries and acts as a point of contact for the Receiver with the Consumer Finance Protection Bureau (the “CFPB”) and state attorneys general. Pepper has also assisted the Receiver with certain transactional work.

3. Schwabe, Williamson & Wyatt – General Counsel

As general counsel to the Receiver, Schwabe provides general outside counsel advice, as well as the majority of transactional support and litigation support for all matters other than the SEC action. As periodically requested by the Receiver and as required of local counsel, Schwabe assists in the SEC enforcement action. Schwabe also communicates with the SEC Staff regarding operations, asset sales and other issues related to the administration of the Receivership.

4. Pachulski Stang Ziehl & Jones – Bankruptcy Counsel

Pachulski has been retained to provide advice involving bankruptcy related matters, if needed.

5. Stanley H. Shure – Insurance Counsel

The Law Offices of Stanley H. Shure was retained to provide counsel on all insurance coverage issues pertaining to the Receivership Entity, including but not limited to: (a) reviewing and analyzing the Receivership Entity's liability insurance policies with respect to the claims made against it, (b) providing counsel in the event of insurance coverage disputes with the Receivership Entity's insurers, (c) evaluating the "Bankers Bond" policy for scope of coverage and whether the Receivership Entity holds any claims under the policy, and (d) analyzing and providing counsel with respect to claims, if any, that the Receivership Entity may have against former directors and officers of the Receivership Entity.

6. Morrison & Foerster – Consumer Finance Protection Bureau

Before the Commission filed suit, MoFo was counsel for three entities within the Receivership Entity: Aequitas Capital Management, Inc., Aequitas Commercial Finance, LLC, and Campus Student Funding, LLC on two matters. Specifically, MoFo

represented those three entities with respect to (a) the Corinthian Colleges bankruptcy case, and (b) an investigation initiated by the CFPB relating to loans owned by Aequitas through its arrangements with Corinthian Colleges (the “CFPB Matter”). The Receiver has retained MoFo with respect to ongoing representation in the CFPB Matter and in negotiations with state attorneys general.

7. Akin Gump Strauss Hauer & Feld – American Student Financial Group, Inc.

Prior to entry of the Interim Order, Akin was counsel to certain entities within the Receivership Entity in two matters. First, Akin represented Aequitas Capital Management, Inc. in the matter of American Student Financial Group, Inc., et al. v. Aequitas Capital Management, Inc., Case No. 12-cv-02445-CAB-JMA (S.D. Cal.). Akin also represented Robert Jesenik and Andrew MacRitchie, but claims against those individuals were dismissed on summary judgment. Second, Akin has represented the following companies in the Receivership Entity, in the matter of American Student Financial Group, Inc. v. Campus Student Funding, LLC, et al., Case No. 37-2013-00028562-CU-IP-CTL (San Diego Superior Court): Aequitas Commercial Finance, LLC; Aequitas Investment Management, LLC; Aequitas Income Protection Fund, LLC; Aequitas Income Opportunity Fund, LLC; and Aequitas Capital Management, Inc. Akin has also represented Campus Student Funding, LLC, f/k/a ASFG, LLC, Thomas Szabo, and Thomas Reiter in the same matter.

8. Ater Wynne – Conflicts Counsel regarding Wells Fargo Bank, NA

Ater was retained to represent the Receiver with respect to matters adverse to Wells Fargo Bank and other matters where the Receiver’s retained counsel had a conflict of interest. Ater may provide future services as conflicts counsel, as and when the need arises.

E. The Receiver and the professional firms have already returned millions of dollars to the Receivership Entity.

During the Application Period, the Receivership Entity's cash receipts totaled \$32.8 million and cash disbursements totaled \$33.2 million, for a net cash decrease of approximately (\$0.4) million (on the "book cash" basis). Since the beginning of the Receivership, the Receivership Entity's cash receipts totaled \$150.5 million and cash disbursements totaled \$127.5 million, for a net cash increase of approximately \$23 million. As of September 30, 2016, the Receivership Entity had possession of cash balances of approximately \$38.9 million. The Standardized Fund Accounting Report, which is included in the Receiver's November Report, provides a detailed statement of cash receipts and disbursements.

The November Report also contains detailed accounts of the asset sales efforts during the Application Period.⁸ The following are summaries of the prior and ongoing sales efforts of the Receiver.

