

Troy D. Greenfield, OSB #892534
Email: tgreenfield@schwabe.com
Alex I. Poust, OSB #925155
Email: apoust@schwabe.com
Lawrence R. Ream (Admitted *Pro Hac Vice*)
Email: lream@schwabe.com
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice*)
Email: iknauer@swlaw.com
Snell & Wilmer LLP
1101 Pennsylvania Ave., N.W., Suite 300
Washington, DC 20004
Telephone: 202.802.9770
Facsimile: 202.688.2201

Attorneys for the Receiver for Defendants
AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS,
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-JR

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



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

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 Order Approving Compromise of Aequitas Corporate Lending’s Claims Against Fieldstone Financial Management Group, Kristofor Behn and Christine Behn (the “Motion”).

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. The Receivership Entity includes Aequitas Corporate Lending, LLC (“ACL”).

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 ACL’s claims under certain loan documents (described below) against the Fieldstone Financial Management Group, LLC, Kristofor R. Behn, and Christine R. Behn (together, the “Fieldstone Parties”). The Receiver, on

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”).

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”).

4. 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 true copy of which is attached as Exhibit 1.

5. On information and belief, 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.

6. On information and belief, 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.

7. On information and belief, 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.

8. On information and belief, 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”). The documents described above are referred to collectively as the “Fieldstone Loan Documents”.

9. 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.

10. 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.

11. 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.

12. 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.

13. Except as described above, the Fieldstone Parties 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 1st day of February, 2019.

/s/ Brad Foster

Brad Foster, Managing Director, Corporate Finance
FTI Consulting, Inc.

On behalf of the Receiver Ronald F. Greenspan

SETTLEMENT AGREEMENT

This Settlement Agreement (also referred to herein as the “Agreement”) is entered into by and among the Receivership Entity (defined below), Fieldstone Financial Management Group, LLC, Kristofor R. Behn and Christine R. Behn, each a “Party” and collectively, the “Parties.”

RECITALS

A. WHEREAS, on March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint against Aequis Management, LLC, Aequis Holdings, LLC, Aequis Commercial Finance, LLC, Aequis Capital Management, Inc., Aequis Investment Management, LLC, Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis;

B. WHEREAS, 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;

C. WHEREAS, on April 14, 2016, pursuant to the Receivership Order (defined below), Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis;

D. WHEREAS, pursuant to the Receivership Order, the Receiver is charged with the duty of marshalling and preserving the assets of the Receivership Entity;

E. WHEREAS, on or about April 15, 2014, Fieldstone Financial Management Group, LLC (“Fieldstone”) executed and delivered to the Receivership Entity a Convertible Promissory Note (the “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;

F. WHEREAS, on or about April 15, 2014, Fieldstone executed a Commercial Security Agreement, whereby Fieldstone granted the Receivership Entity a blanket lien over certain property fully described in the Security Agreement;

G. WHEREAS, the Receivership Entity perfected its lien on the assets of Fieldstone by filing a UCC-1 Financing Statement with the Delaware Secretary of State’s office, under Filing No. 2015 5525760 (“Perfected Security Interest”);

H. WHEREAS, to further secure Fieldstone’s complete and timely payment of the Note, on or about April 15, 2014, the 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;

I. WHEREAS, the documents executed by Fieldstone, Kristofor R. Behn and Christine R. Behn, in order for Fieldstone to borrow \$1,500,000.00 from the Receivership Entity are collectively referred to herein as the “Loan Documents.”

J. WHEREAS, Fieldstone has failed to make payments due under the Note and, accordingly, is in default under the terms of the Note.

K. WHEREAS, the Receivership Entity has performed all conditions precedent on its part to be performed under the Loan Documents or such conditions have otherwise been excused;

L. WHEREAS, on behalf of the Receivership Entity, the Receiver brought suit against Fieldstone, Kristofor R. Behn and Christine R. Behn to recover the principal, interest and fees due the Receivership Entity as a result of the breach of the Loan Documents, titled *Greenspan v. Fieldstone, et. al.*, 3:17-CV-00233-JR, currently pending in the U.S. District Court for the District of Oregon (“Lawsuit”);

M. WHEREAS, FourStar Wealth Advisors, LLC (“FourStar”) seeks to purchase assets of Fieldstone which are encumbered by the Perfected Security Interest of the Receivership Entity;

N. WHEREAS, in accordance with the Receivership Order, the Receiver is authorized to compromise and/or settle claims of the Receivership Entity subject to approval by the Court;

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 Parties hereby stipulate and agree as follows:

1. Recitals Incorporated. The Recitals set forth above are incorporated herein by reference.
2. Definitions. The following defined terms are incorporated into this Agreement:
 - a. **Court** refers to the Court in the SEC enforcement action titled *SEC v. Aequitas Management, LLC, et al.*, 3:16-CV-00438-JR, currently pending in the U.S. District Court for the District of Oregon.
 - b. **Fieldstone Parties** means Fieldstone Financial Management Group, LLC, Kristofor R. Behn and Christine R. Behn.
 - c. **Financial Disclosures** means the financial statements, account statements, tax returns and CPA opinion letter attested to by the Fieldstone Parties on or about January 30, 2019.
 - d. **Payment** means the payment of \$1,000,000 by the Fieldstone Parties to the Receivership Entity, as set forth in Paragraph 4 below.
 - e. **Receiver** refers to Ronald F. Greenspan, the Court-appointed Receiver for the Receivership Entity, pursuant to the Receivership Order.

f. **Receivership Entity** means, individually and collectively, Aequis Management, LLC, Aequis Holdings, LLC, Aequis Commercial Finance, LLC, Aequis Capital Management, Inc., Aequis Investment Management, LLC and each of their 43 subsidiaries and/or majority-owned affiliates, as set forth on Exhibit A of the Receivership Order.

g. **Receivership Order** means the Order Appointing Receiver, entered on or about April 14, 2016 [Dkt. 156].

h. **Release** means the mutual release set forth in Paragraph 8 below.

i. **Sale** means the sale of all or any portion of the assets of Fieldstone Financial Management Group, LLC to FourStar or any other party.

3. Agreement Subject to Court Approval. This Agreement is subject to approval by the Court. If this Agreement is not approved by the Court, it shall be without effect and all of the rights, remedies, claims, and defenses of the Parties shall be preserved as if this Agreement did not exist.

4. Payment. The Fieldstone Parties shall pay the Receivership Entity a total of \$1,000,000.00. At the earlier of thirty (30) days from Court approval of this Agreement or the closing of the Sale, the Fieldstone Parties shall pay the Receivership Entity \$850,000.00 ("Initial Installment"). On or before August 1, 2019, the Fieldstone Parties shall pay the Receivership Entity \$150,000.00 ("Final Installment").

The Parties agree that the Payment constitutes reasonably equivalent value exchanged for the Receivership Entity's release of its claims against the Fieldstone Parties as set forth in Paragraph 8 below.

5. Release of Perfected Security Interest and Dismissal of Lawsuit. The Receivership Entity shall release the Perfected Security Interest and dismiss the Lawsuit only upon (a) Court approval of this Agreement and (b) receipt of the Initial Installment, either directly by the Receivership Entity or by an escrow agent acceptable to the Receivership Entity and pursuant to escrow instructions governing the Sale approved by the Receivership Entity.

6. Joint and Several Liability. The Fieldstone Parties are jointly and severally liable for the Payment obligation to the Receivership Entity.

7. Bankruptcy, Failure to Pay Final Installment and Rescission. In the event any of the Fieldstone Parties files for bankruptcy protection and the Receivership Entity is deprived of all or any portion of the Payment, the other Fieldstone parties are jointly and severally liable for the difference between the Payment obligation of \$1,000,000.00 and any portion of the Payment retained by the Receivership Entity ("Replacement Obligation"). The Replacement Obligation will be satisfied within ten (10) business days of the Receivership Entity surrendering all or any portion of the Payment to a bankruptcy trustee.

In the event the Replacement Obligation is not timely satisfied and/or the Fieldstone Parties fail to make the Final Installment, the Receivership Entity may rescind its Release of the

Fieldstone Parties and, thereby, retain all rights and remedies for the full amount of its claims against the Fieldstone Parties.

In the event the Financial Disclosures are materially inaccurate (undisclosed asset and/or understatement of value of assets totaling at least \$25,000), the Receivership Entity may rescind its Release of the Fieldstone Parties and, thereby, retain all rights and remedies for the full amount of its claims against the Fieldstone Parties.

The Fieldstone Parties' Release of the Receivership Entity, the Receiver, and all professionals and other agents serving the Receiver and the Receivership Entity, set forth in Paragraph 8 below, shall not be affected by the Fieldstone Parties' failure to timely satisfy the Replacement Obligation and/or the Receivership Entity's rescission of its release of the Fieldstone Parties in accordance with the provisions of this paragraph.

8. Mutual Release. The Receivership Entity releases the Fieldstone Parties and the Fieldstone Parties release the Receivership Entity, the Receiver, and all professionals and other agents serving the Receiver and the Receivership Entity from:

A. All claims which the Parties had or held in any capacity, currently have, or may in the future have against one another, regardless of whether any such claims are direct or indirect, known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, now existing or hereinafter arising, specifically including but not limited to the following:

i. all claims in any way related to loans made by any Receivership Entity to any of the Fieldstone Parties; and

ii. All claims against Receivership Property, the Receivership Estates (as those terms are defined in the Receivership Order) or any other assets of the Receivership Entity, including but not limited to any claim under any Court-approved distribution plan.

