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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

No. 3:16-cv-00438-PK

RECEIVER'S REQUEST FOR APPROVAL
OF FOURTH INTERIM FEE APPLICATION



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 Fourth 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 Commission.

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 January 1, 2017 through March 31, 2017 (the "Fourth Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the April 30, 2017 Report of the Receiver (the "April 2017 Report")¹ as well as in the summary invoice of each professional, which are attached to the Declaration of Ronald

¹ Dkt. 444.

F. Greenspan (the “Greenspan Declaration”) filed contemporaneously with this motion.² As the Court is aware, this is a very complex and otherwise difficult case. The information contained in the April 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 “Billing 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 Commission. 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

² Greenspan Declaration, Exhibits B-F.

³ Dkt. 1.

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 The investments identified by the COMMISSION 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”).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 voluntarily filed a 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. On November 10, 2016, the Receiver filed his November Report, which covered the period for the quarter ending September 30, 2016.⁸ On February 10, 2017, the Receiver filed his February Report, which covered the period for the

⁴ Dkt. 1, ¶¶ 1-7.

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

⁷ Dkt. 246.

⁸ Dkt. 298.

quarter ending December 31, 2016.⁹ The April 2017 Report is the Receiver's report and recommendations to the Court for the quarter ending March 31, 2017. The contents of the Fourth Interim Fee Application, like the focus of the April 2017 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending March 31, 2017.

A. The Receiver continues to successfully preserve and expeditiously monetize Receivership assets.

The Receiver and his professionals remain focused on the stabilization of the Receivership Entity to preserve value and facilitate asset monetization. During the approximate one year from the beginning of the Receivership through the quarter ending March 31, 2017, the Receiver has sold assets and collected receivables totaling approximately \$218 million. Further, as of March 31, 2017, the Receiver has entered into an option to sell approximately \$75 million in health care receivables owned by the Receivership. 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, at the end of the quarter, employee headcount decreased to 12, plus four accounting contractors (from pre-receivership levels of 129 in December 2015).

B. The Receiver has made significant progress on data consolidation, has begun the forensic investigation work and investor data verification.

The Receiver has substantially completed the implementation of a consolidated database of the estimated three (3) terabytes of documents in the possession of the Receivership Entity and controlled by receivership agents and vendors. The database is being utilized to fulfill

⁹ Dkt. 365.

current requests for production (RFP) from the COMMISSION as well as limited, targeted requests by investors' counsel. Further, the Receiver will develop a structure that will facilitate access to the database for third-party litigants. Additionally, the Receiver has initiated his investigative efforts with the development of a forensic work plan and the dedication of resources to move the investigation forward.¹⁰

The Receiver continues to work on the development of the claims process. The primary area of focus has been to aggregate information regarding creditor/investor data from the various data repositories into a single database that reflects activity from January 2012 through March 2016. The Receiver undertook a comprehensive reconciliation project reviewing data from the accounting general ledger, Salesforce database entries, tax returns and account statements. Subsequent to the Fourth Application Period, the Receiver has begun a further phased validation process wherein a statement of accounts is being mailed to each investor. The investors would have an opportunity to confirm or assert different investment account information. If the investor agrees with stated account activity, no further action will be required. If the investor disagrees with the account activity, the investor needs only to identify the disputed activity and provide supporting documentation. The rollout has started with Private Notes with, various other Aequitas investment vehicles to follow.

The confirmation process will allow the Receiver to gather/confirm information needed to begin the formulation of a distribution plan and will be levered into a formal claims process

¹⁰ 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.

once the claims order has been issued and a bar date established. Nothing in the data confirmation process will be dispositive as to the form of the distribution plan.

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

It remains the Receiver's recommendation that the Receivership continue. The conditions under which the Receivership was imposed still exist. While much has been accomplished, there is still much more to do. 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 and moving forward with the claims reconciliation and forensic investigation stages of the receivership.

The various loan portfolios and numerous operating companies owned by the Receivership require daily management until they are monetized. 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 the COMMISSION staff and the Aequitas investors regarding our progress thus far has been very positive. The Receiver believes he has their support and encouragement to continue his efforts, and that they also support the continuation of the Receivership.

D. 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 continue to assess the probable 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 April 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.

E. 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.

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4. Pachulski Stang Ziehl & Jones – Bankruptcy Counsel

Pachulski has been retained to provide advice involving bankruptcy related matters, if needed. Pachulski also advised the Receiver at outset of the case on various receivership set up and administration matters and performed lien perfection analyses.