1. Prior Sales Closed

As discussed in detail in the Initial Report, the Receiver, since his appointment, has conducted a competitive sale process and sold two large Consumer Loan Portfolios realizing approximately \$64.2 million in gross proceeds or \$10.1 million in proceeds, net of the payment to the Comvest Lenders in satisfaction of the Comvest Loans; plus an additional \$9.2 million of collections, that had been previously retained by the Comvest Lenders, were released to the Receivership. The Receivership Entity has also sold, through competitive bidding, certain office equipment and furniture (the "OEF") located at the Entity Defendants' business premises at 5300 SW Meadows Road, Suite 400, Lake Oswego, Oregon, realizing in excess of \$50,000 in net

⁸ Greenspan Declaration, Ex. A.

proceeds.

2. Sales Closed During the Application Period

a. Edplus Holdings, LLC/Unigo Group Sale

On June 21, 2016, the Receiver filed the Receiver's Motions for an Order (1) Authorizing Receivership Entities to Execute Instruments to Sell Extended Entity Assets, and (2) Approving Compromise of Creditor Claim Against ACF [Dkt. 199]. As reflected in the motion and the Declaration of Ronald F. Greenspan filed in support of the motion [Dkt. 200], the consideration for the sale was \$500,000 to be paid to EdPlus at closing (the "Initial Cash Proceeds"), \$100,000 to be paid sixty days after the closing (based upon working capital true-up calculations), and an "earn out" based on the performance of EdPlus during the 12 months following the sale (the "Earn-out") which may or may not result in additional payments of up to \$12.9 million.

On June 28, 2016, the Court approved the motion, and entered the Order (1) Authorizing Receivership Entities to Execute Instruments to Sell Extended Entity Assets, and (2) Approving Compromise of Creditor Claim Against ACF [Dkt. 207] and the transaction closed on the same day. The Initial Cash Proceeds were used to repay debt owed by EdPlus including a portion of the \$400,000 lent by certain Aequitas executives/investors and \$100,000 lent to EdPlus by the Receivership Entity to cover EdPlus payroll during the sale process. An additional \$100,000 was placed in escrow to fund a working capital adjustment reserve. Based on an initial review of the adjustment calculation, \$69 thousand should be disbursed from the reserve to the Receivership Entity. Finally, the first reporting period for the quarterly statement of the Earn-out closed September 30, 2016 and the initial statement for the quarter was due November 15, 2016 (forty-five days following the end of each calendar quarter). If any funds are received on the Earn-out, it is expected that they will be distributed (after costs) substantially to the Receivership Entity on

account of its pre-Receivership loans to EdPlus.

b. Strategic Capital Alternatives/SCA Holdings Sale

As discussed in the Initial Report, Strategic Capital Alternatives LLC, a Washington limited liability company (“SCA”) and SCA Holdings LLC, a Washington limited liability company (“SCAH”) are each entities operating in the investment advisory industry. Although SCA and SCAH are not part of the Receivership Entity or Extended Entities, they have financial relationships with the Receivership Entity.

The Receiver concluded negotiations with SCA and SCAH regarding a global resolution of the interests of ACM and ACF in and related to SCA and SCAH. Following a 7 day conferral period, the Receiver filed the Receiver's Motion to (1) Accept Discounted Loan Payment, and (2) Sell Membership Interest in SCA Holdings LLC Free and Clear of Liens, Claims, Interests and Encumbrances [Dkt. 254]. Under the associated Loan Payoff and Redemption Agreement: (i) SCA would redeem the membership interests of SCA held by ACM, and (ii) SCAH would retire its indebtedness to ACF under the SCAH Loan. This agreement allows SCA and SCAH to continue business activities without the involvement of the Receivership Entity, and allows the Receivership Entity to realize significant value in the repayment of the SCAH Loan, and nominal value in the underlying equity investment.

The combined consideration payable to the Receivership Entity in connection with the Loan Payoff Transaction and the Redemption Transaction was \$815,000, payable at closing.

3. Pending and Ongoing Sales Efforts

The Receiver continues to prepare assets for sale and actively market other assets. Significant resources have been expended to support the ongoing sale process and due diligence of potential buyers of CCM's assets, including the Receivership Entity's interest therein.

a. CCM (fka Aequis Capital Opportunities Fund)

CCM is a \$102 million fund formed to make control and minority investments in small to middle-market financial services companies. Affiliates of Aequis Capital Opportunities GP, LLC (the General Partner and together with its affiliates, “Aequis”) committed \$69.6 million to CCM via the contribution of equity in five companies operating in the healthcare, education, and financial services/technology industries. Aequis contributed equity in a sixth company to CCM after its formation and CCM has made direct investments in two additional companies.

