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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 FIFTH 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 Fifth 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 Securities and Exchange Commission (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 April 1, 2017 through June 30, 2017 (the "Fifth Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the July 31, 2017 Report of the Receiver (the "July 2017 Report")<sup>1</sup> as well as

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<sup>1</sup> Dkt. 491.

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 July 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.<sup>3</sup> The Commission alleges that the Individual Defendants, all principals of one or more of the Entity Defendants, defrauded investors and also

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<sup>2</sup> Greenspan Declaration, Exhibits B through G.

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

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 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”).<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 November Report, which covered the period for the quarter ending September 30, 2016.<sup>8</sup> On February 10, 2017, the Receiver filed his February Report, which covered the period for the

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<sup>4</sup> Dkt. 1, ¶¶ 1-7.

<sup>5</sup> Dkt. 1, ¶ 5.

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

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

<sup>8</sup> Dkt. 298.

quarter ending December 31, 2016.<sup>9</sup> On May 11, 2017, the Receiver filed his April 2017 Report, which covered the period for the quarter ending March 31, 2017.<sup>10</sup> The July 2017 Report is the Receiver's report and recommendations to the Court for the quarter ending June 30, 2017. The contents of the Fifth Interim Fee Application, like the focus of the July 2017 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending June 30, 2017.<sup>11</sup>

**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. From the beginning of the Receivership through the quarter ending June 30, 2017, the Receiver has sold assets and collected receivables totaling approximately \$248 million. Further, the Receiver has an option to sell approximately \$42 million<sup>12</sup> in remaining health care receivables owned by the Receivership Entity.<sup>13</sup> The Receiver has substantially completed data consolidation, has continued the forensic investigation work, and made significant progress on investor data validation.

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<sup>9</sup> Dkt. 365.

<sup>10</sup> Dkt. 444.

<sup>11</sup> The fees and expenses for the Pachulski firm, in the total amount of \$40,455.03 were incurred from March 16, 2016 through October 13, 2016 and represent all of the fees and expenses incurred by the Pachulski firm on behalf of the Receivership Entity through June 30, 2017.

<sup>12</sup> Balance as of June 30, 2017.

<sup>13</sup> Subsequent to the end of the quarter, an affiliate of CarePayment Technologies, Inc. exercised the option and completed partial acquisition of the receivables. Certain receivables were also sold during the second quarter of 2017 to an affiliate of CPYT pursuant to the Origination and New Program Agreement. The balance of the receivables is expected to be purchased prior to the end of 2017.

The Receiver has substantially completed the implementation of a consolidated database of the estimated ten (10) terabytes of documents in the possession of the Receivership Entity and controlled by Receivership agents and vendors. The database is being utilized to fulfill current requests for production (RFP) from the Commission. There is currently an attorney-client privilege dispute among the Individual Defendants and the Commission, which Order is under appeal. Upon resolution of the dispute, the Receiver 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.

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.

During the Fifth Application Period, the Receiver began a phased roll out of a data confirmation process pursuant to which data packets are being sent to each investor who had an active account balance in any fund of the Receivership Entity from January 1, 2012 to the date of the Complaint. As of June 30, 2017, 1,153 investor packets have been sent to ACF Private Note investors constituting about \$280 million of the total invested capital in Private Notes (\$315 million) as of the date of the Complaint. Validation work for the remaining investors in ACF Private Notes as well as those invested in funds or investment vehicles has continued after June 30, 2017.

**B. The Receiver continues the daily management of the Receivership Entity.**

The various loan portfolios and numerous operating companies owned by the Receivership Entity 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 SEC staff and the Aequis 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.

