

Troy Greenfield, OSB #892534
Email: tgreenfield@schwabe.com
Alex I. Poust, OSB #925155
Email: apoust@schwabe.com
Lawrence R. Ream (Admitted *Pro Hac Vice*)
Email: lream@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice*)
Email: knaueri@pepperlaw.com
Brian M. Nichilo (Admitted *Pro Hac Vice*)
Email: nichilob@pepperlaw.com
Pepper Hamilton, LLP
600 14th Street, NW, Suite 500
Washington, DC 20005
Telephone: 202. 220.1219
Facsimile: 202. 220.1665

Attorneys for Receiver for Defendants
AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS,
LLC; 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,

No. 3:16-cv-00438-PK

RECEIVER'S REQUEST FOR APPROVAL
OF SIXTH INTERIM FEE APPLICATION

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INTERIM FEE APPLICATION

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Fax: 503.796.2900



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 Sixth 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 July 1, 2017 through September 30, 2017 (the "Sixth Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the October 31, 2017 Report of the Receiver (the "October 2017 Report")¹ as

¹ Dkt. 559.

well as in the summary invoice of each professional, which are attached to the Declaration of Ronald F. Greenspan (the “Greenspan Declaration”) filed contemporaneously with this motion.² As the Court is aware, this is a very complex and otherwise difficult case. The information contained in the October 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

² Greenspan Declaration, Exhibits B through F.

³ Dkt. 1.

Defendants, all principals of one or more of the Entity Defendants, defrauded investors and also misused investor funds to pay operating expenses and to repay earlier investors.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.

The Receiver has filed a voluntary report and recommendations to the Court (the “Initial Report”) for the first “stub quarter” ending June 30, 2016 [Dkt. 246], the first mandated quarterly report covering the period through September 30, 2016 [Dkt. 298] and subsequent reports covering the period through December 31, 2016 [Dkt. 365], through March 31, 2017 [Dkt. 444], and through June 30, 2017 [Dkt. 491], which are collectively referred to herein as the “Receiver’s Reports”. The October 2017 Report is the Receiver’s report and recommendations to the Court for the quarter ending September 30, 2017. The contents of the Sixth Interim Fee

⁴ Dkt. 1, ¶¶ 1-7.

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

Application, like the focus of the October 2017 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending September 30, 2017.

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

The Receiver has successfully stabilized the Receivership Entity, preserved value when possible and facilitated the monetization of a majority of the receivership assets. Through the quarter ended September 30, 2017, the Receiver has sold assets and collected receivables totaling approximately \$290 million. Further, the Receiver has entered into an option to sell the healthcare receivables owned by the Receivership to CarePayment Technologies, Inc. (“CPYT”). CPYT has exercised the option and acquired a significant amount of the receivables, and the Receiver expects to receive approximately \$8.5 million of additional proceeds between the end of November and 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. Significant additional work was performed in the Sixth Application Period to prepare the database and the necessary processes in order to provide access to the documentation to third-party litigants.

Having made substantial progress on the planned asset dispositions, the Receiver and his team have advanced the forensic investigation after receiving input from the SEC and counsel representing the Investors, with preliminary results expected to be made public in the first quarter of 2018. 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 Sixth Application Period, the Receiver continued the 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. During the subject period, Receiver and his staff prepared necessary data, reviewed results, and sent out 287 investor packets. To date, approximately 1,440 packets have been sent to investors representing substantially all of the invested capital in ACF Private Note, Income Opportunity Fund, Income Opportunity Fund II, Income Protection Fund, Private Client Fund, Enhanced Income Fund, ACC C Plus Holdings, ACC F Plus Holdings, Aequis Peer-to-Peer Funding, CarePayment Holdings, ML Financial Holdings, and MotoLease Financial as of the date of the Complaint. After over a year of negotiations, on August 17, 2017, the Court approved Receiver entering into the nationwide settlement with CFPB and thirteen state Attorneys General in connection with the Corinthian Colleges private student loan portfolio owned by the Receivership (the "Settlement") [Dkt. 495]. The Settlement affects approximately 47,000 private student loans held by Campus Student Funding, LLC (a Receivership Entity). All 14 individual settlements are on identical terms, although the form and structure of the settlement and ensuing court orders differ among the states. States that joined the settlement include: California, Colorado, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, New York, Oregon, Pennsylvania, Texas, and Washington. The CFPB settlement pertains to all students nationally; the state settlements cover approximately 65% of the outstanding receivables balance. While the Settlement represents significant relief to the borrowers in terms of the unpaid principal balance

reduction and credit history “clean-up”, it is beneficial for the Receivership Entity as it:

- Allows the Receivership to sell the portfolio and substantially enhances the marketability of the portfolio;
- Preserves the Receivership’s (or purchaser's) ability to collect and pursue collection actions for the Active Loans, thus preserving value in the remaining portfolio;
- Avoids significant legal costs and disruption associated with on-going actions by CFPB and likely actions by state Attorneys General;

Following the entry of the Settlement, the Receiver, the Receivership staff, and legal counsel have spent very significant effort on implementing various requirements of the Settlement, including providing the mandated relief to the student borrowers, coordinating extensive noticing, and fulfilling other obligations under the Settlement.

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 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.

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 monetize the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. Sufficient progress has been made in these areas to permit the Receiver to further advance the claims reconciliation process and forensic investigation, both of which are now under way.

D. The following qualified professional service firms have been engaged by the Receiver to aid in the discharge of his duties and responsibilities to the Receivership Entity.

On March 16, 2016, pursuant to the Interim Order, the Receiver engaged FTI Consulting, Inc. ("FTI"), as well as the law firms of Pepper Hamilton LLP ("Pepper"), Schwabe, Williamson & Wyatt PC ("Schwabe") and Pachulski Stang Ziehl & Jones LLP ("Pachulski") on an interim basis. On April 14, 2016, pursuant to the Final Receivership Order, the Receiver engaged FTI, Pepper, Schwabe and Pachulski on behalf of the Receivership Entity.

On July 18, 2016, pursuant to the Order Granting Receiver's Application To Employ Counsel, the Receiver employed the Law Offices of Stanley H. Shure ("Shure"), Akin Gump Strauss Hauer & Feld LLP ("Akin"), Morrison & Foerster LLP ("MoFo") and Ater Wynne LLP ("Ater") *nunc pro tunc* to March 10, 2016.

1. FTI Consulting - Receiver, Financial Advisor and On-Site Management

The Receiver is employed as a Senior Managing Director of FTI, which bills and collects

for the Receiver's time and expenses. To support the Receivership, the Receiver has retained FTI and has access to FTI professionals. FTI is serving as financial advisor to the Receiver and providing daily, on-site management supervision over the operations of the Receivership Entity. Additionally, FTI has been instrumental in preparing assets for market, running certain sale processes, data and information consolidation, investor account data verification, coordinating the forensic accounting, and implementation of the national Corinthian Colleges student note receivable settlement.

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, 2017.⁷

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

During the Sixth Application Period, the Receivership Entity's cash receipts totaled approximately \$47 million and cash disbursements totaled \$21 million (including repayment of secured debt principal), for a net cash increase of approximately \$26 million. As of September 30, 2017, the Receivership Entity had cash balances in excess of \$109 million. The

⁷ Dkt. 396.

Standardized Fund Accounting Report, which is included in the Receiver's October 2017 Report, provides a detailed statement of cash receipts and disbursements.

The October 2017 Report also contains detailed accounts of the asset sales completed during the Sixth Application Period, as well as prior transactions and ongoing sales efforts.⁸ The following are brief summaries of the transactions completed during the Sixth Application Period.

1. CarePayment Medical Receivables

During the Sixth Application Period, entities under the control of Receiver sold to CPYT, a former affiliate of the Receivership Entity, CarePayment receivables for a purchase price of \$19.7 million under the Option Agreement (face value of \$21.6 million). An additional \$2.4 million was received for the sale of hospital receivables owed to CPLLC and CPFIT from July to September.. Further, on July 28, 2017, CPYT repaid the Receivership Entity loan of \$10.7 million plus accrued interest of \$464 thousand. The Receivership used a portion of these proceeds to retire the outstanding DLI debt balance of \$7.6 million (total payments to DLI during the Sixth Application Period equaled approximately \$12.0 million). Additionally, during the Sixth Application Period, CPLLC and CPFIT have received \$6.3 million in patient collections.