The Receiver continued the pre-Receivership marketing process for certain CCM assets and this resulted in an offer by Origami Capital Partners⁹ (“OCP”) in April 2016 to purchase the Aequis interests in CCM. At the conclusion of its preliminary review, OCP submitted a non-binding letter of intent (LOI) on or about June 13, 2016 (subsequently revised on or about June 21, 2016) to acquire the Aequis interests in CCM for \$77-\$83 million. Following successful negotiation and signing of the LOI, OCP continued to expend significant resources performing due diligence on the various portfolio companies – including efforts to secure post-closing financing for the continued acquisition of medical receivables by the CCM portfolio company, CarePayment Technologies, Inc. (“CPYT”).

On or about August 11, 2016, OCP notified the Receiver it had decided not to pursue acquiring the CCM portfolio if it contained CPYT – but would consider the balance of the CCM interests absent CPYT and certain other interests previously sold (the acquired assets were termed the “Stub Portfolio”). On August 19, 2016, the Receiver conducted a call with the CCM Limited Partner Advisory Committee (the “LPAC”) and discussed the OCP offer for the Stub

⁹ <http://origamicapital.com/>

Portfolio at the August 24, 2016 IAC meeting. Based on the Receiver's business judgment and the unanimous support of the investors, the Receiver pursued an agreement with OCP to acquire the Stub Portfolio under a stalking horse auction structure – the terms of which were memorialized in an LOI dated September 7, 2016.

Following a seven day conferral period, on September 20, 2016, the Receiver filed Motions for Orders: (1) Scheduling Hearing to Approve Purchase and Sale Agreement; (2) Approving Stalking Horse Bidder; (3) Approving Break-Up Fee; (4) Approving Bidding Procedures; and (5) Approving the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests (the "CCM Sale Motion") [Dkt. 247].

Pursuant to the LOI, OCP, or a designated affiliate, agreed to purchase the CCM Interests from the respective Receivership Entities for \$12,175,000, pending the negotiation and execution of mutually satisfactory definitive documentation, including the Purchase and Sale Agreement ("PSA") and assignment agreement and certain other closing conditions.

The PSA was subject to the submission by third parties of higher or better offers as set forth in the Bid Procedures Order. For other bidders to become a Qualified Alternative Bidder under the Bid Procedures Order, they had to submit a bid worth not less than \$1,000,000 more than the Stalking Horse Bidder's offer. The \$1,000,000 minimum overbid was necessary in order to pay \$669,625 to Origami as expense reimbursement and a break-up fee, and still yield approximately \$330,000 in additional net sale proceeds for the Receivership Entity.

The Order Granting Receiver's Motion (1) for Approval of Letter of Intent, (2) for Approval of Bid Procedures, Break-up Fee, and Stalking Horse Bidder and (3) to Schedule Final Sale Hearing was entered on September 21, 2014 (the "Bid Procedures Order") [Dkt. 250]. On or about September 27, 2016, a consent notice was mailed to the CCM limited partners regarding

the proposed transaction. The consent notice requested an affirmative response (yes or no) to SPV Interest/POA; Transaction Consent; Sale Option; Authorizations and Amendments; Distribution Calculation. Ultimately, 95% of the limited partners (by dollar amount) returned their consent notices and the transaction was approved by 100% of the respondents.

On October 5, 2016, the Receiver filed the Declaration in Support of Receiver's Motions Approving the Sale of Assets Free and Clear of all Liens, Claims, Encumbrances and Interests (CCM Capital Opportunities Fund, LP) [Dkt. 259] which declaration attached the negotiated form of the PSA. Also on October 5, 2016, the Receiver received a non-binding letter of interest from Cedar Springs Capital ("CSC") which purported to offer a higher bid for the entirety of the CCM Interests (i.e. the Stub Portfolio and CPYT) (the "CSC Offer"). Due to the construct of the bidding procedures and certain contractual obligations, the Receiver and OCP mutually agreed to extend the alternative bid deadline to October 11, 2016.

