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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,

No. 3:16-cv-00438-PK

RECEIVER'S REQUEST FOR APPROVAL
OF SEVENTH 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 Seventh 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 October 1, 2017 through December 31, 2017 (the "Seventh Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the January 31, 2018 Report of the Receiver (the "January 2018 Report")¹ as

¹ Dkt. 587.

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 January 2018 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], through June 30, 2017 [Dkt. 491], and through September 30, 2017 [Dkt. 559], which are collectively referred to herein as the “Receiver’s Reports”. The January 2018 Report is the Receiver’s report and recommendations to the Court for the quarter ending December 31, 2017. The contents of the

⁴ Dkt. 1, ¶¶ 1-7.

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

Seventh Interim Fee Application, like the focus of the January 2018 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending December 31, 2017.

A. The Receiver continues to successfully preserve and monetize Receivership assets and has proceeded to focus on the next phases of the Receivership.

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 December 31, 2017, the Receiver has sold assets and collected receivables totaling approximately \$305 million. This now includes consummation of the sale of all remaining healthcare receivables owned by the Receivership to CarePayment Technologies, Inc. (“CPYT”) and its affiliate. The Receiver has also entered into a settlement with Consumer Financial Protection Bureau (“CFPB”) and thirteen state Attorneys General in connection with the Corinthian Colleges student loan portfolio held by CSF. The complex implementation of such settlement, including modification or cancellation of each of the approximately 47,000 loans, notification to each of the borrowers, and the processing of approximately 42,000 tax forms (1099’s), is ongoing.

Having made substantial progress on the planned asset dispositions, the Receiver has proceeded with an investor claim validation process, which is approximately eighty percent (80%) complete.⁷ The Receiver has engaged in discussions with Integrity Trust Company, LLC (“Integrity”) about facilitating data confirmation for Integrity investors whose funds were placed by Integrity in Aequitas investment products. The Receiver has also begun evaluating the Integrity

⁷ The 80% completion estimate includes direct investors in the Receivership.

investor data received from Integrity to assess the extent to which his professional team can efficiently facilitate data validation with the Integrity investors. The Receiver has provided material assistance to various investors' counsel in preparation of the data necessary for future distribution of third party settlement proceeds. The Receiver and his retained professionals have also facilitated such settlement negotiations.

The Receiver has also focused his efforts on maximizing potential recovery from the D&O and other Aequitas insurance policies for the benefit of the investors and brought more scrutiny to the depletion of the wasting insurance policies by the individual defendants' defense costs.

During the Seventh Application Period, the Receiver has continued his forensic investigation after receiving input from the Commission and counsel representing the Investors. The results of the investigation will inform the Receiver's future decisions with regard to any potential legal actions and the design of a future distribution plan.

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 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 (including all pre-Receivership management and more than 90% of the pre-Receivership employees). Absent that day-to-day, hands-on management, the Receivership Entities, and, ultimately, the investors' value would languish.

Feedback from Commission staff and the Aequitas investors regarding progress thus far

has been largely positive.⁸ The Receiver is very mindful of their priorities to proceed both expeditiously and economically and conclude this Receivership in an equitable fashion as soon as practicable. 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 value to the investors; continue his data verification and claims reconciliation process and his forensic investigation;

⁸ One attorney, Frederic Klein of the Goldberg Kohn law firm, counsel for Steve and Sheri Idelman, has indicated displeasure with the pace of the Receiver's activities and has specifically requested that the Receiver not represent to the Court that investors are universally satisfied with his performance. The Idelmans made their investment through an affiliate of Integrity Bank and Trust ("IBAT"), which entity, and not Aequis, maintained their individual investor accounts (IBAT is the Aequis investor, not the Idelmans). The Receiver is voluntarily working with the IBAT staff in an effort to enable the IBAT clients and the Receiver to attempt to validate the IBAT investor accounts similarly to the validation process already completed for the vast majority of investors who invested directly with Aequis. In the category of no good deed goes unpunished, the Idelmans' counsel has made disparaging comments regarding the Receiver and his staff. Nonetheless, the Receiver will continue this effort unless requested otherwise by the Idelmans, the Court or potentially the Investor Advisory Committee. The Receiver has also expressly represented to the Idelmans (and representatives of other similarly situated IBAT investors) that they will not be disadvantaged due to the order in which the account validation process was undertaken. As detailed in the Receiver's January 2018 Report (addressing 4Q 2017), the Receiver's efforts on behalf of the IBAT investors including the Idelmans depends on the data provided by IBAT, with the first samples of such data provided by IBAT at the end of December 2017. The Receiver is making progress in testing the initial data extracts and is assisting IBAT in their data extraction efforts. However, if such efforts are not successful, the Receiver reserves all rights to proceed by continuing to recognize IBAT as its legal subscriber, which has been and remains the entity responsible for its investor accounts.

resolve affirmative claims held by the Receivership; and develop a proposed distribution plan.

