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AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS 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,

v.

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

Defendants.

No. 3:16-cv-00438-PK

RECEIVER'S MOTION FOR APPROVAL
OF PROPOSED SETTLEMENTS WITH
THE CONSUMER FINANCIAL
PROTECTION BUREAU AND CERTAIN
STATE ATTORNEYS GENERAL



LR 7-1 CERTIFICATION

On August 9, 2017, the undersigned circulated to the approximately 72 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific time) on August 16, 2017, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received one (1) consent and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver¹ in this securities fraud enforcement action, is responsible for fairly and effectively marshaling and preserving assets of the Receivership Entity for the benefit of investors allegedly defrauded by the former officers of the Aequitas group of companies. Included within the assets of the Receivership Entity is a portfolio of outstanding loans of former Corinthian Colleges Inc. (“Corinthian”) student borrowers. Corinthian loans have been the subject of ongoing consumer protection enforcement efforts by the Consumer Financial Protection Bureau (“CFPB”) and State Attorneys General. The Receiver’s obligation to maximize the value of Receivership Property for the benefit of investors is thus somewhat at odds with the efforts of government regulators to obtain debt relief for these student borrowers. The Receiver has, however, through extensive negotiations, reached what he believes to be a balanced, negotiated resolution with these government agencies that provides meaningful relief for Corinthian student borrowers, while also preserving some value for the Receivership Entity’s allegedly defrauded investors.

¹ Capitalized terms not otherwise defined in this Motion or the Memorandum of Law shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 [Dkt. 156].

To effectuate this resolution, the Receiver hereby moves this Court (the “Motion”) for entry of an order authorizing the Receiver to: (A) enter into (1) a stipulated final judgment with the CFPB; (2) an assurance of voluntary compliance/assurance of voluntary discontinuance with the Attorneys General of Connecticut, Iowa, Kentucky, New York, Pennsylvania, Illinois, Texas, and Washington; (3) stipulated final judgments and permanent injunctions with the Attorneys General of California, Maryland, Colorado, and Oregon; (4) settlements with other State Attorneys General under substantively identical terms, without requiring further order of this Court; and (B) make appearances in courts and consent to pleadings, orders, and other documents the foregoing enforcement parties may require in order to effectuate such judgments, assurances, and injunctions.

This Motion is supported by the following memorandum of law, the accompanying Declaration of Ronald F. Greenspan (“Greenspan Decl.”), and documents on file with this Court.

MEMORANDUM OF LAW

I. Background

A. Appointment and Duties of the Receiver

1. On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the five Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (“Interim Receivership Order”) [Dkt. 30]. On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a

final basis (“Final Receivership Order”) [Dkt. 156].

3. Pursuant to the Interim and Final Receivership Orders, the Receiver has, among other tasks, engaged in an effort to determine the nature, location, and value of all Receivership Property. (Greenspan Decl., ¶ 5). The Receiver is duty bound to marshal and preserve such assets for the benefit of the Receivership Entity’s investors and creditors, monetize such assets, and investigate and prosecute claims held by the Receivership Entity. (Final Receivership Order, ¶ 6.) Receivership Property includes a portfolio of loans receivable from former Corinthian student borrowers held by Campus Student Funding, LLC, and related Aequitas companies. (Greenspan Decl., ¶ 5). The student borrowers are contractually required to make payments on these loans. (Final Receivership Order, ¶ 14). Thus, from the perspective of the Receivership Estates, the Receiver seeks approval from the Court to compromise the value of certain assets of the Receivership Estates by entering into these settlements.

B. Investigations by the CFPB and State Attorneys General

4. The CFPB and several State Attorneys General, as advocates on behalf of student borrowers who attended the now-defunct Corinthian schools, have taken issue with the Aequitas student loan portfolio. (Greenspan Decl., ¶ 8).

5. By way of background, Corinthian operated numerous for-profit, post-secondary career schools throughout the United States. In or around 2011, Aequitas began the purchase and financing of Corinthian private student loans in order to provide investment opportunities for the Aequitas group of companies and, ultimately, the investors. In May 2015, following several government investigations and enforcement actions related to Corinthian’s allegedly unlawful marketing practices, including actions by the CFPB and State Attorneys General, Corinthian closed its remaining schools and filed for bankruptcy protection. Government regulators,

however, continued their investigations into Corinthian, and also businesses associated with its operations, primarily in an effort to obtain debt relief for students, including relief of both public and private debt. (Greenspan Decl. ¶¶ 6, 8).