On October 11, 2016, Marc Fagel of Gibson, Dunn and Crutcher LLC (former counsel for defendant Jesenik) filed a Motion to Continue the Hearing on Sale of CCM Interests [Dkt. 264]. In his Declaration in Support of Jesenik's Motion to Continue Hearing on Sale of CCM Interests [Dkt. 265], Mr. Fagel put forth the CSC Offer. The Receiver had previously evaluated the CSC Offer and determined that it was not a qualifying overbid in accordance with the Bid Procedures Order approved by the Court and, therefore, did not meet the criteria as a Qualified Alternative Bid. Also, the Receivership estate was bound by the terms of a signed exclusivity agreement (the "Exclusivity Agreement") with FTV Capital regarding the sale of CPYT (which the CSC Offer included as an asset to be purchased in addition to the Stub Portfolio). Pursuant to that contract, which is explained in more detail below, the exclusivity provision would be breached if the Receiver were to negotiate the terms of the CSC Offer as presented.

On the same day as Jesenik's motion was filed, the Court entered an Order Continuing Hearing on Sale of CCM Interests [Dkt. 266] to October 26, 2016. On or about October 22, 2016, the Exclusivity Period regarding the sale of CPYT to FTV Capital expired without the parties having reached agreement on the terms of the acquisition and the Receiver elected not to further extend exclusivity.

On October 27, 2016, CSC filed pleadings with the Court submitting its bid for the Stub Portfolio. At the hearing that subsequently took place the same day, the Court determined that CSC had submitted a Qualified Alternative Bid. At an ensuing live auction, CSC submitted a winning bid for the Stub Portfolio for total of \$14,675,000 and received the right to exclusively negotiate a stalking horse offer for the balance of the CCM interests.

b. Dispute as to Receiver's ability to Sell the Stub Portfolio

On or about September 27, 2016, the Receiver, OCP and counsel for the Receiver received a letter (the "ML Letter") from Ronald N. Jacobi of Bryan Cave LLC –purportedly on behalf of MotoLease LLP and two of its principals (Maurice Salter and Emre Ucer) [Dkt 259-3]. The ML Letter claimed that the sale of the CCM interests in the Stub Portfolio violated certain provisions of the Limited Liability Company Agreement of MotoLease LLC dated June 26, 2012 (the "LLC Agreement"). Delivery of the ML Letter to OCP was construed as wrongful interference in a commercial transaction – one that was conducted pursuant to the Bid Procedures Order – causing delays and additional costs to the Receivership.

On or about September 30, 2016, the Receiver (through counsel) replied to the ML Letter setting forth (among other things) (1) the proposed Stub Portfolio sale did not violate the LLC Agreement; (2) disputing the valuation of MotoLease, LLC; (3) correcting the material misstatements contained in the ML Letter; (4) seeking clarity as to Mr. Jacobi's client and source

of payment; and (5) reserving certain claims the Receivership is exploring against MotoLease LLC. While Mr. Jacobi contends that the ML Letter constituted an objection to the CCM Sale Motion – no filing of a formal objection was made. The Receiver reserves all of its rights and remedies against MotoLease, Mr. Salter, Mr. Ucer, and their affiliates, agents and representatives.

c. CarePayment Technologies, LLC (CPYT)

As evidenced by the execution of the Exclusivity Agreement previously discussed, the Receiver has been actively marketing the Receivership’s interests in CPYT. A potential purchaser for CPYT - FTV Capital¹⁰ (“FTV”) – was first approached as a possible minority investor in May 2015 and, beginning in November 2015, was actively involved in the capital raise process led by Aequitas’ then-investment banker, TripleTree. Post-Receivership, FTV’s interest grew to include the acquisition of CPYT as a stand-alone entity and was memorialized in an “investment proposal” dated May 17, 2016. On or about June 9, 2016, the terms of the investment proposal were finalized and executed by the parties.

As previously discussed, OCP submitted a non-binding letter of intent (LOI) on or about June 13, 2016 (subsequently revised on or about June 21, 2016) to acquire the Aequitas interests in CCM (which included CPYT) for \$77-\$83 million. After consulting with the LPAC and counsels for both, the Receivership and CPYT, the Receiver proposed a structure that allowed OCP to pursue its purchase of the CCM interests. On July 13, 2016, FTV, CPYT and the Receiver executed an exclusivity waiver to allow OCP to proceed with due diligence on the CCM acquisition in return for a \$250,000 expense reimbursement to FTV should OCP close on

¹⁰ <http://www.ftvcapital.com/>

the CCM transaction, including CPYT. On or about August 11, 2016, OCP notified the Receiver it had decided not to pursue acquiring the CCM portfolio if it contained CPYT – which reinstated FTV as the lead purchaser of CPYT at that time.

