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CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT  
MANAGEMENT, LLC

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 THIRD 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 Third 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. 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 and received no objection from the SEC.

**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 October 1, 2016 through December 31, 2016 (the "Third Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the January 31, 2017 Report of the Receiver filed on February 10, 2017 (the

“January 2017 Report”)<sup>1</sup> as well as in the summary invoice of each professional, which are attached to the Declaration of Ronald F. Greenspan (the “Greenspan Declaration”) filed contemporaneously with this motion.<sup>2</sup> As the Court is aware, this is a very complex and otherwise difficult case. The information contained in the January 2017 Report and in the summary 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 to the Court for approval 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 and received no objection from the SEC. 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

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<sup>1</sup> Dkt. 365.

<sup>2</sup> Greenspan Declaration, Exhibits B-F.

Commission describes as a “Ponzi-like” scheme.<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup> The investments identified by the SEC refer to the funds borrowed by ACF, one of the 48 entities composing the Receivership Entity. In total, there are over \$600 million of investor funds in the Receivership Entity.

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”).<sup>6</sup> 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 voluntarily filed a first report and recommendations to the Court on September 14, 2016 (the “Initial Report”).<sup>7</sup> The Initial Report covered the period ending June 30, 2016. On November 10, 2016, the Receiver filed his

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<sup>3</sup> Dkt. 1.

<sup>4</sup> Dkt. 1, ¶¶ 1-7.

<sup>5</sup> Dkt. 1, ¶ 5.

<sup>6</sup> Dkt. 156.

<sup>7</sup> Dkt. 246.

November Report which covered the period for the quarter ending September 30, 2016.<sup>8</sup> The January 2017 Report is the Receiver's report and recommendations to the Court for the quarter ending December 31, 2016. The contents of the Third Interim Fee Application, like the focus of the January 2017 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending December 31, 2016.

**A. The Receiver continues to focus on stabilization, preservation, and expeditious 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 December 31, 2016, the Receiver has sold assets and collected receivables totaling approximately \$142 million. Further, as of December 31, 2016, the Receiver was in contract to sell its interest in CCM and other assets for \$52 million together with an option to sell \$76.9 million<sup>9</sup> in health care receivables owned by the Receivership.<sup>10</sup> All such completed sales have been accomplished without the expense of an investment banker. Additionally, the Receivership made progress on the disposition plans for a number of other assets, with closing of many of these transactions expected in the first half of 2017. Operationally, employee headcount decreased from the beginning of the quarter to the end of the quarter at a net 16 (from pre-receivership levels of 129 in December 2015) and has since been further reduced to 13.

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<sup>8</sup> Dkt. 298.1.

<sup>9</sup> Balance as of December 31, 2016.

<sup>10</sup> The sale of the Receivership's interests in CCM was approved on January 25, 2017. [Dkt. 362] The transaction subsequently closed on March 7, 2017, together with the initial sale of \$3.5 million of health care receivables to Care Payment LLC.

**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. 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. Since substantial progress has been made in the stabilization and monetization of the assets, the Receiver has commenced the electronic data consolidation and investigative stage. During this stage the Receiver will (i) consolidate into a more efficient and systematically searchable database the estimated 11 terabytes of electronic data owned by or in the possession of the Receivership Entity (ii) prepare and distribute information gathering forms to investors and other creditors in order to prepare a claims register (iii) develop a historical factual understanding which will assist the Receiver to develop a proposed distribution plan and assist investors to evaluate such plan, and (iv) ferret out additional claims and causes of actions for the benefit of the investors.

As the Receiver concludes the investigative 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. Further, there are extensive administrative functions which must be performed with respect to the numerous investment

entities, including the preparation and filing of over 100 tax returns annually. The Receiver and his professional 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 Aequitas 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 Entity 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 January 2017 Report. Where beneficial to investors and not prejudicial to the interests of the Receivership and all investors, the Receiver has cooperated with investors' counsel to provide exceptions or permissions to engage in litigation against third parties. It is telling about the understandable necessity of the stay (and the Receiver's reasonableness in working with investor counsel when warranted) that this Court has not seen a single request to lift the stay except by several isolated creditors who seek to sue the Receivership Entity or a company in which it has an equity interest in an effort to "line jump" ahead of the thousands of other investors and

creditors looking to those same assets for recovery.