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 with the CFPB and thirteen state Attorneys General.

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 Commission 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, 2017.⁹

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

During the Seventh Application Period, the gross Receivership Entity's cash receipts totaled approximately \$38 million and cash disbursements totaled approximately \$30 million¹⁰ for a net cash increase of approximately \$8 million. As of December 31, 2017, the Receivership Entity had cash balances in excess of \$117.7 million. The Standardized Fund Accounting Report, which is included in the Receiver's January 2018 Report, provides a detailed statement of cash receipts and disbursements.

The January 2018 Report also contains detailed accounts of the asset sales completed during the Seventh Application Period, as well as prior transactions and ongoing sales efforts.¹¹ The following are brief summaries of the transactions completed during the Seventh Application Period.

⁹ Dkt. 396.

¹⁰ Both cash receipts and cash disbursements are presented on a gross basis and each include approximately \$16.5 million of intercompany cash transfers due to bank account re-balancing performed at the end of 2017. These transfers were in addition to intercompany cash transfers required for operations of the Receivership Entity.

¹¹ Greenspan Declaration, Exhibit A.

1. CarePayment Medical Receivables

Throughout the third and fourth quarters of 2017, an affiliate of CPYT continued to acquire receivables and hospital accounts receivable from CarePayment, LLC (“CPLLC”) and CP Funding I Trust (“CPFIT”) through weekly settlements based on CPYT’s obligations under the New Program Agreements. On December 21, 2017, CPLLC and CPFIT sold the remaining healthcare receivables to an affiliate of CPYT. This marked a major milestone in the Receivership’s successful liquidation of the CarePayment receivables portfolio. Subsequent to the initial Option transaction in July, 2017, CPLLC and CPFIT have collected another ~\$19 million. Overall, during the entire 2017 year, CPLLC and CPFIT collected a total of approximately \$88 million from patients and through the sale of receivables and hospital accounts receivable to an affiliate of CPYT. The Receiver is working closely with CPYT to complete post-transaction reconciliations; clear remaining invoices, and establish procedures to finalize separation of the CarePayment platform from the Receivership.

2. Innovator Holdings LLC (IH)

On April 20, 2017, the Court entered its order¹² 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. These closing conditions were met in late September/early October and the \$50,000 in proceeds was received October 11, 2017.

¹² Dkt. 415.

3. ETC Founder Fund (“ETCF”)¹³

Aequitas Commercial Finance (“ACF”) owns 15.4% of ETCF, and Aequitas Investment Management, LLC (“AIM”) owns 11% of ETCF. ETCF’s sole investment is \$8.8 million in Series A convertible preferred stock in ETC Global Holdings, Inc. (“ETCGH”) which was purchased in September, 2011.¹⁴

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

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 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 that provided for consent to the Financing Transaction, converted the ETCF equity interests into special members’ interests in ETCGH and provided a compromise in management fees owed in return for accelerated payment.¹⁵ The Court approved the Receiver’s Motion by order entered on July 24,

¹³ <https://www.etc-clearing.com/>

¹⁴ 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.

¹⁵ Dkt. 482.

2017.¹⁶ Pursuant to a Promissory Note between ETC Global Group, LLC and AIM, dated July 31, 2017, AIM has received six monthly payments totaling \$66,667 through the end of December 2017. AIM subsequently received the final payment under this Note in the amount of \$116,667 on February 2, 2018.

4. Certified Security Solutions (CSS)-¹⁷

CSS is a cybersecurity company that provides company enterprise and IoT digital identity security for data, devices, and applications. Aequitas originally invested \$250,000 in a convertible note and then sold that note pre-Receivership at a discount - \$225,000. Interest had been accruing and unpaid such that CSS allocated common shares at \$.10/share to satisfy such obligation. Receivership records show ownership of 1,596,643 shares of the common stock of CSS by Aequitas Partner Fund (“APF”). Overall CSS has between 82-85 million shares outstanding. Since the time of Aequitas’ investment, CSS has raised four additional rounds of preferred, participating stock with a 1x liquidation preference. Total raise is between \$14-15 million that would be paid prior to common shareholders receiving anything.