The parties executed the Exclusivity Agreement on September 7, 2016 which provided for a \$3.5 million break-up fee to be paid to FTV Capital (subject to certain limitations) should CPYT, CCM or the Receiver solicit, negotiate or otherwise discuss the terms of a sale or a change in control of any equity or a substantial portion of the CPYT's or CarePayment Holdings LLC's ("CP Holdings") assets to any party other than FTV Capital.¹¹ The parties were unsuccessful in negotiating transaction documents and, subsequent to September 30, the exclusivity agreement (and the obligation to pay the breakup fee) expired. FTV Capital is believed to remain interested in acquiring CPYT and the Receivership continues to be interested in selling its interest in it if 'satisfactory terms' can be concluded, subject to the existing agreement with CSC.

d. WindowRock Feeder Fund ("WRFF 1")

WRFF 1, through its affiliates, holds a management contract entitling the Receivership Entity to a management fee of 75 basis points annually on invested capital (approximately \$21.8 million) by its investors in the Window Rock Residential Recovery Fund.¹² The Receiver has negotiated a restructuring of the Receivership Entity's interest in WRFF 1 which will generate payment of \$164 thousand plus any accrued, but unpaid fees as compensation for the

¹¹ CPYT, CCM, and the Receiver could still allow unsolicited parties who expressed interest in CPYT to conduct their due diligence during the FTV exclusivity period.

¹² <http://windowrock.com/>

Receivership interest.¹³ The parties are negotiating the transaction documents.

4. Development of Claims Process

The Receivership has been working on the development of the claims process. So far, the Receivership has focused on two key areas: determining the Receivership Entities' data validation capabilities and working with existing external vendors to better understand their process and functionality as it relates to the solicitation of creditor/investor information, data management, and processing of future claims distributions.

The Receiver and his staff are currently determining the details of the claims validation capabilities of the Receivership Entities. The quality and content of data available in the general ledger of the Receivership Entities varies by entity and investment vehicle. Typically, each investment was recorded as a separate general ledger account number. The Receiver hopes to leverage these general ledger entries to validate investor claims.

The Receivership Entities' ability to validate claims may be complicated by the role of aggregators of registered investment advisers. Several RIA aggregators entered into agreements with certain Receivership Entities in which the aggregators would request an investment tranche on a periodic basis (normally weekly). Each individual tranche represents investments from many investors; however, the Receivership Entities only recorded information at a tranche level, not an investor level. The Receiver and his counsel are determining how to handle claims associated with such investments.

The Receiver and his staff are working with the Receivership's two existing external vendors to determine how to best disseminate and solicit claims information and process the

¹³ As of September 31, 2016, the purchase price would be $\$164,000 + (\text{one year of fees or } \$21,839,176 * .75\%) = 327,793.82$.

data. In the absence of an already agreed distribution plan, the Receiver must anticipate a variety of potential information that may need to be collected to validate creditor and investor claims and implement whatever distribution plan is ultimately approved. The Receiver and his staff are currently analyzing available information and working with the vendors to create a robust claims form and distribution system that will be capable of satisfying a potentially wide array of plans. The Receiver anticipates that the claims process will be rolled out in the coming months.

F. The Receiver and the professional service firms have consistently strived to minimize costs.

As addressed above, in accordance with the request of the Commission, the Receiver and all of the professional firms have discounted their standard hourly rates. The Receiver is consistently mindful of the professional expenses and manages the work in the most cost-effective manner possible. He strives to avoid duplication of effort by the engaged professionals.

1. Day-to-Day Management

With the termination of Aequitas management, the Receiver has needed to supervise the day-to-day operations of the various Receivership Entities. In addition to the daily management duties, the Receiver has focused on several key areas of his mandate, including the marshaling and preserving all assets for the benefit of the investors.

2. Bank Accounts

As a result of negotiations regarding the release of the \$2.48 million ASFG deposit,¹⁴ the

¹⁴ With the assistance of counsel, the Receiver enforced the stay of litigation against American Student Financial Group, Inc. (“ASFG”), which was prosecuting a suit in California against ACM. Additionally, the Receiver secured an order requiring the clerk of the California Court to disburse \$2.48 million from the registry to the Receiver, which funds are held in a segregated account pending resolution of the matter.

