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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,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;

No. 3:16-cv-00438-PK

DECLARATION OF BRAD FOSTER IN
SUPPORT OF RECEIVER'S MOTION FOR
ORDER APPROVING (1) COMPROMISE
OF AEQUITAS COMMERCIAL FINANCE,
LLC'S CLAIMS AGAINST GERALD W.
FRANK AND GERALD W. FRANK



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

REVOCABLE LIVING TRUST, AND (2)
SETTLEMENT AGREEMENT

Defendants.

I, Brad Foster, declare as follows:

1. I am a Managing Director, Corporate Finance, at FTI Consulting, Inc. (“FTI”). FTI was retained by Ronald Greenspan, the duly appointed receiver (“Receiver”) for the Receivership Entity.¹ Pursuant to the Order Authorizing Brad Foster and Larissa Gotguelf to Act on Behalf of the Receiver [Dkt. 245], I make this declaration in support of the Receiver’s Motion for an Order Approving Compromise of Aequitas Commercial Finance, LLC’s Claims Against Gerald W. Frank and Gerald W. Frank Revocable Living Trust (the “Motion”).

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Ronald 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 Final Receivership Order, Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. The Receivership Entity includes Aequitas Commercial Finance, LLC (“ACF”), a Receivership Defendant.

3. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes ACF’s claims under certain loan documents (described below) against Gerald W. Frank and the Trust (together, “Frank”). The

¹ Capitalized terms not otherwise defined in this declaration shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 (Dkt. 156) (the “Final Receivership Order”).

Receivership Entity, including ACF, and Frank have settled ACF's claims against Frank pursuant to the terms of a Settlement Agreement and Release of Claims dated January 8, 2018 (the "Settlement Agreement"), a true copy of which (other than the exhibits referenced therein) is attached as Exhibit 1. The Settlement Agreement is subject to approval of this Court.

4. On information and belief, on or about July 5, 2007, Rock and Roll Restaurants, LLC ("Rock and Roll"), executed and delivered to Aequitas Equipment Finance, LLC ("AEF"), a Master Equipment Lease Agreement, wherein AEF agreed to provide equipment financing and leasing to Rock and Roll (the "Equipment Lease").

5. On information and belief, on or about July 12, 2007, Gerald W. Frank and the Trust executed and delivered to AEF a Guaranty Agreement whereby they jointly and severally guaranteed the obligations of Rock and Roll under the Equipment Lease Agreement (the "Guaranty").

6. On information and belief, on or about January 29, 2008, Frank reaffirmed the Guaranty by executing and delivering to AEF a Reaffirmation of Guaranty agreement (the "Reaffirmation").

7. On information and belief, on or about May 12, 2008, Frank executed and delivered to AEF a Collateral Agreement and Guaranty Modification (the "Modification").

8. On information and belief, on or about May 14, 2010, Frank executed and delivered to AEF a Letter Agreement further clarifying and modifying the terms of the Guaranty (the "Letter Agreement").

9. On information and belief, on or about January 30, 2013, the Trust executed and delivered to ACF a Membership Interest Sale Agreement (the "Sale Agreement"). Under the terms of the Sale Agreement, the Trust pledged certain stock in CarePayment Technologies, Inc. ("CPYT") as collateral to secure its remaining obligations under the Guaranty. Presently the Trust holds a total of 111,573 shares of Class A Common Stock in CPYT (the "CPYT Stock")

represented by share certificate nos. 00000159ZQ and 00000183ZQ (the “CPYT Stock Certificates”).

10. ACF holds all of the rights, remedies and entitlements under the Equipment Lease, Guaranty, Reaffirmation, Modification, Letter Agreement and the Sale Agreement (collectively, the “Rock and Roll Transaction”).

11. The Receiver asserts that Gerald Frank and the Trust are jointly and severally liable to the Receiver under the terms of the Guaranty in the principal amount of \$205,690.00, plus interest and fees that have accrued on this amount. Frank denies that they are obligated to the Receiver, and have asserted certain defenses to the Receiver’s claims.

12. In order to avoid the costs and risks of litigation regarding the amounts due under the Rock and Roll Transaction, Frank and the Receiver, on behalf of ACF and the Receivership Entity, have agreed to compromise the dispute on the terms set forth in the Settlement Agreement. The Settlement Agreement includes the following principal terms:

- Frank shall transfer and assign ownership of the CPYT Stock to the Receiver.
- Frank shall pay ACF \$61,365 within thirty (30) days from the date of Court approval of the Settlement Agreement.
- The parties to the Settlement Agreement release each other from claims that are based on the Rock and Roll Transaction.
- The Settlement Agreement is conditioned on Court approval.