6. This Court's stay of litigation does not apply to actions and proceedings by government regulators in which they seek to advocate on behalf of these student borrowers. (*See* Final Receivership Order, ¶ 20).² Thus, since the time of his appointment, the Receiver has been obligated to engage with various government agencies as they conduct investigations related to the Aequitas student loan portfolio. (Greenspan Decl., ¶ 9). The Receiver has reason to believe that remedies for Corinthian student loan borrowers that the CFPB could seek, consistent with its statutory enforcement authority (and subject to legal defenses such as statute of limitations), include civil monetary penalties, injunction against further collections, and attorneys' fees. The Receiver has been advised that State Attorneys General could seek similar remedies and also treble damages. (Greenspan Decl., ¶ 10).

C. Summary of Proposed Settlements with CFPB and State Attorneys General

7. The Receiver has spent a substantial amount of time and expended very significant professional fees responding to civil investigative demands and other requests for information from the CFPB and State Attorneys General. Although the Receiver believes that there may be valid defenses to any claims brought by these agencies, he has determined that it is in the best interest of the Receivership Estate and all of its stakeholders to resolve these investigations through a settled resolution. To that end, the Receiver has had numerous discussions with these agencies, both in person and telephonically, regarding an appropriate

² Governmental units exercising their police or regulatory powers are not subject to the automatic stay. (Final Receivership Order, ¶ 20).

mechanism to provide student borrowers with meaningful relief, while simultaneously preserving some value for the benefit of the Receivership Entity's investors and creditors, and also to ensure that a final resolution limits future claims against the Receivership Entity. These extensive discussions have resulted in finalized settlements, subject only to approval of this Court, with the CFPB and 11 State Attorneys General. Discussions have also advanced substantially with another State Attorney General such that the Receiver believes it has a current opportunity to reach substantial agreement on the same terms with this state (subject to formal approval by the requisite authorities in such state). (Greenspan Decl. ¶¶ 11-12).

8. As a result of these discussions, the Receiver seeks authority to: (A) enter into (1) a stipulated final judgment with the CFPB (Greenspan Decl., Ex. 1); (2) an assurance of voluntary compliance/assurance of voluntary discontinuance with the Attorneys General of Connecticut, Iowa, Kentucky, New York, Pennsylvania, Illinois, Texas, and Washington (Greenspan Decl., Ex. 2); (3) stipulated final judgments and permanent injunctions with the Attorneys General of California, Maryland, Colorado, and Oregon (Greenspan Decl., Ex. 3); (4) settlements with other State Attorneys General under substantively identical terms, without requiring further order of this Court; and (B) make such appearances in courts and consent to such pleadings, orders, and other documents the foregoing enforcement parties may require in order to effectuate such judgments, assurances, and injunctions (Greenspan Decl. ¶¶ 13-14) (collectively, the "Settlements").

9. The Receiver believes, in the exercise of his discretion and business judgment, that the Settlements, which include compromising the outstanding student loan balances owed to the Receivership Entity, are in the best interests of the Receivership's investors and creditors.

(Greenspan Decl., ¶ 16). Although the procedural mechanisms to effectuate the Settlements differ slightly, the Settlements are substantively identical, and include the following key terms:

- Receivership Defendants settle matters with the CFPB and State Attorneys General on a neither-admit-nor-deny basis;
- 100% relief for loan accounts with an open balance that are 270 days or more past due as of the Record Date (March 31, 2017), including forgiveness of all outstanding principal, interest, fees or any other amounts;
- 100% relief for loan accounts with an open balance and the borrower did not graduate or complete his/her course work, the borrower attended one of the Corinthian schools that Corinthian announced on April 27, 2015 would be closed, and was either attending such school when it closed or withdrew from such school on or after June 1, 2014, including forgiveness of all outstanding principal, interest, fees or any other amounts;³
- 55% principal reduction for all other loan receivables (“Active Loan Accounts”)⁴ and 100% relief on any interest, fees, and charges on such loans that are 30 or more days past due as of the Record Date (March 31, 2017);
- Detailed notice regarding the settlement and available payment options to be provided to student borrowers, including a borrower’s option to either continue paying the current payment amount on the lowered principle balance or elect to have the loan re-amortized using the lowered principal balance and remaining term of the subject loan;
- Receivership to request any servicer that previously furnished trade line information for the subject loans to credit reporting agencies to furnish deletion codes to said credit reporting agencies to delete such information from subject borrowers’ credit reports and use commercially reasonable efforts to follow up with any such servicer;
- Receivership will use commercially reasonable efforts to obtain guidance from the Internal Revenue Service indicating that Receiver is not required to make federal tax filings as a result of the debt relief provided under the settlements;
- Receivership will provide periodic reports regarding the implementation of the settlements to the settling enforcement parties; and

³ Closed School Loan relief also includes relief for certain agreed-upon borrowers who attended one of the Corinthian schools sold to a company named Zenith, which is described more fully in the proposed stipulated judgment with the CFPB. (See Greenspan Decl., Ex. 1).