Receiver has agreed to segregate the ASFG deposit. Similarly, the senior lender to SCA requested, as provided by the Receivership Order, that proceeds from the sale of CCM's interest in SCA be segregated and remain subject to the lien of senior lender (to the extent of such lien). Separate cash accounts were set-up to accommodate the segregation requests.

As discussed in the Initial Report, the Receiver has instituted an integrated on-line platform that facilitates banking, future claims processing and cash reporting for receivership cases. The cash basis report, including information for the current reporting period and case to date, is attached as Exhibit B to the November Report.

3. Staffing

a. Headcount Reduction

The Receiver continues with planned, targeted staffing reductions based on the needs of the enterprise. As of September 30, 2016, the Receivership Entity had 16 full-time employees and 1 part-time employee. The Receiver instituted an employee retention program, which provides for at least six-weeks' notice to employees whose services are anticipated to no longer be required by the Receivership.

b. Contractors

In response to some staff attrition in addition to the planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local independent contractors (not affiliated with FTI). As of September 30, 2016, the Receivership employed four full-time equivalent accounting contractors and three part-time IT contractors.

4. Audit and Tax Preparation

In the ordinary course of business, the Receivership has many reporting and tax preparation responsibilities to investors and taxing authorities. With the resignation of Deloitte

LLP as Aequitas' auditor and tax preparer, the Receiver was required to seek out and engage new professionals to fulfill those responsibilities.

a. Audit

The Receiver engaged Burr Pilger Mayer ("BPM") to audit the 2015 financial statements for several Receivership entities where the Receiver believes an audit is likely to be helpful with a sale or refinancing process. Audits for COF/CCM and for CP LLC are ongoing, with Receivership professionals overseeing the audit process complicated by the auditor's unfamiliarity with the Receivership Entity and lack of institutional knowledge in some areas on the Receivership side due to staff attrition. The Receivership professionals are also involved in responding to audit-related questions and information requests in connection with the ongoing audit of CPYT which faces some of the same challenges.

b. Tax Preparer

The Receiver retained a tax specialist to assist legacy Aequitas staff in the preparation of tax and information returns, and to provide tax consulting services on an as-needed basis at the request of the Receiver. Receivership professionals provided management and oversight of tax preparation during the Application Period. As of September 30, 2016, the Receiver filed 20 Federal tax returns, plus 113 state tax returns. An additional 18 State tax returns were filed in October.

5. Managing legal discovery

The Receiver is in the process of developing a plan to govern all legal discovery directed to the Receiver and the Receivership Entity in various proceedings related to this case. While there are multiple ways to deal with discovery requests, the Receiver seeks an approach that would (1) aid in the Receiver's investigation and (2) minimize cost for the Receivership and

third-party litigants consistent with providing them full information.

The Receiver inherited multiple data repositories in various locations containing a mixed bag of data (i.e. different custodians, different date ranges and different file formats) with some sets containing duplicative data. It is against this backdrop of inherited redundant data sets, inefficient production practices and lack of control over the process that the Receiver is developing a plan to consolidate all discovery into a single, comprehensive e-discovery solution to replace the various, disparate systems. It is anticipated that this will allow the Receiver to (1) provide a single e-discovery database, (2) provide a comprehensive system that is similar in cost to current set-up, (3) ensure proper migration of previously reviewed data, (4) allow for cost-effective processing of data ensuring that data is comprehensive, inclusive and available for the entire relevant time period with mapping to source documents, (5) make responding to document requests an efficient, repeatable process and, finally, (6) provide litigants with a secure, online portal to their document productions.

The Receivership professionals are in the process of evaluating several proposals from e-discovery providers and selecting a vendor to implement the discovery solution.

6. Leveraging the professional firms' resources

FTI continues to leverage its access to various financial research databases and subscription-based services, to provide information at no additional charge to the Receivership as needed. As a result, the Receivership Entity has eliminated contracts with a number of corresponding providers. Additionally, FTI provides tele-conferencing and web-conferencing capabilities to the Receivership Entity at no charge.

Schwabe provides meeting space and infrastructure at no charge to the Receivership Entity which allows the Receiver to minimize costs associated with the Investor Advisory

Committee and investor counsel meetings.

7. Discounted travel

The Receiver, FTI and the majority of legal counsel only charge 50 percent of actual travel time. Schwabe does not charge for travel time or travel expenses.