13. The terms outlined above and as set forth in the Settlement Agreement are the result of good faith negotiations at arm’s length with Frank after diligent investigation into the Rock and Roll Transaction by the Receiver and, in the exercise of the Receiver’s business judgment, are in the best interests of the creditors of, and investors in, the Receivership Entity.

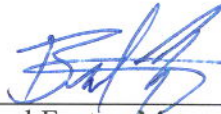
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14. Gerald W. Frank and the Trust have no known relation to the Receiver or the Receivership Entity.

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

Dated this 2nd day of February, 2018.



Brad Foster, Managing Director, Corporate Finance
FTI Consulting, Inc.
On behalf of the Receiver Ronald F. Greenspan

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release (this "Agreement") is entered into by and among Gerald W. Frank Revocable Living Trust, an Oregon trust (the "Trust"), and Gerald W. Frank ("Frank") and receiver Ronald F. Greenspan (the "Receiver") on behalf of Aequitas Commercial Finance, LLC, an Oregon limited liability company ("ACF"), and the Receivership Entity, as more defined below in *Securities and Exchange Commission v. Aequitas Management, LLC; Aequitas Holdings, LLC; Aequitas Commercial Finance, LLC; Aequitas Capital Management, Inc.; Aequitas Investment Management, LLC; Robert J. Jesenik; Brian A Oliver; and N. Scott Gillis*, Case No. 3:16-cv-00438-PK (the "Action"), pending in United States District Court, District of Oregon, Portland Division (the "Court").

I. RECITALS

1. On or about July 5, 2007, Rock and Roll Restaurants, LLC ("Rock and Roll") executed and delivered to Aequitas Equipment Finance, LLC ("AEF") a Master Equipment Lease Agreement, wherein AEF agreed to provide equipment financing and leasing to Rock and Roll (the "Equipment Lease"). A true and correct copy of the Equipment Lease is attached and incorporated herein as **Exhibit 1**.

2. On or about July 12, 2007, Frank and the Trust executed and delivered to AEF a Guaranty Agreement whereby Frank and the Trust jointly and severally guaranteed the obligations of Rock and Roll under the Equipment Lease Agreement (the "Guaranty"). A true and correct copy of the Guaranty is attached and incorporated herein as **Exhibit 2**.

3. On or about January 29, 2008, Frank and the Trust reaffirmed the Guaranty by executing and delivering to AEF a Reaffirmation of Guaranty agreement (the "Reaffirmation"). A true and correct copy of the Reaffirmation is attached and incorporated herein as **Exhibit 3**.

4. On or about May 12, 2008, Frank and the Trust executed and delivered to AEF a Collateral Agreement and Guaranty Modification (the "Modification"). A true and correct copy of the Modification is attached and incorporated herein as **Exhibit 4**.

5. On or about May 14, 2010, Frank and the Trust executed and delivered to AEF a Letter Agreement further clarifying and modifying the terms of the Guaranty. (the "Letter Agreement"). A true and correct copy of the Letter Agreement is attached and incorporated herein as **Exhibit 5**.

6. On or about January 30, 2013, the Trust executed and delivered to ACF a Membership Interest Sale Agreement (the "Sale Agreement"). A true and correct copy of the Sale Agreement is attached and incorporated herein as **Exhibit 6**. Under the terms of the Sale Agreement, the Trust pledged certain stock in CarePayment Technologies, Inc. ("CPYT") as collateral to secure its remaining obligations under the Guaranty. Presently the Trust holds a total of 111,573 shares of Class A Common Stock in CPYT (the "CPYT Stock") represented by share certificate nos. 00000159ZQ and 00000183ZQ (the "CPYT Stock Certificates").

7. ACF holds all rights and entitlement under the Equipment Lease, Guaranty, Reaffirmation, Modification, Letter Agreement and the Sale Agreement (collectively, "the Rock and Roll Transaction").

8. On March 10, 2016, the U.S. Securities and Exchange Commission (the "SEC") filed an action in the Court, against ACF, certain affiliates of ACF, and certain individuals in the Action.

9. In order to marshal and preserve the assets of named entity defendants in the Action (collectively, the "Receivership Defendants"), the Court entered an order (the "Receivership Order") appointing Ronald F. Greenspan as Receiver. As specified in the Receivership Order, the Court appointed the Receiver for the "Receivership Entity," which consists of the Receivership Defendants (including ACF) and certain affiliated entities set forth on Exhibit A to the Receivership Order.

10. The Receiver asserts that Frank and the Trust are jointly and severally liable to the Receiver under the terms of the Guaranty in the principal amount of \$205,690.00, plus interest and fees that have accrued on this amount. Frank and the Trust deny that they are obligated to the Receiver.