2. Innovator Holdings LLC (IH)

On April 20, 2017, the Court entered its order⁹ permitting the sale of the Receivership's interests related to Innovator Management, LLC and a closing of the transaction occurred on May 9, 2107. Sale proceeds were held in escrow until the shareholders approved the new advisory agreement and the purchaser received an exemptive order from the Commission.

⁸ Greenspan Declaration, Exhibit A.

⁹ Dkt. 415.

These closing conditions were met in late September/early October and the \$50,000 in proceeds was received October 11, 2017.

4. ETC Founder Fund (“ETCF”)¹⁰

Aequitas Commercial Finance (“ACF”) owns 15.4% of ETCF, and Aequitas Investment Management, LLC (“AIM”) owns 11% of ETCF. ETCF’s sole investment is in \$8.8 million Series A convertible preferred stock in ETC Global Holdings, Inc. (“ETCGH”) which was purchased in September, 2011. As discussed in prior Receiver's Reports, ETCF was entitled to certain preferential rights, including a liquidation preference that requires ETCGH to first return ETCF’s capital investment in ETCGH, plus a 5% per annum preferred return, before making distributions to the other members of ETCGH.

On May 1, 2017, ETCGH notified the Receiver that ETCGH intended to enter into a “Financing Transaction” with two lenders that would provide ETCGH with critical capital, but would also drastically change the ownership and control of ETCGH. ETCF, through its ownership of the Series A Units, had the ability to block the Financing Transaction. The Receiver rejected that proposal and negotiated extensively the terms of the Financing Transaction taking into consideration the Receivership investors, the interests of non-AIM/ACF investors (a Receivership entity was the general partner of ETCF), the investment and execution risks, and the investment timeline.

The Receiver solicited the consent of ETCF investors formally documenting the approval of and consent to the renegotiated Financing Transaction, and a determination by the

¹⁰ <https://www.etc-clearing.com/>

ETCF investors that the Financing Transaction is fair to ETCF and its members. The Receiver received consent from 92% of ETCF investors (all who voted) with no dissent noted. After conferral with interested parties, the Receiver filed on July 24, 2017 the Receiver's Motions for an Order (1) Authorizing Aequis ETCGH Founders Fund to Consent to Loan to ETCGH Global Group, (2) Authorizing Receivership Entities to (A) Sell Special Member Interests in Aequis ETCGH Founders Fund, (B) Release Claims, (C) Convert Aequis ETCGH Founders Fund's Equity Interests in ETCGH Global Group, and (D) Execute Instruments to Effectuate Loan to ETCGH Global Group (3) Approving Compromise of Management Fees Owned by Aequis ETCGH Founders Fund to Aequis Investment Management, and (4) Granting Related Relief.¹¹ The Court approved the Receiver's Motion by order entered on July 24, 2017.¹²

5. Marketing Services Platform (MSP)

MSP was originally a holding company formed to acquire companies in the marketing, printing, and graphic arts industries. Over time the holding company acquired the assets of three traditional printing companies, a packaging company, and Ivey Performance Marketing (a branding, marketing, and digital technology company). At the time of the Receivership, only the Ivey Performance Marketing ("Ivey") business was active, with the other operations either being shut down, sold off, or rolled into Ivey. The majority of the equity of MSP is owned by APF and there is approximately \$12.5 million subordinated debt which is predominately held by AHF.

Due to the seasonality of the business and the loss of a key customer in early 2016,

¹¹ Dkt. 482.

¹² Dkt. 485.

the Receiver – after consultation with the IAC – agreed to provide bridge financing of up to \$940 thousand while Ivey repositioned its business and prepared to sell itself as a going concern. The Receiver, MSP and Ivey retained the services of an investment banker. The marketing efforts were not successful in sourcing any offers that returned value to the Receivership and alternative plans were evaluated and offers sought for the separate business lines. This approach also failed to produce satisfactory offers.