III. AUTHORITY SUPPORTING REQUEST FOR APPROVAL OF FEES AND EXPENSES INCURRED FROM JULY 1, 2016 THROUGH SEPTEMBER 30, 2016

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”¹⁵ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹⁶ Allowed fees may be subject to a twenty percent (20%) holdback pending final review and closing of the Receivership. Allowed expenses are not subject to a holdback. The Receiver requests that the Court approve the fees and expenses incurred by the Receiver and his retained professionals for the period from July 1, 2016 through September 30, 2016.

A. This is the Second Interim Fee Application and the Court has previously approved the first Interim Fee Application

This is the Second Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application [Dkt. 251] was filed on September 22, 2016. The fees and expenses requested in the Interim Fee Application were approved by the Court on October 21, 2016 [Dkt. 273]. The following is a summary of the fees and expenses requested in the first Interim Fee Application, the amounts allowed, the amounts paid, and identification of the twenty

¹⁵ Dkt. 156, ¶ 45.

¹⁶ Dkt. 156, ¶ 47.

percent (20%) holdback for fees (which remain unpaid consistent with the Instructions)):

Entity	Previous Fees	Previous Expenses	Total Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	440,220	12,829	453,049	88,044	365,005
FTI Consulting	1,221,608	82,412	1,304,020	244,322	1,059,698
Pepper Hamilton	660,989	17,299	678,288	132,198	546,090
Schwabe, Williamson & Wyatt	617,933	7,359	625,291	123,587	501,705
Morrison Foerster	73,355	845	74,200	14,671	59,529
Law Office of Stanley H. Shure	54,717	1,901	56,618	10,943	45,675
Akin Gump	49,258	-	49,258	9,852	39,407
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	3,128,436	122,644	3,251,080	625,687	2,625,393

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Second Interim Fee Application.

In the Ninth Circuit, in a common fund case such as this Receivership proceeding, the Court has the “discretion to choose between either the lodestar or the percentage-of-the-fund methods when calculating fees.”¹⁷ Under either method, the Court must exercise its discretion to achieve a “reasonable” result.¹⁸

Because there is a strong presumption that the lodestar amount represents a reasonable fee, adjustments to the lodestar are the “exception rather than the rule.”¹⁹ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.²⁰ In the

¹⁷ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

¹⁸ *In re Galena Biopharma, Inc., Sec. Litig.*, No. 3:14-cv-00367-SI, 2016 U.S. Dist. LEXIS 82693, at *15-16 (D. Or. June 24, 2016) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

¹⁹ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

²⁰ *Id.*

current Receivership, where neither the amount of the common fund nor the aggregate amount of allowed claims has been determined, the lodestar method rather than the percentage-of-fund method should be applied to this interim fee application.

The amount of compensation to be awarded a court-appointed receiver is within the Court's reasonable discretion.²¹ The SEC's prior review and no objection should be given great weight.²²

Factors for consideration include the "time, labor and skill required, but not necessarily that actually expended, in the proper performance of the duties imposed by the court upon the receivers, the fair value of such time, labor and skill measured by conservative business standards, the degree of activity, integrity and dispatch with which the work is conducted and the result obtained."²³ The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.²⁴ The benefits bestowed on the estate are a relevant consideration.²⁵

The degree of success achieved in solving legal and practical problems should be

²¹ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff'd*, 609 F.3d 87 (2d Cir. 2010).

²² *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership)).

²³ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

²⁴ *See Fifth Ave. Coach Lines*, 364 F. Supp. at 1220 (awarding interim fees and expenses to law firm for role in receivership and noting that it involved wide variety of complex legal matters requiring the time, competence, and diverse resources of a law firm of high caliber); *SEC v. Mobley*, No. 00 CV 1316 RCC, 2000 WL 1702024, at *2 (S.D.N.Y. Nov. 13, 2000) (finding that fees requested in early stages of receivership were not excessive where receiver was faced with deconstructing an "enormous" fraud of seven years in which defendant utilized over forty entities to funnel investors' money throughout the world and there were few, if any, verifiable financial records).

²⁵ *See Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

considered when calculating the fees awarded.²⁶ Courts examine the credentials, experience, reputation, and other professional qualities required to carry out the court's orders when assessing the reasonableness of the rates charged for services to a receivership.²⁷

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.²⁸ All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Second Interim Fee Application.

C. The fees and expenses during this Application Period are reasonable and necessary in light of the complexity and difficulties of this case.

The Receiver requests approval of fees and expenses for the firms identified herein, which have provided the services summarized throughout this Motion, in the November Report and in each firm's summary invoice.²⁹ As noted, these firms agreed to substantial discounts of their customary fees, and the amounts requested reflect those discounts. The time spent, services performed, hourly rates charged, and expenses incurred were incurred in the best interests of the

²⁶ See *SEC v. W.L. Moody & Co., Bankers*, 374 F. Supp. 465, 484-85 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir 1975) (attorney's timely action prevented delay in payment to bank depositors); *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222 (law firm's services resulted in successful reorganization of company); *SEC v. Tanner*, No. 05-4057-RDR, 2007 WL 2013606, at *2 (D. Kan. May 22, 2007) (actions of receiver resulted in return of more money to investors than if defendant had continued in business).

²⁷ See *W.L. Moody & Co.*, 374 F. Supp. at 481 (holding that a court should give "considerable weight" to "a receiver's abilities, as required by the tasks of the receivership"); *SEC v. Aquacell Batteries Inc.*, No. 6:07-cv-608-Orl-22 DAB, 2008 WL 276026, at *4 (M.D. Fla. Jan. 31, 2008) ("The Receiver retained well qualified, experienced counsel and such representation does not come cheap.").

²⁸ See *Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222 (fees awarded in full because based on law firm's usual hourly rate and supported by meticulous records).

²⁹ Greenspan Declaration, Exs. A-G.

Receivership Entity, and were indeed essential for the Receiver to perform his Court-ordered duties.³⁰ Each of these professional firms was selected because it possesses special expertise required to fulfill the Court's orders. The following is a summary of the fees and expenses reasonably incurred in the service of the Receivership Entity from July 1, 2016 through September 30, 2016:

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	252,078	11.4%	1,312	1.1%	253,390	10.8%
FTI Consulting	994,028	44.8%	78,209	64.9%	1,072,237	45.8%
Pepper Hamilton	321,211	14.5%	38,795	32.2%	360,006	15.4%
Schwabe, Williamson & Wyatt	525,086	23.7%	1,509	1.3%	526,594	22.5%
Morrison Foerster	77,057	3.5%	141	0.1%	77,199	3.3%
Law Office of Stanley H. Shure	39,257	1.8%	406	0.3%	39,663	1.7%
Akin Gump	11,000	0.5%	133	0.1%	11,133	0.5%
Ater Wynne ^[1]	-	0.0%	-	0.0%	-	0.0%
Total:	2,219,717	100%	120,505	100%	2,340,223	100%

[1] Ater Wynne did not incur fees or expenses during the billing period.

D. The fees and expenses requested are in line with those approved in other cases.

The fees associated with complex receivership cases are often substantial percentages of the total assets recovered.³¹ The size and scope of this equitable receivership are much greater than the size and scope of many of the receiverships in the reported cases cited in this Application. Courts have noted that compensation to equitable receivers is analogous to

³⁰ Greenspan Declaration, p. 4.

³¹ *SEC v. Megafund Corp.*, No. 3:05–CV–1328–L, 2008 WL 2839998, at *2 (N.D. Tex. June 24, 2008) (approving final request for fees and expenses comprising 22.4% of total recovery by Receiver in light of complexities of case, difficulties in tracing proceeds, and results obtained); *SEC v. Funding Res. Group*, No. Civ.A.3:98–CV–2689–M, 2003 WL 145411, at *1 (N.D. Tex. Jan. 15, 2003) (costs of administration totaled 21% of cash and assets finally recovered by receiver).

compensation to receivers in bankruptcy.³² The United States Department of Justice reported that from 1994 to 2000, in Chapter 7 asset cases, 30% to 40% of total estate receipts were disbursed as fees and expenses to trustees and other professionals.³³ This was true regardless of the size of the case.³⁴

IV. CONCLUSION

The relief requested herein is appropriate and in furtherance of the provisions of the Final Receivership Order appointing the Receiver. Accordingly, the Receiver respectfully requests

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³² *W.L. Moody & Co.*, 374 F. Supp. at 481.

³³ U.S. DOJ, U.S. Trustee Program Prelim. Rep. on Ch. 7 Asset Cases 1994 to 2000, attached as Exhibit P, App'x 187, 192.

³⁴ *Id.*

that the Court enter an order approving the fees and expenses requested in the Second Interim Fee Application, for the period from July 1, 2016 through September 30, 2016.

Dated this 12th day of December, 2016.

Respectfully submitted,

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