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 and certain state attorneys general 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 Aequis Capital Management, Inc. in the matter of American Student Financial Group, Inc., et al. v. Aequis 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): Aequis Commercial Finance, LLC; Aequis Investment Management, LLC; Aequis Income Protection Fund, LLC; Aequis Income Opportunity Fund, LLC; and Aequis 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. The Wells Fargo liability has been retired and it is not anticipated that Alter Wynne will provide further services to the Receivership.

F. 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 approximately \$81.2 million and cash disbursements totaled \$39.6 million (including repayment of secured debt principal), for a net cash increase of approximately \$41.6 million. As of March

31, 2017, the Receivership Entity had cash balances in excess of \$80 million. The Standardized Fund Accounting Report, which is included in the Receiver's April 2017 Report, provides a detailed statement of cash receipts and disbursements.

The April 2017 Report also contains detailed accounts of the asset sales completed during the Application Period, as well as prior transactions and ongoing sales efforts.¹¹ The following are brief summaries of the transactions completed during the Fourth Application Period.

1. CCM Capital Opportunities Fund (fka Aequitas Capital Opportunities Fund)

CCM Capital Opportunities Fund ("CCM") was a \$102 million fund formed to make control and minority investments in small to middle-market financial services companies. Following extensive marketing efforts, on or about March 7, 2017, the Receiver closed on a transaction that involved not only the sale of the Receivership Entity's interest in CCM and a related repayment of a loan to Aequitas Corporate Lending, LLC, but also (i) the sale of certain CarePayment healthcare receivables, (ii) the payoff of Wells Fargo Bank, N.A, (iii) grant of an option to purchase the Receivership Entity's and its affiliate's healthcare receivables to CarePayment Technologies, Inc. (together with its subsidiaries, "CPYT"), and (iv) detailed agreements related to the continued operation of the CarePayment program during the option period (collectively, the "CCM Transaction"). In total, close to 60 separate documents, plus schedules and disclosure statements were executed by the Receiver as part of the CCM Transaction.

The CCM Transaction brought approximately \$41 million cash (\$52 million transaction price, less \$11 million short-term note receivable) into the Receivership Entity.

¹¹ Greenspan Declaration, Ex. A.

Additionally, as discussed above, as part of the CCM Transaction, CPYT exercised the first tranche of its purchase option when it purchased ~\$3.8 million (face value) of CPFIT's CarePayment receivables. Subsequently, \$232 thousand of additional CarePayment receivables have been purchased by CarePayment.

2. WindowRock Feeder Fund ("WRFF 1")

WRFF 1, through its affiliates, held a management contract entitling the Receivership Entity to a management fee of 75 basis points annually on invested capital (approximately \$21.8 million) by the investors in the Window Rock Residential Recovery Fund. On March 14, 2017, the transaction restructuring the fund closed and the Receiver received \$328 thousand as compensation for the Receivership interest in both, accrued but unpaid, as well as future management fees.

3. Innovator Holdings LLC (IH)

IH holds a 51% interest in Innovator Management, LLC ("IM") – a 1940-Act investment advisory platform owned equally with Clifton Larson Allen ("CLA"). IM has consistently lost money and, since the Receivership, has been funded solely by CLA. The Receiver is not aware of any business reason to continue ownership or advance the Receivership's share of losses. The Receiver and CLA agreed to sell company with the Receiver receiving \$50,000 and contractual indemnities and releases (and understands that CLA is receiving no consideration on account of its equity investment).

On April 20, shortly after the end of the Forth Application Period, the Court entered the order approving the transaction. Because it is an investment advisory business, the transaction closed but the sale proceeds are held in escrow until the shareholders approve the new advisory agreement and the purchaser receives an exemptive order from the COMMISSION

(completion expected September 2017).

4. Aequitas Senior Housing Operations, LLC (“ASH”)

ASH, through its affiliates, held a minority interest in an assisted living facility being constructed in Austin Texas. The project construction costs are over budget and it is behind schedule. Civitas, the general partner, has agreed to be the stalking horse bidder to purchase the Aequitas interest for \$1.9 million, equal to a 25% discount on expected cash flows. Aequitas had initially invested \$2.8 million and failed to fund subsequent capital calls.

Significant effort was spent during the Fourth Application Period on the disposition of this asset. The Bid Procedures Order was entered on April 26, 2017; no Qualified Alternative Bids were received by the Receiver by the Bid Deadline. On May 25, the Court entered the order approving the sale to Civitas Senior Healthcare, LLC. The transaction closed on June 9, 2017.

