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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

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.

Case No. 3:16-CV-00438-PK

**DECLARATION OF ROBERT R.
HOLMEN IN SUPPORT OF
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
OPPOSITION TO INDIVIDUAL
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER**



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I, Robert R. Holmen, declare as follows:

1. I was General and Special Counsel for Aequis Capital Management, Inc., and certain related entities (collectively, “Aequis” or “the company”). I make this declaration in support of Plaintiff Securities and Exchange Commission’s Opposition to the Individual Defendants’ Motion for Protective Order.

Professional Background

2. I am a licensed attorney who has served in a variety of roles during my 28-year legal career, including as an attorney at law firms Latham & Watkins LLP and Morrison & Foerster LLP, and as general counsel for public and private technology, healthcare, and financial services companies. I earned a B.S. in Electrical Engineering from Stanford University and obtained my J.D. from the University of California, Berkeley School of Law.

3. I am currently a Principal with Investor Counsel. Investor Counsel represents venture capital and private equity investors and funds, and provides legal advice regarding fund formation, structuring and negotiating investments, and mergers and acquisitions. I am also a Founder and Managing Director of Miramar Venture Partners, a family of venture capital funds investing in early- and mid-stage technology companies.

Counsel for Aequis

4. I served as General Counsel for Aequis from June 1, 2015 through February 7, 2016. I was retained by Aequis as Special Counsel until on or about March 16, 2016, when this Court appointed a Receiver for the Aequis group of companies.

5. As counsel for Aequis, my responsibilities included, among others, providing counsel on key legal issues related to contracts, compliance, business ethics, corporate matters and labor laws; managing in-house legal personnel and legal processes; managing and

supervising litigation and regulatory investigations involving the company, including relationships with outside company counsel; and assessing legal risks and suggesting appropriate business practices in light of legal risk assessments.

6. To carry out my responsibilities as counsel, I communicated with and advised Aequitas through its corporate officers and employees, including Robert Jesenik, Brian Oliver, and N. Scott Gillis (collectively, "Individual Defendants"). Throughout my time with Aequitas, I would not have been able fulfill my responsibilities without the ability to regularly communicate in real-time with the officers of Aequitas about the operations of the company.

7. During my time with Aequitas, the Individual Defendants retained their own personal counsel for representation related to the above-captioned case.

8. I did not at any time represent the Individual Defendants in their individual capacities. Nor did any of the Individual Defendants inform me that they believed I had advised or represented, or was advising or representing, them in their individual capacities.

9. From time to time, specifically as part of communications identified by Control Number ID LD00611593, LD00612618, LD00613215, LD00613237, LD00613381, LD00613382, LD00613383, LD01078672, I informed the Individual Defendants and other executives at the company that certain actions exposed not only the company to liability, but also the Individual Defendants and other executives to personal liability. I did this in order to emphasize the seriousness of the matters and hopefully effect rapid action for the benefit of the company. In providing that information, I did not believe nor intend that I was representing the Individual Defendants and other executives nor providing the information pursuant to any joint strategy.

10. I did not, as counsel for Aequitas, enter into a written joint defense or common

interest agreement with the Individual Defendants or their counsel.

11. I have reviewed communications where, as counsel for Aequitas, I communicated with counsel for the Individual Defendants with an understanding that communications among counsel were being made under a joint defense or common interest arrangement. These communications were made on an ad hoc basis.

12. I believed that all communications I had in furtherance of a joint strategy included counsel for the Individual Defendants on such communications.

Individual Defendants' Privilege Logs

13. I have reviewed the communications listed on the Individual Defendants' privilege logs where I was a party to the communication. *See* Dkt. 429-1 (Jesenik Privilege Log); Dkt. 429-2 (Oliver Privilege Log); Dkt. 429-3 (Gillis privilege log). To the best of my knowledge, I was a party to all communications on the logs, except for the communication identified by Control Number ID LD00615868. *See* Dkt. 429-1 at 7; Dkt. 429-2 at 4; Dkt. 429-3 at 2. Additionally, I have reviewed the communications identified by Control Number ID LD01021470 and LD01021475. Based on my review of the communications to which I was a party, I state the following:

- a. In each communication, I was communicating as counsel for Aequitas with the Individual Defendants as officers of the company.
- b. Any legal advice I provided concerned matters within the general affairs of the company.
- c. Any communications I had directly with Individual Defendants without their counsel present were communications I made as counsel for the company with the Individual Defendants as officers of the company.

d. I did not intend for any of the communications to be protected pursuant to a joint defense or common interest agreement.

e. I do not believe any of the communications were made in the course of a joint defense effort or designed to further a joint defense effort.

f. On three occasions, as noted on Individual Defendant Brian Oliver's privilege log, Mr. Oliver did forward me communications between himself and his counsel that may have been attorney-client privileged communications between Mr. Oliver and his counsel. *See* Dkt. 429-2 at 2, 4 (LD00499191, LD00499726, LD00504507).

g. Additionally, I do not believe that certain communications were ever privileged communications because they were not made in confidence for the purpose of securing legal advice, including, but not limited to, the following: LD00510613, LD00510619, and LD00510671.

I declare under penalty of perjury under the laws of the state of Oregon that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated this 8th day of May, 2017.


Robert R. Holmen