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 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;

No. 3:16-cv-00438-JR

RECEIVER'S MOTION FOR ORDER
 APPROVING COMPROMISE OF AEQUITAS
 CORPORATE LENDING'S CLAIMS AGAINST
 FIELDSTONE FINANCIAL MANAGEMENT
 GROUP, KRISTOFOR BEHN AND CHRISTINE
 BEHN



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.

LR 7-1 CERTIFICATION

On January 30, 2019, the undersigned circulated to the approximately 68 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. Given exigent circumstances, the conferral requested that counsel respond by 12:00 noon (Pacific Time) on February 1, 2019, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received no consents and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for the Receivership Entity,¹ hereby moves (the “Motion”) this Court for the entry of an order (1) approving a compromise of the claims of Aequitas Corporate Lending, LLC (“ACL”), against Fieldstone Financial Management Group, LLC, Kristofor R. Behn, and Christine R. Behn (together, the “Fieldstone Parties”), and (2) approving and authorizing the performance of the Settlement Agreement between the Receivership Entity and the Fieldstone Parties dated as of January 30, 2019.

This Motion is supported by the Declaration of Brad Foster (“Foster Decl.”) submitted herewith, and the following memorandum.

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

I. Procedural and Fact Background.

A. Appointment of the Receiver.

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, Ronald F. 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. (Foster Decl., ¶ 2).

3. The Receivership Entity includes ACL.²

4. 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 ACL’s claims under certain loan documents (described below) against the Fieldstone Parties. The Receiver, on behalf of the Receivership Entity, brought suit against the Fieldstone Parties to recover the amounts due under the loan documents, in a matter titled *Ronald F. Greenspan v. Fieldstone Financial Management Group, LLC, et al.* (U.S. Dist. Ct., Dist. of Oregon, Case No. 3:17-cv-00233-JR) (the “Lawsuit”). (Foster Decl., ¶ 3).

5. The Receivership Entity, including ACL, and the Fieldstone Parties have settled ACL’s claims against the Fieldstone Parties pursuant to the terms of a Settlement Agreement dated January 30, 2019 (the “Settlement Agreement”), a copy of which is attached as Exhibit 1 to the Declaration of Brad Foster. The Settlement Agreement is subject to approval of this Court.

² Final Receivership Order, at Exhibit A.

(Foster Decl., ¶ 4, and Exhibit 1, at p. 3, ¶¶ 2.a and 3).

B. The Fieldstone Loan.

6. On or about April 15, 2014, Fieldstone Financial Management Group, LLC (“Fieldstone”), executed and delivered to the Receivership Entity, a Convertible Promissory Note (“Note”) in the original principal amount of \$1,500,000.00, as well as a Business Loan Agreement, Pledge Agreement, and Assignment and Assumption Agreement. (Foster Decl., ¶ 5).

7. On or about April 15, 2014, Fieldstone executed a Commercial Security Agreement pursuant to which it granted the Receivership Entity a blanket security interest in substantially all of its assets (the “Fieldstone Collateral”) to secure repayment of the Note. (*Id.*, ¶ 6).

8. The Receivership Entity duly perfected its security interest in the Fieldstone Collateral by filing a UCC-1 Financing Statement with the Delaware Secretary of State’s office, under filing number 2015-5525760. (*Id.*, ¶ 7).

9. On or about April 15, 2014, Kristofor R. Behn and Christine R. Behn executed and delivered a guaranty, whereby they agreed to pay the Receivership Entity all amounts owed to it by Fieldstone, including but not limited to the amounts owing under the Note (the “Guaranty”). (*Id.*, ¶ 8). The documents described above are referred to collectively as the “Fieldstone Loan Documents”.

10. As of February 2017, the Receiver alleges that Fieldstone was in default under the Note, and the balance owing, including accrued interest and late fees, exceeded \$1.9 million (the “Loan Balance”). Interest continues to accrue at the rate of 17.0% per annum. The Receiver asserts that the Fieldstone Parties are jointly and severally liable to the Receiver under the terms of the Note and Guaranty for the Loan Balance. (*Id.*, ¶ 9).

11. The Receiver has reviewed all reasonably available information about the

Fieldstone Parties, including financial disclosures provided by them in the course of the Lawsuit. In light of those disclosures, as well as certain claims asserted against Fieldstone and Kristofor Behn by other creditors as well as one or more regulatory agencies, the Receiver, in the exercise of his business judgment, has determined that the recovery for the Receivership Entity under the Settlement Agreement is in the best interests of the Receivership Entity, and its creditors and investors. (Foster Decl., ¶ 10).

C. Compromise of ACL's Claims Under the Fieldstone Loan Documents.

12. In order to avoid the costs and risks of litigation regarding the amounts due under the Fieldstone Loan Documents, the Fieldstone Parties and the Receiver, on behalf of 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:

- The Fieldstone Parties shall pay the Receivership a total of \$1,000,000, on the terms set forth in paragraph 4 of the Settlement Agreement.
- The Receiver shall release the security interest in the Fieldstone Collateral and dismiss the Lawsuit, following Court approval of the Settlement Agreement and the Receivership Entity's receipt of the initial installment of \$850,000.
- The parties to the Settlement Agreement mutually release each other from substantially all claims.
- The Settlement Agreement is conditioned on Court approval.

(Foster Decl., ¶ 11).

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 the Fieldstone Parties after diligent investigation 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. (Foster Decl., ¶ 12).

14. Except as described above, the Fieldstone Parties have no known relation to the Receiver or the Receivership Entity. (Foster Decl., ¶ 13).

II. Points and Authorities.

15. Pursuant to the Final Receivership Order, the “Receiver may, without further Order of this Court...compromise...Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity...” (Final Receivership Order, ¶ 26). Here, the compromise of the claims under the Fieldstone Loan Documents are outside of the ordinary course of business, and the Settlement Agreement is conditioned on Court approval. Accordingly, the Receiver seeks this Court’s approval of, and authority to perform, the Settlement Agreement.

16. The Receiver’s compromise with the Fieldstone Parties is comparable to a bankruptcy trustee’s compromise of claims in a bankruptcy proceeding under Federal Rule of Bankruptcy Procedure 9019. That rule authorizes a bankruptcy trustee to seek court approval of a settlement, after notice and a hearing. FRBP 9019(a). A trustee is entrusted 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 Mailman Steam Carpet Cleaning Corp.*, 212 F3d 632, 635 (1st Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, the Receiver has investigated the claims against the Fieldstone Parties and believes, in the exercise of his discretion and business judgment, that the recovery of \$1,000,000 in exchange for a release of claims and a release of the Fieldstone Collateral represents a fair compromise that is in the best interests of the Receivership Entity, and its creditors and investors.

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III. Conclusion.

For the foregoing reasons, the court should enter an order (1) approving the compromise of the claims of ACL and the Receivership Entity against the Fieldstone Parties, and (2) approving and authorizing the performance of the Settlement Agreement.

Dated this 1st day of February, 2019.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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