B. This Mutual Release shall bind the Parties, as well as their respective members, officers, directors, receivers, trustees, insurers, marital communities, successors, subrogees, transferees, assigns, heirs and beneficiaries to the maximum extent allowable by law. The Parties acknowledge that they may discover facts in addition to or different from those that they now know to be true with respect to the subject matter of the claims that they have released pursuant to this provision of the Agreement, but that it is their intention to fully, finally, and forever settle and release the claims addressed in this provision of the Agreement, whether known or unknown, suspected or unsuspected, and without regard to the subsequent discovery or existence of such additional or different facts concerning the subject matter of the claims that have been released. Accordingly, the Release set forth in this provision of this Agreement shall extend to claims that the Parties do not know or suspect to exist in their favor at the time that they execute this Agreement, which if known, might have affected their decision to enter into the Release and this Agreement. The Parties shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States, any state or territory of the United States, any foreign law or any principle of common law that may have the effect of limiting this

Release, including but not limited to those that are similar, comparable or equivalent to California Civil Code Section 1542.

C. Effective Date of Release. The Fieldstone Parties' release of the Receivership Entity, the Receiver, and all professionals and other agents serving the Receiver and the Receivership Entity shall become effective immediately upon Court approval of this Agreement. The Receivership Entity's release of the Fieldstone Parties shall become effective upon Court approval of this Agreement and receipt of the entire Payment, but the Receivership Entity's Release of the Fieldstone Parties may be rescinded in accordance with the provisions of Paragraph 7 above.

9. No Admission of Liability. The Parties enter into this Agreement for the express purpose of avoiding the expense and risk of litigation. This Agreement is not and may not be construed as an admission or acknowledgement of liability or wrongdoing on the part of any of the Parties, all of whom deny any and all liability.

10. Entire Agreement. This Agreement sets forth the full and complete agreement of the Parties 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.

11. No Oral Modification. 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.

12. Binding Agreement. This Agreement is binding on the Parties and their respective successors, legal representatives, heirs and assigns.

13. 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 and venue shall be exclusively in the Court.

14. Attorney Fees and Costs. In the event of any suit or action, 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 reasonable attorney fees, costs and expenses incurred in such suit or action and in any appeal therefrom, in addition to all other remedies afforded the prevailing Party.

15. Notices. All notices shall be effective upon receipt, shall be in writing, and shall be sent by U.S. Certified Mail, overnight courier, hand delivery, or email as follows:

If to the Receivership Entity:

Troy Greenfield
Schwabe, Williamson & Wyatt
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101
Phone: (206) 624-1711
tgreenfield@schwabe.com

If to Fieldstone Parties:

Benjamin E. Widener
Stark & Stark
993 Lenox Drive
Lawrenceville, NJ 08648
T: 609.895.7358
bwidener@stark-stark.com

16. 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.

17. Severability. The invalidity of all or any part of any paragraph or any provision 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.

18. 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 of the Parties.

19. Representation Regarding Authority to Execute Agreement. The Receiver, on behalf of the Receivership Entity, represents that, to the extent prescribed in the Receivership Order, he has the power and authority to enter into this Agreement and provide the Release to the Fieldstone Parties upon approval of this Agreement by the Court. The Fieldstone Parties represent that they have the authority to enter into this Agreement and provide the Release to the Receivership Entity. The corporate representative executing this Agreement on behalf of Fieldstone Financial Management Group, LLC represents that he/she has the power and authority to enter into this Agreement and provide the Release to the Receivership Entity.

[Intentionally left blank]

20. Representation by Counsel. The Receivership Entity and the Fieldstone Parties are 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.

By: KR Behn DATED: 1-30-19
Kristofor R. Behn

By: Christine R Behn DATED: 1.30.19
Christine R. Behn

By: KR Behn DATED: 1-30-19
Fieldstone Financial Management
Group, LLC
Title: Managing Member

By: _____ DATED: _____
Receivership Entity
Title: Receiver

20. Representation by Counsel. The Receivership Entity and the Fieldstone Parties are 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.

By: _____ DATED: _____
Kristofor R. Behn

By: _____ DATED: _____
Christine R. Behn

By: _____ DATED: _____
Fieldstone Financial Management
Group, LLC
Title: Managing Member

By: Ronald F. Greenman DATED: January 30, 2019
Receivership Entity
Title: Receiver