G. 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 marshaling and preserving 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 April 2017 Report.

3. Staffing

a. Headcount Reduction

The Receiver continues with planned, targeted staff reductions based on the needs of the enterprise. As of March 31, 2017, the Receivership Entity had 11 full-time employees, 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 March 31, 2017, 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 Aequis' 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. The 2015 audit for CP LLC was in final review with the BPM partners as of the end of the Fourth Application Period and, subsequently, finalized. The Receiver is facilitating the 2016 audit for COF/CCM but the cost of the audit will be borne by COF/CCM (in which the Receivership no longer owns an interest).

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.

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 meal 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 JANUARY 1, 2017 THROUGH MARCH 31, 2017

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates...”¹² Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹³ 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 January 1, 2017 through March 31, 2017.

A. This is the Fourth Interim Fee Application and the Court has previously approved the prior three Interim Fee Applications

This is the Fourth 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

¹² Dkt. 156, ¶ 45.

¹³ Dkt. 156, ¶ 47.

Court on February 22, 2017 [Dkt. 370]. The Third Interim Fee Application [Dkt. 393] was filed on April 4, 2017. The fees and expenses requested in the Third Fee Application were approved by the Court on April 20, 2017 [Dkt. 416]. The following is a summary of the fees and expenses requested and approved from the prior 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 Billing Instructions):

Entity	Previous Fees	Previous Expenses	Total Previous Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	1,003,075	17,309	1,020,384	200,615	819,769
FTI Consulting	3,105,261	205,548	3,310,809	621,052	2,689,757
Pepper Hamilton	1,244,428	134,409	1,378,836	248,886	1,129,951
Schwabe, Williamson & Wyatt	1,900,418	12,186	1,912,604	380,084	1,532,520
Morrison Foerster	236,643	1,190	237,832	47,329	190,504
Law Office of Stanley H. Shure	170,157	2,307	172,464	34,031	138,433
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	7,730,597	373,081	8,103,678	1,546,119	6,557,558

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Fourth 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.”¹⁴ “Under either method, the Court must exercise its discretion to achieve a ‘reasonable’ result.”¹⁵

¹⁴ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

¹⁵ *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)).

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.”¹⁶ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.¹⁷ 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.¹⁸ The Commission’s approval of an application should be given great weight.¹⁹

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 obtained.”²⁰ The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.²¹ The benefits bestowed on the

¹⁶ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

¹⁷ *Id.*

¹⁸ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

¹⁹ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership).

²⁰ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

²¹ *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.*

estate are a relevant consideration.²²

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.²³ 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.²⁴

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.²⁵ All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Fourth Interim Fee Application.

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).

²² See *Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

²³ 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).

²⁴ 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.”).

²⁵ 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).

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 April 2017 Report and in each firm's summary invoice.²⁶ 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 in the best interests of the Receivership Entity, and were indeed essential for the Receiver to perform his Court-ordered duties.²⁷ 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 January 1, 2017 through March 31, 2017:

Aequitas Receivership

Professional Fees & Expenses by Entity (from January 1 through March 31, 2017)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	253,687.00	10.1%	2,614.03	2.3%	256,301.03	9.7%
FTI Consulting	989,437.00	39.3%	39,743.19	35.0%	1,029,180.19	39.1%
Pepper Hamilton	271,955.12	10.8%	66,421.40	58.4%	338,376.52	12.9%
Schwabe, Williamson & Wyatt	929,850.50	36.9%	3,168.93	2.8%	933,019.43	35.5%
Morrison Foerster	44,523.80	1.8%	217.99	0.2%	44,741.79	1.7%
Law Office of Stanley H. Shure	27,482.63	1.1%	1,495.17	1.3%	28,977.80	1.1%
Akin Gump ^[1]	-	0.0%	-	0.0%	-	0.0%
Ater Wynne ^[1]	-	0.0%	-	0.0%	-	0.0%
Total:	2,516,936.05	100%	113,660.71	100%	2,630,596.76	100%

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

²⁶ Greenspan Declaration, Exs. A-G.

²⁷ Greenspan Declaration, p. 4.

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.²⁸ 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.²⁹ 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.³⁰ This was true regardless of the size of the case.³¹ 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

²⁸ *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).

²⁹ *W.L. Moody & Co.*, 374 F. Supp. at 481.

³⁰ 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.

³¹ *Id.*

that the Court enter an order approving the fees and expenses requested in the Fourth Interim Fee Application, for the period from January 1, 2017 through March 31, 2017.

Dated this 14th day of July, 2017.

Respectfully submitted,

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