Ivey was not able to sustain operations without additional loans or equity investment. Given the inadequate offers generated by the marketing efforts of the investment banker and the likely inability to recover any new funds advanced, the Receiver declined to provide additional funds. On September 15, 2017, Ivey sold two of its three lines of business (Branded Environment and Content) in a “distressed sale” for \$850 thousand with the bulk of the proceeds (together with existing cash balances) used to pay secured debt in exchange for lien releases (\$486 thousand), personnel-related costs (\$307 thousand) and investment banker costs (\$105 thousand). Also on September 15, 2017, all staff at Ivey was terminated. Ivey recently closed a separate sale of the Partnership Marketing line of business in partial satisfaction of related trade vendor liabilities. As all operations of Ivey have either been sold or terminated, it is unlikely that the Receivership will receive material proceeds on account of this investment.

F. The Receiver and the professional service firms have consistently strived to minimize costs.

As addressed above, in accordance with the request of the Commission, the Receiver and all of the professional firms have discounted their standard hourly rates. The Receiver is consistently mindful of the professional expenses and manages the work in the most cost-effective manner possible. He strives to avoid duplication of effort by the engaged professionals.

1. Day-to-Day Management

With the termination of Aequitas management, the Receiver has needed to supervise the day-to-day operations of the various Receivership Entities. In addition to the daily management duties, the Receiver has focused on several key areas of his mandate, including marshaling, preserving and disposing of assets for the benefit of the investors, data consolidation, forensic accounting investigation, resolution of claims and litigation, investor data validation, and implementation of the Campus Student Funding settlement.

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 October 2017 Report.

3. Staffing

a. Employee Headcount

The Receiver continues to maintain the minimum staff necessary for the Receivership and enterprise to operate efficiently and effectively. As of September 30, 2017, the Receivership Entity had 12 full-time employees and 1 part-time employee – an increase of 2 employees during the quarter. The Receivership brought on a key person formerly with CarePayment Technologies to assist in the accounting for the portfolio receivables in connection with their reconciliation and transfer to CarePayment. The anticipated reduction in headcount of 1 FTE on June 30, 2017 did not occur as utilizing the employee as a contractor to shepherd the sale of certain small Receivership assets could not be legally accomplished under a consulting agreement. The Receiver's employee retention program provides for at least six-week 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 planned reductions, the Receiver necessarily backfilled key accounting and technology positions with local independent contractors (not affiliated with FTI). As of September 30, 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 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 would be helpful in connection with a sale or refinancing process. This audit has been completed. 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 Aequis staff in the preparation of tax and information returns, and to provide tax-consulting services on an as-needed basis.

c. Other Tax matters

The 2016 Federal and state tax return filings for the Receivership LLCs, partnerships and trusts were completed in September. In all, more than 150 returns were filed with all federal and state authorities. Form k-1 information for investors and members were distributed as soon as returns were completed. The corporate tax returns for Aequitas Capital Management Inc. are in process and will be completed by year end.

The Receiver focused on marking as “final returns” as many of the 2016 filings as possible (primarily state returns) to reduce the number of returns to be filed for 2017.

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 JULY 1, 2017 THROUGH SEPTEMBER 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....”¹³ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹⁴ 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 July 1, 2017 through September 30, 2017.**

A. This is the Sixth Interim Fee Application and the Court has previously approved the prior five Interim Fee Applications

This is the Sixth Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.¹⁵ The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.¹⁶ The Second Interim Fee Application was filed on December 12, 2016.¹⁷ The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.¹⁸ The Third Interim Fee

¹³ Dkt. 156, ¶ 45.

¹⁴ Dkt. 156, ¶ 47.

¹⁵ Dkt. 251.

¹⁶ Dkt. 273.

¹⁷ Dkt. 315.

¹⁸ Dkt. 370.

Application was filed on April 4, 2017.¹⁹ The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.²⁰ The Fourth Interim Fee Application was filed on July 14, 2017.²¹ The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.²² The Fifth Interim Fee Application was filed on October 11, 2017.²³ The Court approved the fees and expenses requested in the Fifth Fee Application on October 12, 2017.²⁴ 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	1,388,184	21,489	1,409,673	277,637	1,132,036
FTI Consulting	5,286,705	294,885	5,581,590	1,057,341	4,524,249
Pepper Hamilton	1,683,915	263,695	1,947,611	336,783	1,610,827
Schwabe, Williamson & Wyatt	3,417,617	19,121	3,436,738	683,523	2,753,215
Morrison Foerster	358,882	1,505	360,387	71,776	288,611
Law Office of Stanley H. Shure	265,587	3,802	269,389	53,117	216,272
Pachulski Stang Ziehl & Jones	100,243	604	100,847	20,049	80,798
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	12,571,748	605,234	13,176,982	2,514,350	10,662,633

¹⁹ Dkt. 393.