11. On or about May 3, 2017, The Receiver, the Trust, and Frank entered into a Tolling Agreement ("Tolling Agreement") to toll all applicable statutes of limitations for any claims while the parties have attempted to resolve the issues relating to this Agreement. On or about January 4, 2018, the Receiver, the Trust, and Frank executed the Eleventh Tolling Agreement Extension to extend the expiration date of the Tolling Agreement to January 19, 2018.

12. In order to avoid the costs and risks of litigation regarding the amounts due under the Rock and Roll Transaction, Frank, the Trust, and the Receiver have now agreed to compromise this dispute upon the terms and conditions set forth in this Agreement.

13. Pursuant to the Receivership Order, the Receiver is authorized to compromise and/or settle this dispute with Court approval.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Receiver, Frank, and the Trust hereby stipulate and agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

2. Consideration.

a. Assignment of CPYT Stock. Frank and the Trust agree to transfer and assign ownership of the CPYT Stock to the Receiver and execute such documents as are necessary to complete such transfer and assignment, including a stock power and any lost stock affidavit in substantially the forms attached here to as Exhibit 7.

b. Cash Payment. Frank and the Trust agree to pay to ACF the sum of \$61,365.00 ("Settlement Payment") within thirty (30) days from the date of Court approval of this Agreement.

3. Representations and Warranties. Frank and the Trust represent and warrant to ACF and the Receiver as follows:

b. Title. The Trust owns the CPYT Stock, free and clear of all security interests, liens and other encumbrances, other than any security interests, liens or encumbrances in favor of ACF.

c. No Other CPYT Stock. The CPYT Stock represents all interests and shares of CPYT held by Frank and the Trust. The CPYT Stock Certificates are the only valid representation of Frank and the Trusts ownership of the CPYT Stock.

4. Agreement Subject to Court Approval. This Agreement is subject to approval by the Court by entry of an order of the Court approving this Agreement in form and substance acceptable to the Receiver, Frank, and the Trust. The Receiver represents that he will promptly move for such approval of the Agreement. If this Agreement is not approved by the Court for any reason: this Agreement shall be without effect; all of the rights, remedies, claims, and defenses that the Receiver (on behalf of the Receivership Entity), Frank, and the Trust have against one another shall be preserved as if this Agreement did not exist; and this Agreement shall not be offered nor admitted into evidence, nor be subject to a court taking judicial notice hereof.

The Receiver (on behalf of the Receivership Entity), Frank, and the Trust agree that the Tolling Agreement shall be extended until 30 days following the Court's approval or rejection of this Agreement.

5. Mutual Release.

a. The Release. Except as provided in paragraph 5.b below, the Receiver (on behalf of the Receivership Entity), Frank, and the Trust hereby release each other from all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys' fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, extents and executions whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the Receiver (on behalf of the Receivership Entity), Frank, and/or the Trust may have against one another, or have at any time heretofore owned or held, against the persons and entities they are releasing or any of them, in any capacity, based on, arising out of Rock and Roll Transaction (collectively the "Release").

b. No Release of the Terms of this Agreement. Notwithstanding the foregoing, the Release shall not extend to (i) any claims that arise out of this Agreement, (ii) the required performance of the terms herein by Frank, the Trust, and the Receiver (on behalf of the Receivership Entity,) (iii) breach of the representations and warranties of Frank and the Trust set forth in Section 3, and (iv) any other claims, transfers, avoidance actions, or other causes of action, whether now existing or hereafter arising that the Receivership Entity may have against Frank or the Trust .

c. Breadth of Release. The Release extends to and inures to the benefit of the Receiver (on behalf of the Receivership Entity), Frank, the Trust, and the following "Additional Released Parties" affiliated with those released hereunder: all of their past and present shareholders, members, owners, managers, member-managers, officers, directors, agents, employees, representatives, partners, attorneys, accountants, insurers, employee benefit plans, parents, subsidiaries, affiliates, predecessors, successors, transferees, assigns, purchasers and related entities thereof, and all past and present shareholders, officers, directors, agents, employees, marital communities, representatives, partners, attorneys, and accountants of any of those persons and entities.

d. Binding Effect of Release. This Release shall bind the Receiver (on behalf of the Receivership Entity), Frank, and the Trust as well as their respective officers, directors, receivers, trustees, insurers, marital communities, successors, subrogees, transferees, and assigns to the maximum extent allowable by law.

e. No Avoidance. This Agreement is being entered into in good faith, the transactions contemplated are for reasonably equivalent value and fair consideration, are an exchange and receipt of contemporaneous value between the parties, and shall not be, and the order of the Court approving this transaction shall provide that, the transactions consummated hereunder shall not be subject to avoidance, rescission, clawback, or otherwise reversed, for any reason, under any federal or state law, or equitable principles.