**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.

**D. The Receiver recommends that the stay of litigation be lifted as to Private Advisory Group, LLC. and will likely recommend at least a partial lifting of the stay in the Receiver's next report.**

As described in the Receiver's July 2017 Report,<sup>14</sup> the Receivership Entity owns a majority interest in Private Advisory Group, LLC, a registered investment advisor ("PAG"). Pursuant to the directive contained in paragraph 24 of the Order Appointing Receiver,<sup>15</sup> the Receiver has recommended that the Court lift the stay of litigation against PAG. Assuming negotiations are concluded productively, the Receiver anticipates filing shortly a motion to allow the parties to proceed toward a settlement as fully described in the July 2017 Report.

As to the stay of claims against the Receivership Entity, individual Defendants and others addressed in Sec. IX of the Order Appointing Receiver,<sup>16</sup> the Receiver anticipates recommending at least a partial lifting of the stay in the next Receiver's report (90 days). By that time, there will likely be substantial progress on the forensic accounting/investigation and the majority of the Receivership Entity's assets will have been sold or otherwise monetized, thereby allowing some resources to be redirected to litigation-related matters without jeopardizing the Receivership's other vital activities.

**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,

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<sup>14</sup> Dkt. 491.

<sup>15</sup> Dkt. 156.

<sup>16</sup> Dkt. 156.



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 Financial 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 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. 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 Financial Protection Bureau**

Before the Commission filed suit, MoFo was counsel for three entities within the Receivership Entity: Aequis Capital Management, Inc., Aequis 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. Ater withdrew as counsel to the Receiver effective

April 4, 2017.<sup>17</sup>

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

During the Fifth Application Period, the Receivership Entity's cash receipts totaled approximately \$33.4 million and cash disbursements totaled \$29.6 million (including repayment of secured debt principal), for a net cash increase of approximately \$3.8 million. As of June 30, 2017, the Receivership Entity had cash balances in excess of \$84 million. The Standardized Fund Accounting Report, which is included in the Receiver's July 2017 Report, provides a detailed statement of cash receipts and disbursements.

The July 2017 Report also contains detailed accounts of the asset sales completed during the Fifth Application Period, as well as prior transactions and ongoing sales efforts.<sup>18</sup> The following are brief summaries of the transactions completed during the Fifth Application Period.

**1. CarePayment Medical Receivables**

Between April 1, 2017 and June 30, 2017, a company affiliated with CPYT, a former affiliate of the Receivership Entity, acquired \$5.1 million in active CarePayment receivables and an additional \$6.2 million was received for the purchase of hospital accounts receivable owed to CPLLC and CPFIT, for recoured receivables or other monies due (net of accounts payable owed to the respective hospitals). The Receiver utilized the CPLLC proceeds to pay down senior secured debt with DLI. Additionally, during the Fifth Application Period, CPLLC and CPFIT have received \$12.2 million in patient collections.

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<sup>17</sup> Dkt. 396.

<sup>18</sup> Greenspan Declaration, Exhibit A.

Subsequent to the Fifth Application Period, after securing funding, on July 28, 2017, CPYT repaid the Receivership Entity loan of \$10.7 million plus accrued interest of \$464 thousand and purchased \$19.2 million (face value) of medical receivables. The Receivership used a portion of the proceeds to retire the outstanding DLI debt balance of \$7.56 million.

## **2. 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 IM and requested court approval on April 19, 2017.<sup>19</sup> The Receiver did not believe that the Receivership Entity’s equity was worth more than the \$50,000 and contractual indemnities and releases being received (and understands that CLA is receiving no consideration on account of its equity investment).

On April 20, 2017, the Court entered its order<sup>20</sup> permitting the sale of the Receivership’s interest and a closing of the transaction occurred on May 9, 2107. Due to restrictions related to an investment advisory business, the transaction closed but the sale proceeds are in escrow until the shareholders approve the new advisory agreement and the purchaser receives an exemptive order from the Commission (completion expected shortly in 2017).

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<sup>19</sup> Dkt. 412.

<sup>20</sup> Dkt. 415.