CSS recently completed a valuation of the fair market value of the company consistent with the provisions of Internal Revenue Code 409A which established the value for the common shares/options on a minority nonmarketable basis at \$.05/share. CSS is pursuing additional financing that will further dilute the Common Stock. Given the Receiver’s desire to liquidate APF’s interests in CSS common shares and CSS’s interest in reacquiring the shares, the parties have negotiated in good faith and have agreed to a purchase price of \$.03/share or a total purchase

¹⁶ Dkt. 485.

¹⁷ <https://www.css-security.com/>

price of \$47,899.

Shortly after the end of the Seventh Application Period, on January 2, 2018, the Receiver filed a Motion for an Order Authorizing Aequis Partner Fund, LLC, to Sell Common Stock in Certified Security Solutions, Inc., Free and Clear of Liens, Claims, Encumbrances and Interests.¹⁸ The Motion was approved by the Court on January 4, 2018.¹⁹

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 Aequis Hybrid Fund (“AHF”).

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

¹⁸ Dkt. 574.

¹⁹ Dkt. 577.

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 Ivey staff were terminated. On October 27, 2017, Ivey sold the remaining assets associated with Bag Insert and Partnership Marketing services in in partial satisfaction of related trade vendor liabilities. This last transaction effectively completed the liquidation of Ivey’s assets. At this point, the Receiver does not anticipate any recovery on the \$12.5 million of debt held by AHF and, consequently, no positive equity value in MSP.

6. Synchronex, LLC²⁰

Synchronex provides technology solutions to the publishing industry via multiple products. It offers syncAccess, a cloud-based pay meter solution that helps newspaper publishers to develop, configure, own, and evolve mobile and digital products.

The Receiver is working towards a definitive agreement with a potential stalking horse bidder regarding the sale of the equity interest. Also, the Receivership holds title to a vacant residence in Coeur d’Alene, Idaho, that had been pledged by the Synchronex principals. During the

²⁰ <http://www.synchronex.com/en/>

Seventh Application Period, the Receivership listed the residence for sale, and subsequently negotiated a purchase and sale agreement.

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 Aequis 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 monetizing assets for the benefit of the investors.

2. Bank Accounts

As discussed in the Initial Report, the Receiver has instituted an integrated on-line platform that facilitates banking, future claims processing and cash reporting for receivership cases. As assets are monetized, the Receiver has begun to close bank accounts that are no longer deemed necessary. Through December 31, 2017, the Receiver has reduced the total number of post-Receivership bank accounts by five.

Additionally, the Receivership Order effectively allows the necessary use of funds from the various entities composing the Receivership Entity by those entities with a need for such funds. However, to present a more transparent view of each entity in the year-end financial reports, at the end of December 2017, the Receiver performed funds transfers among various Receivership

Entities aimed at repaying post-Receivership inter-company loans and advances to the extent funds were available in the borrowers' bank accounts.

The Cash basis reports, including information for the current reporting period and case to date, are attached as Exhibit B to the January 2018 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 December 31, 2017, the Receivership Entity had 11 full-time employees and 1 part-time employee. After the end of 2017, full-time employee count was further reduced by one. 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 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 December 31, 2017, the Receivership employed four full-time equivalent accounting contractors, one part-time accounting contractor 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. Tax Preparer

The Receiver had 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.

b. Other Tax matters

The Receiver completed and filed 2017 short period tax returns for CCM Capital Opportunities Fund LP and Aequis WRFF 1 LLC in December 2017. K-1 forms have been sent to fund members. Going forward, tax information for the two funds will be provided by the new owners/managers. Reporting by the Receivership for the funds is complete.

2016 corporate federal and state tax returns for Aequis Capital Management Inc. were completed and filed in early December 2017. 2017 tax reporting is underway. Information returns, as required, were distributed to recipients in late January and will be filed with tax agencies by the reporting deadlines.

Federal and state return extensions and estimates are in process. The Receiver expects to provide estimates to fund members for the remaining funds consistent with timing in prior years.

Information reporting for student loans held by Campus Student Funding, LLC is required in connection with debt cancellation that was provided under the terms of the settlement with the CFPB and state Attorneys General. Receiver and his retained professionals have worked closely with the IRS and have requested a Private Letter Ruling that would eliminate the need for the information reporting. However, ultimately, the Receiver was required to mail ~42,000 information forms (1099's) to the student borrowers. Significant effort was expended in the Seventh Application Period on the matters related to the application for the Private Letter Ruling and the issuance of 1099 forms to Campus Student Funding borrowers.

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 meetings, investor counsel meetings and other in-person 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 OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”²¹ Applications for compensation and expense reimbursement are on an interim basis,

²¹ Dkt. 156, ¶ 45.

subject to final review at the close of the Receivership.²² 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 October 1, 2017 through December 31, 2017.