6. No Admission of Liability. The parties expressly enter into this Agreement for the purpose of avoiding the expense and risk of further litigation. This Agreement is not and may not be construed as an admission or acknowledgment of liability or wrongdoing on the part of the Receiver (on behalf of the Receivership Entity), Frank, or the Trust, each of which denies any and all liability.

7. Frank and the Trust Indemnification. Frank and the Trust will defend and indemnify ACF and the Receiver for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney's fees, resulting from or arising out of Frank's or the Trust's breach of any representation and warranty made in Section 3 of this Agreement.

8. General Terms.

a. Entire Agreement. This Agreement sets forth the full and complete agreement of the Receiver (on behalf of the Receivership Entity), Frank, and the Trust with respect to its subject matter, and there is no mistake of law or fact with respect to this Agreement. This Agreement supersedes and replaces any earlier representations, inducements, promises, settlements, compromises, agreements, or understandings, written or oral, between the parties hereto with respect to each party's claims. This Agreement may not be amended, modified, or revoked except by means of a supplemental writing that is signed by the party against whom the amendment, modification, or revocation is to be enforced.

b. Binding Agreement. This Agreement is binding on the parties and their respective successors, legal representatives, and assigns and on any other persons, including all parties in interest in the Action, claiming a right or interest through the parties.

c. No Third Party Benefit. No other person or entity, other than the parties to this Agreement, is intended to be released from liability to any party, nor is any other person or entity intended to benefit in any way from this Agreement.

d. Parties To Bear Own Fees and Costs. The Receiver (on behalf of the Receivership Entity), Frank, and the Trust shall assume responsibility for the payment of their own attorneys' fees, costs, and expenses in this matter, including the negotiation of this Agreement and the legal work associated with obtaining the entry of an Order approving this Agreement by the Court.

e. Governing Law and Venue. This Agreement has been executed under and shall be construed in accordance with the laws of the State of Oregon and the laws of federal common law receiverships. If there is any litigation or other proceeding to enforce or interpret any provision of this Agreement, jurisdiction shall be in the Court.

f. Attorneys' Fees and Costs. In the event of any suit, action, or arbitration to interpret or enforce the provisions of this Agreement, the prevailing party, as defined in ORS 20.077, shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses incurred in such action or arbitration and in any appeal therefrom, in addition to all other remedies afforded the prevailing party.

g. Notices. All notices hereunder shall be effective upon receipt, shall be in writing, and shall be sent by U.S. certified mail, overnight courier, hand delivery, mailgram, facsimile, telegram, or telex as follows:

If to the Receiver: SCHWABE WILLIAMSON & WYATT
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204
Attn: Joel Parker
jparker@schwabe.com

If to Frank or the Trust: ELLIOTT OSTRANDER & PRESTON PC
707 SW Washington Street, Suite 1500
Portland, OR 97205
Attn: William A. Drew
billd@eoplaw.com

h. Construction. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this Agreement. The parties

acknowledge that they have each read this Agreement, that they understand its meaning and intent, and that this Agreement has been executed voluntarily.

i. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement to the extent it represents the intent of the parties in all material respects if interpreted without the invalid provision.

j. Counterparts. This Agreement may be executed in one or more counterparts, each of which is to be deemed an original. All counterparts may be consolidated into one agreement, binding on all the parties.

k. Representation Regarding Authority to Execute Agreement. The Receiver (on behalf of the Receivership Entity) represents that he has the power and authority to enter into this Agreement and provide the Release to Frank or the Trust upon approval of this Agreement by the Court. Frank, individually and on behalf of the Trust, represents that he has the power and authority to enter into this Agreement and provide the Release to the Receiver (on behalf of the Receivership Entity generally and ACF specifically).

l. Representation by Counsel. The Receiver (on behalf of the Receivership Entity), Frank, and the Trust are each represented by counsel and have consulted with their counsel regarding the terms and legal meaning of this Agreement.

IN WITNESS WHEREOF, the undersigned executed this Agreement as of the dates noted below, to be effective upon the entry of an order approving this Agreement by the Court.

The Receivership Entity, including
Aequitas Commercial Finance, LLC, an Oregon entity

By: _____
Ronald F. Greenspan, as Receiver on behalf
of the Receivership Entity, including
Aequitas Commercial Finance, LLC

Dated: 1/8/18

Gerald W. Frank Revocable Living Trust,
an Oregon Trust

By: Gerald Frank

Dated: 1/8/18

Printed Name: Gerald W. Frank
Its: Trustee

GERALD W. FRANK
Gerald W. Frank

Dated: 1/8/18

Referenced exhibits available upon request to: Alex Poust
email: apoust@schwabe.com
phone: 503.222.9981