⁴ An Active Loan Account is one that has an open balance, is less than 270 days past due, and is not a closed school loan. (Greenspan Decl., Ex. 1).

- Any purchaser, transferee, or assignee of these student loan receivables will adopt or abide by the terms and provisions of the settlements requiring ongoing performance.

(Greenspan Decl., ¶ 15).

II. Points and Authorities

10. Pursuant to the Final Receivership Order, the Receiver may “without further Order of this Court, transfer, compromise, abandon or otherwise dispose of any Receivership Property . . . in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity and with due regard to the realization of the true and proper value of such Receivership Property.” (Final Receivership Order, ¶ 26). The Receiver may also take such actions outside the ordinary course of business “with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard.” *Id.* The proposed Settlements are a compromise of Receivership Property outside the ordinary course of business. Consequently, this Court’s approval is required before the Receiver may enter into and perform the terms set forth in the Settlements.

11. Although the outstanding student loan balances are claims of the Receivership Entity, the Receiver’s compromise of these claims is comparable to a bankruptcy trustee’s reasonable ability to compromise claims in a bankruptcy proceeding. The “foremost obligation of a bankruptcy trustee is to ‘proceed in settling [an estate’s] accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors.’” *In re Wire Comm Wireless, Inc.*, 373 F. App’x 707, 708 (9th Cir. 2010) (quoting *In re Mailman Steam Carpet Cleaning Corp.*, 212 F.3d 632, 635 (1st Cir. 2000)). Federal Rule of Bankruptcy Procedure 9019 therefore enables a trustee to seek court approval of “a compromise or settlement,” after notice and a hearing. *Id.* Where pursuing a claim would involve protracted or

“potentially costly litigation, with no guarantee as to the outcome, the trustee must tread cautiously – and an inquiring court must accord him wide latitude should he conclude” that pursuing litigation is not worth the cost. *In re Mailman Steam Carpet Cleaning*, 212 F.3d at 635; *see also In re Wire Comm Wireless*, 373 F. App’x at 708 (“[T]he purpose of a compromise is . . . ‘to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.’”) (citation omitted). In light of such guidance, “a bankruptcy court enjoys great latitude in approving a proposed compromise, and a fruitful settlement is always favored over needless litigation.” *In re Wire Comm Wireless*, 373 F. App’x at 709 (citing *In re A&C Props.*, 784 F.2d 1377, 1381-82 (9th Cir. 1986)).

12. Here, the Receiver believes, in the exercise of his discretion and business judgment, the Settlements represent a fair compromise that is in the best interests of the Receivership Entity’s investors and creditors for the following reasons. (Greenspan Decl., ¶ 16). First, the CFPB and numerous State Attorneys General are prepared, or are preparing, to initiate enforcement actions against Aequis in various federal and state courts. These agencies allege that Aequis violated federal and state consumer protection laws related to unfair and deceptive business practices through its relationship with Corinthian and the student borrowers. *See, e.g.*, (Greenspan Decl., ¶ 17). This Court’s stay of litigation does not prohibit these government agencies from commencing such actions. Thus, to protect Receivership Property, the Receiver would be forced to bear the “expenses and burdens [of] litigating sharply contested” claims in multiple jurisdictions throughout the country. *See In re Wire Comm Wireless*, 373 F. App’x at 708.

13. Second, there is “no guarantee as to the outcome” of any government enforcement

actions brought against the Receivership Entity. *See In re Mailman Steam Carpet Cleaning*, 212 F.3d at 635. The government agencies allege Aequitas holds student loans that were obtained through abusive practices. The agencies would therefore seek, among other relief, to have Aequitas permanently enjoined from collecting loan payments, pay restitution to student borrowers, and “disgorge all ill-gotten profits.” (Greenspan Decl., ¶ 18). Although there may be valid defenses to such allegations, litigating these matters exposes Receivership Property to the potential for significant losses.⁵

14. Third, pending government investigations hinder the Receiver’s ability to monetize the assets of the Receivership Entity. The Receiver’s primary focus to date has been the stabilization of the Receivership Entity to preserve value and facilitate asset monetization. The Receiver cannot even begin to attempt the liquidation of Aequitas’ student loan portfolio so long as the possibility remains for government enforcement actions against the Receivership Entity. (Greenspan Decl., ¶ 19).

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⁵ The relief being provided in the Settlements will be nationwide. Consequently, there will be no further impact on the Receivership Estate if the Receiver enters into additional settlements with other states on substantively identical terms.

III. Conclusion

For the reasons stated above, the Receiver respectfully requests that this Court grant the Motion authorizing the Receiver to enter into the proposed settlements with the CFPB and State Attorneys General.

Dated this 17th day of August, 2017.

Respectfully submitted,

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By: /s/ Alex Poust

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