As explained in detail in the January 2017 Report, the Receiver has developed a plan to govern all 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. The Receivership has selected a data management vendor who has begun comprehensive data consolidation which is expected to be completed in Spring of 2017. The Receiver has shared its data management plan with the SEC and counsel for the investors and they appear to support the Receiver's approach.

**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.

**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 certain other governmental agencies. 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 Corinthian-related student loans owned by Campus Student Funding (the “CFPB Matter”). The Receiver has retained MoFo with respect to ongoing representation in the CFPB Matter only.

#### **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 in that action, 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, although the Wells Fargo liability has been retired.

**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 \$39.6 million and cash disbursements totaled \$39.8 million, for a net cash decrease of approximately \$200 thousand. The majority of the external cash receipts during the Application Period stemmed from the collections on portfolios of receivables, with the largest share of such collections attributable to the healthcare receivables. The Receivership Entity has reinvested such cash receipts in the acquisition of new healthcare receivables necessary to maintain the

value of the CarePayment platform and paid the required servicing fees and other charges related to the operation of all of the remaining receivables portfolios. As of December 31, 2016, the Receivership Entity had cash balances in excess of \$38.7 million, including \$9.2 million of previously, but no longer, restricted cash. The Standardized Fund Accounting Report, which is included in the Receiver's January 2017 Report, provides a detailed statement of cash receipts and disbursements.

The January 2017 Report also contains detailed accounts of the asset sales completed during the Application Period.<sup>11</sup> 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 and the November Report, through the third quarter of 2016 the Receiver completed the following transactions:

a. a competitive sale process for the disposition of 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.

b. the Receivership 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 proceeds.

c. the Receivership sold the assets which constituted the business operations of

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<sup>11</sup> Greenspan Declaration, Ex. A.

EdPlus Holdings, LLC/Unigo Group . The Initial Cash Proceeds were used to repay debt owed by EdPlus including a portion of the \$400,000 lent by certain Aequis 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, of which \$52,699 has been released to the Receivership. An additional \$10,347 is being held back pending resolution of a potential Dell Financial Services lease liability. The Receivership also has an “earnout” depending upon profitability, if any, of the business sold during the 12 months following the sale.

d. sale of the Receivership’s interests in SCA Holdings LLC for \$815,000.

## **2. Pending and Ongoing Sales Efforts**

### **a. CCM (fka Aequis Capital Opportunities Fund)**

During the Third Application Period, the Receivership negotiated the sale of its interests in CCM Opportunities Fund (fka Aequis Capital Opportunities Fund, “CCM”) and a \$3.6 million note owed to ACL by CarePayment, LLC.<sup>12</sup> This disposition has effected a complete disposition of the Receivership’s interests in six equity positions held by CCM: CarePayment Technologies, Inc. common stock, QuarterSpot, Inc. common stock and warrants, MotoLease, LLC common units and ownership interest, EMPYR Inc. (fka MOGL Loyalty Services, Inc.) preferred stock, ETC Global Group, LLC common units, and Independence Bancshares, Inc. preferred shares.

As part of the larger CCM transaction, the Receivership has also negotiated an option to sell healthcare receivables owned by the Receivership and its affiliate to CarePayment

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<sup>12</sup> Receivership subsequently consummated this sale effective March 7, 2017.

Technologies, Inc. ("CPYT"). The first tranche of such receivables, owned by CP Funding I Trust (not part of a Receivership Entity but owned 100% by the Receivership Entity), was sold in conjunction with the CCM transaction closing, with approximately \$3.5 million of sale proceeds and approximately \$1.7 million in restricted cash reserves utilized to fully retire the senior secured debt held by Wells Fargo.

**b. 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.<sup>13</sup> The Receiver has negotiated a restructuring of the Receivership Entity's interest in WRFF 1 which will generate payment of approximately \$328 thousand of accrued and future fees as compensation for the Receivership interest. Subsequent to the Third Application Period, the parties closed the transaction.

**c. ACC Holdings 5 (Luxembourg Bonds)**

The Receivership Entity is involved in a complex trust structure (the "Lux Investment") related to several series of bonds offered on the Luxembourg Stock Exchange (the "Bonds") to non-U.S. investors. The issuer of such bonds is Aequitas Income Opportunities S.A. (the "Issuer"), which is not part of the Receivership Entity. Issuer is an independent company that is owned by a Dutch Stichting (foundation) and managed by a Board of Directors.<sup>14</sup>

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<sup>13</sup> <http://windowrock.com/>

<sup>14</sup> Consisting of Mr. Andrew MacRitchie, Mr. Elvin Montes and Ms. Laetitia Antoine. Mr. MacRitchie was formerly an officer of the Receivership Entity and owns a minority membership interest in Aequitas Management LLC ("AM"). The other directors do not have any past

The Issuer purchased limited partnership interests in Aequitas International Opportunities LP, a Cayman Islands limited partnership (“Cayman”) which is one of the “Extended Entities” under the Final Receivership Order. Cayman is the holder of certificates of beneficial interest (“CBI”) in ACCH5 (part of the Receivership Entity), which is wholly-owned by AH (also part of the Receivership Entity). ACCH5 established a series of Grantor Trusts that purchased and currently holds certain C+ and F+ Freedom loan portfolios.

On November 17, 2016, the Receiver received a proposal (the “Lux Proposal”) from counsel representing the Issuer to acquire certain rights and terminate certain obligations of the Receivership Entity in certain entities in which Lux has invested and that are controlled by the Receivership Entity, including Cayman and certain related entities. The Receiver rejected such offer as inadequate. Subsequent to the close of the third quarter, the Receiver was advised that a meaningfully better offer would be forthcoming.

**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

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relationships with the Receivership Entity.

duties, the Receiver has focused on several key areas of his mandate, including the marshaling, preserving, and monetizing assets for the benefit of the investors.

## **2. Bank Accounts**

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 reports, including information for the current reporting period and case to date, are attached as Exhibit B to the January 2017 Report.

## **3. Staffing**

### **a. Headcount Reduction**

The Receiver continues with planned, targeted staffing reductions based on the needs of the enterprise. As of December 31, 2016, the Receivership Entity had 15 full-time employees and 1 part-time employee. The Receiver has in place an employee retention program which provides for quarterly retention bonuses and 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 December 31, 2016, the Receivership employed four full-time equivalent accounting contractors and two 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. We concluded the audit for COF/CCM in December 2016 (satisfying a closing condition for the CCM sale) and the audit for CP LLC is nearing completion. Receivership professionals had to devote significant time to overseeing the audit activities given lack of institutional knowledge on the part of both the accounting group (consisting to a large part of contractors) and the newly appointed auditors.

**b. Tax Preparer**

The Receiver retained a tax specialist to assist legacy Aequis 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. As of December 31, 2016, the Receiver filed 21 federal plus 145 state tax returns. As of December 31, 2016, all required federal tax returns have been filed and there remain two state returns in process. The retained tax professionals and Receivership employees are working on the 2016 tax filings due in the first two quarters of 2017.

**5. Leveraging the professional firms’ resources**

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

#### **6. Discounted Travel Time**

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.

#### **7. Out-of-Town Meals and Expenses**

The Receiver carefully monitors the expenses incurred by his professionals. In furtherance of this effort, the Receiver has imposed a per diem limit on meals expenses and all costs incurred in excess thereof are not charged to the Receivership.

### **III. AUTHORITY SUPPORTING REQUEST FOR APPROVAL OF FEES AND EXPENSES INCURRED FROM OCTOBER 1, 2016 THROUGH DECEMBER 31, 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....”<sup>15</sup> Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.<sup>16</sup> Allowed fees are 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 October 1, 2016 through December 31, 2016.

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<sup>15</sup> Dkt. 156, ¶ 45.

<sup>16</sup> Dkt. 156, ¶ 47.