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

ASH, through its affiliates, held a minority interest in an assisted living facility under construction in Austin Texas. The project construction costs are over budget and it is behind schedule. Civitas, the general partner, 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.

The Order Granting Receiver’s Motion to Sell Assets Free and Clear of All Liens, Claims, Encumbrances and Interests was entered on May 25, 2017.<sup>21</sup> No overbid was received. The sale 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, data consolidation, forensic accounting investigation, and investor data validation.

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<sup>21</sup> Dkt. 456.

## **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 July 2017 Report.

## **3. Staffing**

### **a. Headcount Reduction**

The Receiver continues with planned, targeted staff reductions based on the needs of the enterprise. As of June 30, 2017, the Receivership Entity had 9 full-time employees and 1 part-time employee, a reduction of 2 employees during the quarter. The Receiver's employee retention program 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 staff attrition in addition to planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local independent contractors (not affiliated with FTI). As of June 30, 2017, the Receivership employed five 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's auditor and tax preparer, the Receiver was required to engage new professionals to fulfill those requirements.

**a. Audit**

The Receiver engaged Burr Pilger Mayer (“BPM”) to audit the 2015 financial statements for several Receivership Entities where the Receiver believed an audit was helpful in connection with a sale or refinancing process. The Receiver facilitated the 2016 audit for COF/CCM, with the cost of the audit borne by COF/CCM (in which the Receivership no longer owns an interest). The Receiver has delayed the kick-off of the 2016 audit of CP LLC pending the timing of CPYT’s purchase of the medical receivables portfolio.

**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.

**c. Other Tax matters**

For the 2016 tax year, the Receivership has thus far filed 42 federal, state and local returns – including twenty-one filed since the last report (3 federal returns and 18 state returns). Many more additional returns were subsequently filed to meet the September filing deadline. The Receiver continues to look for opportunities to file final tax returns as sale transactions occur and/or other circumstances allow for closure of entities.

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

FTI continues to leverage its access to various resources and 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 APRIL 1, 2017 THROUGH JUNE 30, 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....”<sup>22</sup> Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.<sup>23</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 April 1, 2017 through June 30, 2017.**<sup>24</sup>

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<sup>22</sup> Dkt. 156, ¶ 45.

<sup>23</sup> Dkt. 156, ¶ 47.

<sup>24</sup> The fees and expenses for the Pachulski firm, in the total amount of \$40,455.03 were incurred from March 16, 2016 through October 13, 2016 and represent all of the fees and expenses incurred by the Pachulski firm on behalf of the Receivership Entity through June 30, 2017.

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

This is the Fifth Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.<sup>25</sup> The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.<sup>26</sup> The Second Interim Fee Application was filed on December 12, 2016.<sup>27</sup> The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.<sup>28</sup> The Third Interim Fee Application was filed on April 4, 2017.<sup>29</sup> The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.<sup>30</sup> The Fourth Interim Fee Application was filed on July 14, 2017.<sup>31</sup> The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.<sup>32</sup> 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):

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<sup>25</sup> Dkt. 251.

<sup>26</sup> Dkt. 273.

<sup>27</sup> Dkt. 315.

<sup>28</sup> Dkt. 370.

<sup>29</sup> Dkt. 393.

<sup>30</sup> Dkt. 416.

<sup>31</sup> Dkt. 475.

<sup>32</sup> Dkt. 478.

Entity	Previous Fees	Previous Expenses	Total Previous Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	1,256,762	19,923	1,276,685	251,352	1,025,332
FTI Consulting	4,094,698	245,291	4,339,989	818,940	3,521,050
Pepper Hamilton	1,516,383	200,830	1,717,213	303,277	1,413,936
Schwabe, Williamson & Wyatt	2,830,269	15,355	2,845,623	566,054	2,279,570
Morrison Foerster	281,166	1,408	282,574	56,233	226,341
Law Office of Stanley H. Shure	197,640	3,802	201,442	39,528	161,914
Pachulski Stang Ziehl & Jones	-	-	-	-	-
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>10,247,533</b>	<b>486,742</b>	<b>10,734,274</b>	<b>2,049,507</b>	<b>8,684,768</b>