A. This is the Seventh Interim Fee Application and the Court has previously approved the prior six Interim Fee Applications

This is the Seventh Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.²³ The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.²⁴ The Second Interim Fee Application was filed on December 12, 2016.²⁵ The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.²⁶ The Third Interim Fee Application was filed on April 4, 2017.²⁷ The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.²⁸ The Fourth Interim Fee Application was filed on

²² Dkt. 156, ¶ 47.

²³ Dkt. 251.

²⁴ Dkt. 273.

²⁵ Dkt. 315.

²⁶ Dkt. 370.

²⁷ Dkt. 393.

²⁸ Dkt. 416.

July 14, 2017.²⁹ The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.³⁰ The Fifth Interim Fee Application was filed on October 11, 2017.³¹ The Court approved the fees and expenses requested in the Fifth Fee Application on October 12, 2017.³² The Sixth Interim Fee Application was filed on December 12, 2017.³³ The Court approved the fees and expenses requested in the Sixth Fee Application on December 12, 2017.³⁴ 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	1,520,514	23,546	1,544,060	304,103	1,239,957
FTI Consulting	6,307,045	329,258	6,636,303	1,261,409	5,374,894
Pepper Hamilton	1,949,680	263,768	2,213,448	389,936	1,823,512
Schwabe, Williamson & Wyatt	4,100,455	22,007	4,122,462	820,091	3,302,371
Morrison Foerster	596,767	5,577	602,344	119,353	482,990
Law Office of Stanley H. Shure	415,896	5,807	421,703	83,179	338,524
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:	15,061,214	650,699	15,711,913	3,012,243	12,699,671

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Seventh Interim Fee Application.

In the Ninth Circuit, in a common fund case such as this Receivership proceeding, the

²⁹ Dkt. 475.

³⁰ Dkt. 478.

³¹ Dkt. 544.

³² Dkt. 548.

³³ Dkt. 567.

³⁴ Dkt. 570.

Court has the “discretion to apply either the lodestar method or the percentage-of-the-fund method when calculating fees.”³⁵ “Under either method, the Court must exercise its discretion to achieve a ‘reasonable’ result.”³⁶

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.”³⁷ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.³⁸ 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.³⁹ The Commission’s approval of an application should be given great weight.⁴⁰

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

³⁵ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

³⁶ *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)).

³⁷ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

³⁸ *Id.*

³⁹ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

⁴⁰ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership)).

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.”⁴¹ The complexity and difficulty associated with the receivership are highly relevant factors in determining the reasonableness of professional fees.⁴² The benefits bestowed on the estate are a relevant consideration.⁴³

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.⁴⁴ 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.⁴⁵

⁴¹ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation omitted).

⁴² *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).

⁴³ *See Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

⁴⁴ *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).

⁴⁵ *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

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.⁴⁶ All of the factors considered in these cases weigh heavily in favor of approving the fees and expenses requested in the Seventh Interim Fee Application.

C. The fees and expenses during this Seventh 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 January 2018 Report and in each firm's summary invoice.⁴⁷ 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.⁴⁸ 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 October 1, 2017 through December 31, 2017:

cheap.”).

⁴⁶ 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).

⁴⁷ Greenspan Declaration, Exhibits A through F.

⁴⁸ Greenspan Declaration, p. 4.

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	115,087.00	5.7%	-	0.0%	115,087.00	5.6%
FTI Consulting	939,379.00	46.2%	22,645.46	79.6%	962,024.46	46.7%
Pepper Hamilton	176,931.92	8.7%	3,738.85	13.1%	180,670.77	8.8%
Schwabe, Williamson & Wyatt	483,528.00	23.8%	1,952.18	6.9%	485,480.18	23.6%
Morrison Foerster	223,157.06	11.0%	122.29	0.4%	223,279.35	10.8%
Law Office of Stanley H. Shure	93,391.63	4.6%	-	0.0%	93,391.63	4.5%
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:	2,031,474.61	100%	28,458.78	100%	2,059,933.39	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.⁴⁹ 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.⁵⁰ 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.⁵¹ This was true regardless of the size of the case.⁵² The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end

⁴⁹ *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).

⁵⁰ *W.L. Moody & Co.*, 374 F. Supp. at 481.

⁵¹ 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.

⁵² *Id.*

of the Seventh 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 Seventh Interim Fee Application, for the period from October 1, 2017 through December 31, 2017.

Dated this 16th day of March, 2018.

Respectfully submitted,

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