**A. This is the Third Interim Fee Application and the Court has previously approved the prior two Interim Fee Applications**

This is the Third 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 Second Interim Fee Application [Dkt. 315] was filed on December 12, 2016. The fees and expenses requested in the Second Fee Application were approved by the Court on February 22, 2017 [Dkt. 370]. The following is a summary of the fees and expenses requested and approved from these Interim Fee Applications, the amounts allowed, the amounts paid, and identification of the twenty percent (20%) holdback for fees (which remain unpaid as required by the SEC billing guidelines):

Entity	Previous Fees	Previous Expenses	Total Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	692,298	14,141	706,439	138,460	567,979
FTI Consulting	2,215,636	160,621	2,376,257	443,127	1,933,130
Pepper Hamilton	982,200	56,094	1,038,294	196,440	841,854
Schwabe, Williamson & Wyatt	1,143,018	8,867	1,151,886	228,604	923,282
Morrison Foerster	150,412	986	151,399	30,082	121,316
Law Office of Stanley H. Shure	93,974	2,307	96,281	18,795	77,486
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
<b>Total:</b>	<b>5,348,154</b>	<b>243,149</b>	<b>5,591,303</b>	<b>1,069,631</b>	<b>4,521,672</b>

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

In the Ninth Circuit, in a common fund case such as this Receivership proceeding, the Court has the “discretion to apply either the lodestar method or the percentage-of-the-fund method when calculating fees.”<sup>17</sup> “Under either method, the Court must exercise its discretion to

<sup>17</sup> *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action

achieve a ‘reasonable’ result.”<sup>18</sup>

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.”<sup>19</sup> Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.<sup>20</sup> In the 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.<sup>21</sup> The SEC’s approval of an application should be given great weight.<sup>22</sup>

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 receiver, 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

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case creating a common fund).

<sup>18</sup> *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)).

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

<sup>20</sup> *Id.*

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

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

obtained.”<sup>23</sup> The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.<sup>24</sup> The benefits bestowed on the estate are a relevant consideration.<sup>25</sup>

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.<sup>26</sup> 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.<sup>27</sup>

The Court should consider the usual and customary fees charged and the evidence

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

<sup>24</sup> *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).

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

<sup>26</sup> *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).

<sup>27</sup> *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.”).

presented to support the application for fees.<sup>28</sup> All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Third 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 January 2017 Report and in each firm's summary invoice.<sup>29</sup> 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 Receivership Entity, and were indeed essential for the Receiver to perform his Court-ordered duties.<sup>30</sup> 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 October 1, 2016 through December 31, 2016:

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<sup>28</sup> 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).

<sup>29</sup> Greenspan Declaration, Exs. A-G.

<sup>30</sup> Greenspan Declaration, p. 4.

**Aequitas Receivership**

Professional Fees &amp; Expenses by Entity (from October 1 through December 31, 2016)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	310,777.00	13.0%	3,168.24	2.4%	313,945.24	12.5%
FTI Consulting	889,625.00	37.3%	44,927.24	34.6%	934,552.24	37.2%
Pepper Hamilton	262,227.75	11.0%	78,314.55	60.3%	340,542.30	13.6%
Schwabe, Williamson & Wyatt	757,399.90	31.8%	3,318.45	2.6%	760,718.35	30.3%
Morrison Foerster	86,230.10	3.6%	203.11	0.2%	86,433.21	3.4%
Law Office of Stanley H. Shure	76,183.38	3.2%	-	0.0%	76,183.38	3.0%
Akin Gump <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
Ater Wynne <sup>[1]</sup>	-	0.0%	-	0.0%	-	0.0%
<b>Total:</b>	<b>2,382,443.13</b>	<b>100%</b>	<b>129,931.59</b>	<b>100%</b>	<b>2,512,374.72</b>	<b>100%</b>

[1] Akin Gump and 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.<sup>31</sup> 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 compensation to trustees in bankruptcy.<sup>32</sup> 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.<sup>33</sup> This was true regardless of the size of

<sup>31</sup> *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).

<sup>32</sup> *W.L. Moody & Co.*, 374 F. Supp. at 481.

<sup>33</sup> 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.

the case.<sup>34</sup> The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end of the Application Period than any of these cases and the Receivership Entity has benefitted by avoiding additional fees that would have been incurred if investment bankers were retained.

#### 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 that the Court enter an order approving the fees and expenses requested in the Third Interim Fee Application, for the period from October 1, 2016 through December 31, 2016.

Dated this 4th day of April, 2017.

Respectfully submitted,

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<sup>34</sup> *Id.*



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