**B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Fifth 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>33</sup> “Under either method, the Court must exercise its discretion to achieve a ‘reasonable’ result.”<sup>34</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>35</sup> Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.<sup>36</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

<sup>33</sup> *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

<sup>34</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>35</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>36</sup> *Id.*

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>37</sup> The Commission's approval of an application should be given great weight.<sup>38</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 obtained."<sup>39</sup> The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.<sup>40</sup> The benefits bestowed on the estate are a relevant consideration.<sup>41</sup>

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

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<sup>37</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>38</sup> *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership)).

<sup>39</sup> *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

<sup>40</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>41</sup> See *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at \*2 (receiver marshaled assets quickly and efficiently).

considered when calculating the fees awarded.<sup>42</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>43</sup>

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.<sup>44</sup> All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Fifth Interim Fee Application.

**C. The fees and expenses during this Fifth 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 July 2017 Report and in each firm's summary invoice.<sup>45</sup> As noted, these firms agreed to substantial discounts of their customary fees, and the amounts requested reflect those discounts. The time spent, services

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<sup>42</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>43</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.").

<sup>44</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>45</sup> Greenspan Declaration, Exhibits A through G.

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.<sup>46</sup> Each of these professional firms was selected because it possesses special expertise required to fulfill the Court's orders. The following chart is a summary of the fees and expenses reasonably incurred in the service of the Receivership Entity from April 1, 2017 through June 30, 2017:<sup>47</sup>

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	131,422.00	5.8%	1,565.89	1.3%	132,987.89	5.6%
FTI Consulting	1,192,007.00	52.7%	49,593.69	41.9%	1,241,600.69	52.1%
Pepper Hamilton	167,532.36	7.4%	62,865.22	53.1%	230,397.58	9.7%
Schwabe, Williamson & Wyatt	587,348.50	25.9%	3,766.36	3.2%	591,114.86	24.8%
Morrison Foerster	77,715.83	3.4%	97.50	0.1%	77,813.33	3.3%
Law Office of Stanley H. Shure	67,946.88	3.0%	-	0.0%	67,946.88	2.9%
Pachulski Stang Ziehl & Jones <sup>[1]</sup>	39,984.00	1.8%	471.03	0.4%	40,455.03	1.7%
Akin Gump <sup>[2]</sup>	-	0.0%	-	0.0%	-	0.0%
Ater Wynne <sup>[2]</sup>	-	0.0%	-	0.0%	-	0.0%
<b>Total:</b>	<b>2,263,956.57</b>	<b>100%</b>	<b>118,359.69</b>	<b>100%</b>	<b>2,382,316.26</b>	<b>100%</b>

[1] Fees and Expenses for Pachulski Stang Ziehl & Jones relate to the period March 16 through October 13, 2016.

[2] 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>48</sup> The size and scope of this equitable receivership are much greater

<sup>46</sup> Greenspan Declaration, p. 4.

<sup>47</sup> The fees and expenses for the Pachulski firm, in the total amount of \$40,455.03 were incurred from March 16, 2016 through October 13, 2016 and represent all of the fees and expenses incurred by the Pachulski firm on behalf of the Receivership Entity through June 30, 2017.

<sup>48</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).

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>49</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>50</sup> This was true regardless of the size of the case.<sup>51</sup> The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end of the Fifth 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

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<sup>49</sup> *W.L. Moody & Co.*, 374 F. Supp. at 481.

<sup>50</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.

<sup>51</sup> *Id.*

that the Court enter an order approving the fees and expenses requested in the Fifth Interim Fee Application, for the period from April 1, 2017 through June 30, 2017.

Dated this 11th day of October, 2017.

Respectfully submitted,

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