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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;  
AEQUITAS HOLDINGS, LLC;  
AEQUITAS COMMERCIAL FINANCE,  
LLC; AEQUITAS CAPITAL  
MANAGEMENT, INC.; AEQUITAS

No. 3:16-cv-00438-PK

RECEIVER'S MOTION FOR APPROVAL  
OF PROPOSED SETTLEMENT WITH THE  
MASSACHUSETTS ATTORNEY  
GENERAL



INVESTMENT MANAGEMENT, LLC;  
 ROBERT J. JESENİK, BRIAN A. OLIVER;  
 and N. SCOTT GILLIS,

Defendants.

### **LR 7-1 CERTIFICATION**

On June 4, 2018, the undersigned circulated to the approximately 70 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific time) on June 11, 2018, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received two (2) consents and zero (0) objection(s).

### **MOTION**

Ronald F. Greenspan, the duly appointed Receiver in this securities fraud enforcement action, is responsible for fairly and effectively marshaling and preserving assets of the Receivership Entity for the benefit of investors allegedly defrauded by the former officers of the Aequis group of companies.<sup>1</sup> Included within the assets of the Receivership Entity is a portfolio of outstanding loans of former Corinthian Colleges Inc. (“Corinthian”) student borrowers. Corinthian loans have been the subject of ongoing consumer protection enforcement efforts by the Consumer Financial Protection Bureau (“CFPB”) and State Attorneys General. In August 2017, this Court approved settlements reached by the Receiver with the CFPB and numerous State Attorneys General that provided meaningful relief for Corinthian student borrowers throughout the country, while also preserving value for the Receivership Entity’s

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

allegedly defrauded investors. The Massachusetts Attorney General was not a party to any of the settlements previously approved by this Court. Massachusetts borrowers did, however, receive the relief provided by those settlements. The Massachusetts Attorney General has continued her efforts to obtain additional relief for Massachusetts borrowers whose relatively small amount of principal remains outstanding. As the result of many discussions, the Receiver has reached an agreement with the Massachusetts Attorney General that he believes is in the best interest of the Receivership Entity's investors and creditors.

To effectuate this resolution, the Receiver hereby moves this Court (the "Motion") for entry of an order authorizing the Receiver to: (1) enter into an Assurance of Discontinuance ("AOD") with the Massachusetts Attorney General; and (2) make appearances in court and consent to pleadings, orders, and other documents the Massachusetts Attorney General may require in order to effectuate the AOD.

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

## **MEMORANDUM OF LAW**

### **I. Background**

#### **A. Appointment and Duties of the Receiver**

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

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

Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (“Final Receivership Order”). Dkt. 156.

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

#### **B. Investigations by the CFPB and State Attorneys General**

4. The Consumer Financial Protection Bureau (“CFPB”) and several State Attorneys General, including for the Commonwealth of Massachusetts, as advocates on behalf of student borrowers who attended the now-defunct Corinthian schools, conducted investigations regarding student loans such as those held in the Aequitas student loan portfolio. Greenspan Decl. ¶ 8.

5. By way of background, Corinthian operated numerous for-profit, post-secondary career schools throughout the United States, including two campuses in Massachusetts under the name Everest Institute. In or around 2011, Aequitas began purchasing Corinthian private student loans in order to provide investment opportunities for the Aequitas group of companies and, ultimately, the investors. In May 2015, following several government investigations and

enforcement actions related to Corinthian's allegedly unlawful marketing practices, including actions by the CFPB and the Massachusetts Attorney General, Corinthian closed its remaining schools and filed for bankruptcy protection. Government regulators, however, continued their investigations into Corinthian, and also businesses associated with its operations, primarily in an effort to obtain debt relief for students, including relief of both public and private debt.

Greenspan Decl. ¶¶ 6, 8.

6. The Massachusetts Attorney General also continued its litigation against Corinthian. In August 2016, following a motion for summary judgment filed by the Attorney General, a Massachusetts court entered final judgment against Corinthian ordering restitution in the amount of \$67,333,091, plus interest, for tuition paid by Massachusetts Everest Institute students. Greenspan Decl. ¶ 9.

### **C. Settlement with CFPB and Certain State Attorneys General**

7. Aequitas continued to collect payment on the remaining portfolio of loans of former Corinthian student borrowers. Greenspan Decl. ¶ 7. This Court's stay of litigation does not apply to actions and proceedings by government regulators in which they seek to advocate on behalf of these student borrowers. Final Receivership Order ¶ 20. Thus, since the time of his appointment, the Receiver has been obligated to engage with various government agencies as they conduct investigations related to the Aequitas student loan portfolio. Greenspan Decl. ¶ 10.

8. On August 17, 2017, following extensive negotiations between the Receiver and numerous government agencies, this Court entered an order approving proposed settlements with the CFPB and thirteen State Attorneys General. Dkt. 495. The settlements, which applied to student borrowers nationwide, provided, among other relief: forgiveness of all outstanding amounts for loan accounts with an open balance that were 270 days or more past due as of March

31, 2017; forgiveness of all outstanding amounts for loan accounts related to certain closed Corinthian schools; and a 55% principal reduction for all other loans receivable. Dkt. 492 at 7.

9. The Massachusetts Attorney General was not a party to any of the settlements previously approved by this Court. Massachusetts borrowers did, however, receive the full relief provided by those settlements. Consequently, as of February 28, 2018, Aequitas' student loan portfolio for the remaining seventy-six Massachusetts borrowers consisted of approximately \$121,000 of outstanding principal. Greenspan Decl. ¶ 11.

**D. Summary of Proposed Settlement with Massachusetts Attorney General**

10. The Receiver has spent a substantial amount of time and energy responding to a civil investigative demand from the Massachusetts Attorney General. Although the Receiver believes that there may be valid defenses to any claims brought by the Attorney General, he has determined that it is in the best interest of the Receivership Estate to resolve this investigation through a settled resolution. To that end, the Receiver has had numerous discussions with the Massachusetts Attorney General regarding an appropriate mechanism to provide Massachusetts student borrowers with the relief sought by the Attorney General, while seeking to minimize the financial impact any such relief may have on the Receivership Estates, and also to ensure that a final resolution limits future claims against the Receivership Entity. Greenspan Decl. ¶¶ 12-13.

11. As a result of these discussions, the Receiver seeks authority to: (1) enter into an AOD with the Massachusetts Attorney General (Greenspan Decl., Ex. 1); and (2) make appearances in court and consent to pleadings, orders, and other documents the Massachusetts Attorney General may require in order to effectuate the AOD (Greenspan Decl. ¶ 14) (the "Settlement").

12. The Receiver believes, in the exercise of his discretion and business judgment, that the Settlement, which includes compromising outstanding student loan balances owed to the Receivership Entity, is in the best interests of the Receivership's investors and creditors.

Greenspan Decl. ¶ 16. The Settlement includes the following key terms:

- Receivership (on behalf of CSF) settles matters with the Massachusetts Attorney General on a neither-admit-nor-deny basis;
- Detailed notice regarding the settlement to be provided to student borrowers, including the option each borrower has to elect whether to receive the relief being offered through the settlement ("opt-in" requirement);
- For borrowers who opt-in, 100% relief for loan accounts with an open balance, including all outstanding principal, interest, fees or any other amounts;
- Receivership will confirm that requests have been made to any servicer that previously furnished trade line information for the subject loans to credit reporting agencies to furnish deletion codes to said credit reporting agencies to delete such information from subject borrowers' credit reports;
- Receivership will report to the Attorney General regarding the implementation of the settlement; and
- Any purchaser, transferee, or assignee of any remaining student loan receivables will adopt or abide by any terms and provisions of the settlement requiring ongoing performance.

Greenspan Decl. ¶15.

## **II. Points and Authorities**

13. Pursuant to the Final Receivership Order, the Receiver may "without further Order of this Court, transfer, compromise, abandon or otherwise dispose of any Receivership Property . . . in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity and with due regard to the realization of the true and proper value of such Receivership Property." Final Receivership Order ¶ 26. The Receiver may also take such actions outside the ordinary course of business "with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard."

*Id.* The proposed Settlement is a compromise of Receivership Property outside the ordinary course of business. Consequently, the Receiver is seeking this Court’s approval before entering into and performing the terms set forth in the Settlement.

14. Although the outstanding student loan balances are claims of the Receivership Entity, the Receiver’s compromise of these claims is comparable to a bankruptcy trustee’s reasonable ability to compromise claims in a bankruptcy proceeding. The “foremost obligation of a bankruptcy trustee is to ‘proceed in settling [an estate’s] accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors.’” *In re Wire Comm Wireless, Inc.*, 373 F. App’x 707, 708 (9th Cir. 2010) (quoting *In re Mailman Steam Carpet Cleaning Corp.*, 212 F.3d 632, 635 (1st Cir. 2000)). Federal Rule of Bankruptcy Procedure 9019 therefore enables a trustee to seek court approval of “a compromise or settlement,” after notice and a hearing. *Id.* Where pursuing a claim would involve protracted or “potentially costly litigation, with no guarantee as to the outcome, the trustee must tread cautiously – and an inquiring court must accord him wide latitude should he conclude” that pursuing litigation is not worth the cost. *In re Mailman Steam Carpet Cleaning*, 212 F.3d at 635; *see also In re Wire Comm Wireless*, 373 F. App’x at 708 (“[T]he purpose of a compromise is . . . ‘to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.’”) (citation omitted). In light of such guidance, “a bankruptcy court enjoys great latitude in approving a proposed compromise, and a fruitful settlement is always favored over needless litigation.” *In re Wire Comm Wireless*, 373 F. App’x at 709 (citing *In re A&C Props.*, 784 F.2d 1377, 1381-82 (9th Cir. 1986)).

15. Here, the Receiver believes, in the exercise of his discretion and business judgment, the Settlement is in the best interest of the Receivership Entity’s investors and



creditors for the following reasons. Greenspan Decl. ¶ 16. First, the Massachusetts Attorney General is prepared, or is preparing, to initiate enforcement action against Aequitas in state court. The Attorney General alleges that Aequitas violated the Massachusetts Consumer Protection Act related to unfair and deceptive business practices through its relationship with Corinthian and the student borrowers. *See, e.g.*, Greenspan Decl. ¶ 17. This Court’s stay of litigation does not prohibit the Attorney General from commencing such an action. Thus, to protect Receivership Property, the Receiver would be forced to bear the “expenses and burdens [of] litigating [a] sharply contested” claim in a distant jurisdiction. *See In re Wire Comm Wireless*, 373 F. App’x at 708.

16. Second, there is “no guarantee as to the outcome” of any government enforcement action brought against the Receivership Entity. *See In re Mailman Steam Carpet Cleaning*, 212 F.3d at 635. The Massachusetts Attorney General would likely seek, among other relief, to have Aequitas permanently enjoined from collecting loan payments, pay restitution to student borrowers, and disgorge all allegedly ill-gotten profits. Although there may be valid defenses to such allegations, litigating these matters exposes Receivership Property to the potential for losses that far exceed the relief being provided pursuant to the Settlement. Greenspan Decl. ¶ 18.

17. Third, a pending government investigation hinders the Receiver’s ability to monetize the assets of the Receivership Entity. The Receiver cannot attempt the liquidation of the Receivership Entity’s student loan portfolio of Massachusetts borrowers so long as the possibility remains for a government enforcement action affecting the Receivables. Greenspan Decl. ¶ 19.

### III. Conclusion

For the reasons stated above, the Receiver respectfully requests that this Court grant the Motion authorizing the Receiver to enter into the proposed settlement with the Massachusetts Attorney General.

Dated this 11th day of June, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Troy D. Greenfield

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