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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 MOTION (1) TO LIFT STAY
FOR LIMITED PURPOSE, and (2) FOR
AUTHORITY TO INITIATE LITIGATION

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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 Certificate

On June 6, 2018, counsel for the Receiver circulated to counsel of record, via email, a copy 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 13, 2018, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver¹ for the Receivership Entity hereby moves (the “Motion”) this Court for the entry of an order (1) lifting the stay of litigation set forth in Article IX of the Final Receivership Order for the limited purpose of initiating Claims (defined below), and (2) authorizing, but not requiring, the Receiver to prosecute any or all of the Claims.

This Motion is supported by the records and files herein, the Declaration of Ronald F. Greenspan submitted herewith, and the following memorandum.

¹ Capitalized terms not otherwise defined in this Motion shall have the meaning ascribed to them in the April 14, 2016, Order Appointing Receiver (“Final Receivership Order”) [Dkt. 156].

I. Procedural and Factual Background

1. On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership 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 (the “Interim Receivership Order”). On April 14, 2016, pursuant to the Final Receivership Order, Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (Greenspan Decl., ¶ 2).

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 obligations owing to, and claims held by, certain Receivership Entities, as detailed in Exhibit 1, which has been filed under seal. (Greenspan Decl., ¶ 3).

4. The Receiver requests (A) authority, on behalf of the Receivership Entity, to initiate litigation against any or all of the obligors and related parties described in Exhibit 1 to collect the amounts due to Receivership Entities and to assert any and all other causes of action against them (together, the “Claims”), and (B) that the stay applicable under Article IX of the Final Receivership Order be modified for the limited purpose of authorizing the Claims, but for no other purpose. The Receiver further requests authority, in the exercise of his business judgment, not to pursue any or all of the Claims described above. (Greenspan Decl., ¶ 4).

5. The Receiver has previously sought, and will continue to seek to resolve the Claims economically. The Receiver, through counsel, has sent a demand letter to one of the obligors but, to date, that demand has not resulted in payment on the debt. The Receiver anticipates making further demands on the obligors, and any related parties, prior to initiating

litigation. By this Motion the Receiver requests authority to prosecute the Claims judicially if he is unable to realize sufficient recovery without resorting to litigation. (*Id.*, ¶ 5).

6. The Receiver's investigation into Receivership Property is ongoing. The Claims described above are not intended to be exhaustive list of debts owed to, or the claims held by, the Receivership Entity. This Motion is without waiver of any other claims that the Receiver and/or Receivership Entity may have against both the above-described obligors and any other person, all of which are expressly reserved. (*Id.*, ¶ 6).

II. Points and Authorities

7. Pursuant to Article IX of the Final Receivership Order, the following actions are "stayed until further Order of this Court:"

All civil legal proceedings of any nature, including, but not limited to....actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; [and] (c) any of the Receivership Entity...."

(Final Receivership Order, ¶ 20). As detailed above, all of the Claims (A) include the Receiver, in his capacity as Receiver, (B) are for the benefit of particular Receivership Entities, and (C) are for the recovery of Receivership Property. Accordingly, the Receiver is not authorized to commence any of the Claims without authority from the Court.

8. Subject to the Court granting authority as required by the Final Receivership Order, the Receiver is authorized and empowered to investigate and prosecute actions in any court as may, in the Receiver's discretion, and in consultation with SEC counsel, "be advisable or proper to recover and/or conserve Receivership Property." (Final Receivership Order, ¶ 28). Here, Receivership Property includes the Claims, which total more than \$6,000,000. The Receiver should be authorized, but not required, to commence and prosecute any or all of the Claims in the exercise of his business judgment, in order to seek recoveries for the benefit of the Receivership Entity, and its creditors and investors.

III. Conclusion

For the foregoing reasons, (1) the stay of litigation under Article IX of the Final Receivership Order should be modified on the terms described in this Motion, and (2) the Receiver should be authorized, but not required, to commence and prosecute any or all of the Claims.

Dated this 15th day of June, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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