²⁰ Dkt. 416.

²¹ Dkt. 475.

²² Dkt. 478.

²³ Dkt. 544.

²⁴ Dkt. 548.

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Sixth 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.”²⁵ “Under either method, the Court must exercise its discretion to achieve a ‘reasonable’ result.”²⁶

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.”²⁷ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.²⁸ 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.²⁹ The Commission’s approval of an application should be given great weight.³⁰

²⁵ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

²⁶ *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)).

²⁷ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

²⁸ *Id.*

²⁹ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

³⁰ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership)).

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.”³¹ The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.³² The benefits bestowed on the estate are a relevant consideration.³³

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.³⁴ 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.³⁵

³¹ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

³² *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).

³³ *See Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

³⁴ *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).

³⁵ *See W.L. Moody & Co.*, 374 F. Supp. at 481 (holding that a court should give “considerable

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.³⁶ All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Sixth Interim Fee Application.

C. The fees and expenses during this Sixth 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 October 2017 Report and in each firm's summary invoice.³⁷ 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.³⁸ 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 July 1, 2017 through September 30, 2017:

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.").

³⁶ 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).

³⁷ Greenspan Declaration, Exhibits A through G.

³⁸ Greenspan Declaration, p. 4.

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	132,330.00	5.3%	2,057.40	4.5%	134,387.40	5.3%
FTI Consulting	1,020,340.00	41.0%	34,372.69	75.6%	1,054,712.69	41.6%
Pepper Hamilton	265,764.43	10.7%	72.57	0.2%	265,837.00	10.5%
Schwabe, Williamson & Wyatt	682,837.40	27.4%	2,885.99	6.3%	685,723.39	27.1%
Morrison Foerster	237,884.60	9.6%	4,071.67	9.0%	241,956.27	9.5%
Law Office of Stanley H. Shure	150,309.75	6.0%	2,004.37	4.4%	152,314.12	6.0%
Pachulski Stang Ziehl & Jones ^[1]	-	0.0%	-	0.0%	-	0.0%
Akin Gump ^[1]	-	0.0%	-	0.0%	-	0.0%
Ater Wynne ^[1]	-	0.0%	-	0.0%	-	0.0%
Total:	2,489,466.18	100%	45,464.69	100%	2,534,930.87	100%

[1] Pachulski Stang Ziehl & Jones, 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.³⁹ 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.⁴⁰ 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.⁴¹ This was true regardless of the size of the case.⁴² The fees incurred in this case are a significantly smaller percentage of the total

³⁹ *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).

⁴⁰ *W.L. Moody & Co.*, 374 F. Supp. at 481.

⁴¹ 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.

⁴² *Id.*

recoveries through the end of the Sixth Application Period than any of these cases and the Receivership Entity has benefitted by avoiding additional fees that would have been incurred if investment bankers were retained.

IV. CONCLUSION

The relief requested herein is appropriate and in furtherance of the provisions of the Final Receivership Order appointing the Receiver. Accordingly, the Receiver respectfully requests that the Court enter an order approving the fees and expenses requested in the Sixth Interim Fee Application, for the period from July 1, 2017 through September 30, 2017.

Dated this 12th day of December, 2017.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Alex I. Poust

Troy Greenfield, OSB #892534

tgreenfield@schwabe.com

Alex I. Poust, OSB #925155

apoust@schwabe.com

Lawrence R. Ream (Admitted *Pro Hac Vice*)

lream@schwabe.com

Telephone: 503.222.9981

Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice*)

knaueri@pepperlaw.com

PEPPER HAMILTON LLP

600 Fourteenth Street N.W.

Washington, D.C. 20005

Tel: 202.220.1665

Attorneys for Receiver for Defendants Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC