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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,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,

No. 3:16-cv-00438-JR

RECEIVER'S REQUEST FOR APPROVAL
OF ELEVENTH INTERIM FEE
APPLICATION



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 Eleventh 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, 2018 through December 31, 2018 (the "Eleventh 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, 2019 Report of the Receiver (the "January 2019 Report")¹ as 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

¹ Dkt. 674.

² Greenspan Declaration, Exhibits B through G.

As the Court is aware, this is a very complex and otherwise difficult case. The information contained in the January 2019 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 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

³ Dkt. 1.

⁴ Dkt. 1, ¶¶ 1-7.

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 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], through September 30, 2017 [Dkt. 559], through December 31, 2017 [Dkt. 587], through March 31, 2018 [Dkt. 610], through June 30, 2018 [Dkt. 644] and through September 30, 2018 [Dkt. 662], which are collectively referred to herein as the “Receiver’s Reports”. The January 2019 Report is the Receiver’s report and recommendations to the Court for the quarter ending December 31, 2018. The contents of the Eleventh Interim Fee Application, like the focus of the January 2019 Report, provides the basis for the fees and

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

expenses incurred by the professionals on behalf of the Receivership for the quarter ending December 31, 2018.

A. The Receiver continues to successfully preserve and expeditiously monetize Receivership assets.

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 fourth quarter ended December 31, 2018, the Receiver has sold assets and collected receivables totaling approximately \$316.8 million. The Receiver has also entered into and substantially completed the implementation of a settlement with the Consumer Financial Protection Bureau (“CFPB”) and fourteen state Attorneys General in connection with the Corinthian Colleges student loan portfolio held by Campus Student Funding, LLC, including modification or cancellation of each of the approximately 47,000 loans, and appropriate notification to each of the borrowers. As a result of the debt discharge provided to the student borrowers, the Receiver was also required to mail approximately 42,000 debt cancellation tax forms (1099’s) to the borrowers.⁷

Having made substantial progress on the planned asset dispositions, the Receiver has proceeded with an investor claim validation process and has compiled and sent out 2,561 individually-tailored investment data verification packets, which substantially completed the Receiver’s intended investor data verification production.

As mandated by the Final Receivership Order, the Receiver has concluded the first phase

⁷ Subsequent to the extended deadline to file the 1099’s, and after the close of the second quarter of 2018, the Receiver received notice that IRS has determined that the debt forgiveness may not be taxable income to the borrowers. Borrowers should see IRS Revenue Procedure 18-39 at <https://www.irs.gov/pub/irs-drop/rp-18-39.pdf> and consult their tax advisor for applicability.

of his forensic investigation, and the resulting forensic report (the “Forensic Report”) was filed and posted to the Receiver’s website⁸ on November 21, 2018 [Dkt. 663].

The Receiver has expended a significant effort in data analysis and financial modeling necessary for the development of a formal claims process and bar date as well as analyses of potential distribution plans.

Further, the Receiver and his team coordinated and participated in two mediations with the Receivership Entity’s insurers, the Individual Defendants and counsel for the investor groups in an effort to broker a global settlement of claims that, absent an early negotiated resolution, would diminish the insurance proceeds available to pay a portion of the investors’ claims against the Receivership Entity and the Individual Defendants. In that same vein, the Receiver and his team have been intimately involved in shepherding settlement of claims against Tonkon Torp LLP, a law firm that provided legal services to the Receivership Entity and alleged by the various investor groups to have aided and abetted in the fraud. The Tonkon Torp settlement is subject to approval by multiple courts. Additionally, settlement negotiations with other parties who the Receiver believes owe the Receivership substantial amounts of money were advanced during the quarter.

And finally, the Receivership continues to facilitate discovery, with over 200 people having accessed the database with 17 million documents and provide financial and tax administration including preparing and filing over 100 entity tax returns annually.

⁸ <http://www.kcellc.net/aequitasreceivership/document/1600438181121000000000001>

B. The Receiver continues to manage the Receivership Entity and recommends that the Receivership continue for the benefit of creditors and investors.

It remains the Receiver's recommendation that the Receivership be continued. 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 finish monetizing the remaining assets in a manner and timeline consistent with reasonably maximizing the value to the investors. The Receiver also must (i) complete the claims processes, (ii) complete asset recovery and avoidance litigation, (iii) resolve investor and other creditor claim amounts, (iv) draft and seek constituent support and court approval of an asset distribution plan, for which the modeling of several alternatives has already begun, and (v) manage the distribution process.

The remaining loan portfolios owned by the Receivership Entity require management until monetized or wound down. 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 (more than 90% of pre-Receivership employees are no longer with the Receivership Entities). Absent that day-to-day, hands-on management, the Receivership Entity's, and, ultimately, the investors' value would languish.

Feedback from Commission staff and Aequis investors regarding our progress thus far has been positive. The Receiver is very mindful of the priorities to proceed both expeditiously and economically, to seek an interim distribution when possible, 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 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.

On May 3, 2018, pursuant to the Order Granting Receiver’s Application to Employ Counsel, the Receiver employed Snell & Wilmer LLP (“Snell & Wilmer”) in order to retain attorney, Ivan B. Knauer, who relocated from Pepper Hamilton to Snell & Wilmer.

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 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 and overseeing the forensic accounting, implementation of the national Corinthian Colleges

student note receivable settlement with the CFPB and fourteen state Attorneys General, and planning the claims process and distribution plan development.

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 acted 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. Snell & Wilmer - Securities and Exchange Commission Counsel

Following the move of attorney Ivan Knauer from Pepper to Snell & Wilmer around May 1, 2018, Snell & Wilmer represents the Receiver in connection with SEC-related matters, including the SEC Complaint and discovery promulgated thereunder. Snell & Wilmer also represents the Receiver regarding other ongoing regulatory inquiries and acts as a point of contact for the Receiver with the state Attorneys General, Consumer Financial Protection Bureau (the “CFPB”) and certain other governmental agencies. Counsel is diligently ensuring there is no duplication in work performed by Pepper and Snell & Wilmer.

4. 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.

5. 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.

6. 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.

7. 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 and assistance with various consumer finance matters.

8. 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.

9. 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

⁹ Dkt. 396.

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

As of December 31, 2018, the Receivership Entity had cash balances of approximately \$117.2 million. The Standardized Fund Accounting Report, which is included in the Receiver's January 2019 Report, provides a detailed statement of cash receipts and disbursements. Over the period from March 16, 2016 to December 31, 2018, the overall cash balance of the Receivership Entity increased by approximately \$101.3 million.

The January 2019 Report also contains detailed accounts of the asset monetization and wind down activities completed during the Eleventh Application Period, as well as the ongoing sales efforts. The following are brief summaries of the transactions and efforts undertaken during the Eleventh Application Period.

1. CarePayment Medical Receivables

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.

Throughout 2018, Receivership staff continued to work closely with CPYT to finalize separation of the CarePayment platform from the Receivership. The Receivership continued to negotiate and execute documentation with healthcare providers that resulted in releases to the Receivership Entities in connection with prior contractual obligations of CPLLC and assignment of the agreements to an affiliate of CPYT. Such releases and assignments reduce the risk to the Receivership Entity going forward and are intended to minimize any potential future claims from the providers. As of December 31, 2018, the Receiver obtained releases and provider agreement assignments in connection with 32 contracts, encompassing approximately 120 medical facilities.

Several additional agreements with hospital providers were terminated. To the best of Receiver's knowledge, the Receivership has resolved all the outstanding CarePayment provider agreements by either assigning them to an affiliate of CPYT (with a release to the Receivership Entity) or by terminating such agreements. The Receiver, jointly with CPYT, is continuing to work on terminating or transitioning the remaining contractual relationships with marketing partners, targeting to complete the vast majority of such transactions by the end of February 2019.

2. Coeur d'Alene, Idaho real estate

The Receivership sold a vacant lake-front, recreational home in Coeur d'Alene, Idaho (the "Idaho Real Property") on April 30, 2018. As part of the transaction, the Receivership received a \$550,000 secured promissory note from the buyer bearing interest at the rate of 5.0% and repaid on a 30-year amortization schedule at the monthly rate of \$2,952.00. The unpaid balance of the loan is due nine (9) months after closing of the sale or by January 31, 2019. The loan is secured by a first priority deed of trust lien on the Idaho Real Property. The purchaser repaid the note in full during the fourth quarter of 2018.

3. Claims against Gerald Frank

The Receiver continues to work with CPYT regarding the monetization of the 111,573 shares of Class A Common Stock in CPYT received as part of the settlement with Gerald W. Frank and the Gerald W. Frank Revocable Living Trust related to the Rock and Roll restaurant loan.

4. Synchronex, LLC

Synchronex, LLC 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, on behalf of each of AHL, ACL, ACF, APF, and Aequis Management, LLC (“AML”), (AHL, AML, ACL and APF each a “Seller Entity,” and collectively the “Seller Entities”), entered into a Purchase Agreement dated as of April 9, 2018, subject to approval of this Court, with Silvermine Media Holdings, LLC (“Purchaser”), which provides the terms for sale of the Seller Entities’ (a) membership interests in Company, and (b) their lenders’ interests in certain loans to Company (together, the “Assigned Interests”, as defined in the Purchase Agreement). The Court issued its Order Granting Receiver's Motion To Sell Personal Property To Silvermine Media Holdings, LLC, Free And Clear Of Liens, Interests, Claims And Encumbrances relative to the Assigned Interests on May 17, 2018 [Dkt. 614] and the sale closed on June 15, 2018 repaying the AHL Loan in full. Pursuant to the Purchase Agreement, the Purchaser had until September 15, 2018 to calculate a purchase price adjustment for operating capital which could result in the receipt of additional consideration of up to \$75,000. On September 14, 2018, the Purchaser advised the Receivership that the review of the Closing Balance Sheet had concluded and the Losses (as defined in the Purchase Agreement) exceed \$75,000 by a substantial margin and, accordingly, the Purchase Price will be reduced by \$75,000 pursuant to the terms of the Purchase Agreement. The Receivership has requested additional information regarding the adjustments and will evaluate any potential remedies.

5. Other Assets

The Receiver continues to manage and monetize the remaining consumer receivables portfolios held by Campus Student Funding, LLC, Motolease Financial, LLC, and ACC Funding Series Trust 2015-5 (DE). The Receiver is monitoring the situation and seeking opportunities to monetize the Receivership’s interests associated with Portland Seed Fund and Pipeline Health Holdings, as well as various third-party notes receivable held by the Receivership Entity. During

the fourth quarter of 2018, the Receiver and the Receivership professionals expended considerable effort on negotiating a compromise with Fieldstone Financial Management Group and the related parties. The Court subsequently approved the Compromise of Aequis Corporate Lending's Claims and the Settlement Agreement with the Fieldstone parties on February 1, 2019 [Dkt. 673].

E. 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 all 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 been closing bank accounts that are no longer necessary.

The cash activity reports, including information for the current reporting period and case to date, are attached as Exhibit B to the January 2019 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, 2018, the Receivership Entity had 10 full-time employees and 1 part-time employee (unchanged from the prior quarter). In January 2019, the Receiver further reduced the number of full-time employees by one. The Receiver's employee retention program provides for at least a six-week notice to employees whose services are anticipated to no longer be required by the Receivership.

b. Contractors

In response to 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, 2018, the Receivership employed two full-time equivalent accounting contractors (unchanged from the prior quarter) and two part-time IT contractors (unchanged from the prior quarter).

4. 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 Aequitas' auditor and tax preparer, the Receiver was required to seek out and engage new professionals to fulfill those requirements.

a. Tax Preparer

The Receiver retained a tax specialist to assist legacy Aequitas staff in the preparation of tax and information returns, and to provide tax-consulting services on an as-needed basis at the request of the Receiver.

b. Other Tax matters

2018 tax reporting begins in January 2019 with 1099 information reporting as applicable.

The Receiver expects to provide estimates to fund members for the remaining funds consistent with timing in prior years. Form K-1s will be provided as returns are completed in summer 2019.

The remaining investor funds are:

Aequitas Income Protection Fund LLC

Aequitas Enhanced Income Fund LLC

Aequitas Hybrid Fund LLC

Information reporting for student loans held by Campus Student Funding LLC was 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 legal counsel had been working with the IRS and had requested a Private Letter Ruling that would eliminate the need for the information reporting. Such relief from the reporting requirements was denied by the IRS. Receiver had also filed a request for an extension of the deadline to mail informational forms (1099's) to the student borrowers (which request was granted in January 2018). On or about March 2, 2018, the Receivership mailed out ~42,000 informational tax forms to the student borrowers. Subsequent to the extended deadline to file the 1099's, and during the third quarter of 2018, the Receiver received notice that the IRS had determined that the debt forgiveness may not be taxable income to the borrowers. Borrowers should see IRS Revenue Procedure 18-39 at

<https://www.irs.gov/pub/irs-drop/rp-18-39.pdf> and consult their tax advisor for applicability.

During the fourth quarter of 2018, the Receivership staff and retained professionals continued to field direct inquiries from the borrowers about the 1099 tax forms, monitored the activities of the call center that also handled such inquiries, and communicated with the IRS on matters related to the tax implications of the debt forgiveness on the student 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, 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 related to travel to Portland, Oregon.

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.

F. The Receiver and the professional firms have been working on the preparation for the Claims Process

The Receiver has substantially completed quantifying and validating the over \$600 million of investor claims. This involved reconciling tens of thousands of investor investment/redemption activities documented by the books and records of the Receivership, which, because Aequitas did not utilize a consolidated accounting and investor reporting platform, required reconciling investor account statements produced outside the accounting system with separate accounting and tax records. Additional validations are necessary to the extent issues were discovered during the reconciliation process and to the extent the Receivership's records did not align with investor and creditor records.

A total of 2,561 investor data validation packets (including Integrity investors) have been sent to investors representing substantially all of the invested capital in ACF Private Note, Income Opportunity Fund, Income Opportunity Fund II, Income Protection Fund, Private Client Fund, Enhanced Income Fund, ACC C Plus Holdings, ACC F Plus Holdings, Aequitas Peer-to-Peer Funding, CarePayment Holdings, ML Financial Holdings, and MotoLease Financial.

During the third and fourth quarter of 2018, the Receiver undertook a significant effort involving integration of information on interest and return payments made to investors prior to the Receivership into the comprehensive investor activity database that the Receiver has developed. Given the uncertainty of the nature of a future distribution plan, the Receiver has determined that it was necessary to supplement the investor activity database with the detail of interest and return payments in order to be able to

accommodate a wider range of possible distribution plans and be able to readily access this important information. The Receivership staff and retained professionals worked to review numerous Aequitas Excel-based schedules, capture the relevant information involving approximately 19,000 transactions, and then map and integrate such information into the existing database. This work is nearing completion in preparation for the claims process.

The Receiver and the retained professionals designed and drafted the necessary documentation for the upcoming claims process. The Receivership staff also interviewed several potential claim agent vendors and reviewed such vendors' capabilities, tools, and processes, as well as solicited proposals to provide claims agent services. Ultimately, the Receiver decided to hire Epiq Restructuring Services, LLC as the claims agent. On February 12, 2019, the Receiver circulated a claims motion for conferral and will shortly file it with the Court.

G. The Receiver and the professional firms have completed the first phase of the forensic investigation

As mandated by the Final Receivership Order, the Receiver has concluded the first phase of his forensic investigation, and the resulting forensic report (the "Forensic Report") was filed and posted to the Receiver's website on November 21, 2018 [Dkt. 663]. The 137-page Forensic Report details the financial activities during the Relevant Period (defined in the Forensic Report as January 1, 2014 through March 16, 2016) and is supplemented by 35 pages of exhibits and supported by 425 files obtained from the books and records of Receivership Entity.

III. AUTHORITY SUPPORTING REQUEST FOR APPROVAL OF FEES AND EXPENSES INCURRED FROM OCTOBER 1, 2018 THROUGH DECEMBER 31, 2018

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”¹⁰ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹¹ 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, 2018 through December 31, 2018.

A. This is the Eleventh Interim Fee Application and the Court has previously approved the prior ten Interim Fee Applications

This is the Eleventh Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.¹² The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.¹³ The Second Interim Fee Application was filed on December 12, 2016.¹⁴ The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.¹⁵ The Third

¹⁰ Dkt. 156, ¶ 45.

¹¹ Dkt. 156, ¶ 47.

¹² Dkt. 251.

¹³ Dkt. 273.

¹⁴ Dkt. 315.

¹⁵ Dkt. 370.

Interim Fee Application was filed on April 4, 2017.¹⁶ The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.¹⁷ The Fourth Interim Fee Application was filed on July 14, 2017.¹⁸ The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.¹⁹ The Fifth Interim Fee Application was filed on October 11, 2017.²⁰ The Court approved the fees and expenses requested in the Fifth Fee Application on October 12, 2017.²¹ The Sixth Interim Fee Application was filed on December 12, 2017.²² The Court approved the fees and expenses requested in the Sixth Fee Application on December 12, 2017.²³ The Seventh Interim Fee Application was filed on March 16, 2018.²⁴ The Court approved the fees and expenses requested in the Seventh Fee Application on March 20, 2018.²⁵ The Eighth Interim Fee Application was filed on June 26, 2018.²⁶ The Court approved the fees and expenses requested in the Eighth Fee Application on June 26, 2018.²⁷ The Ninth Interim Fee Application was filed on September 17, 2018.²⁸ The Court approved the fees and expenses

¹⁶ Dkt. 393.

¹⁷ Dkt. 416.

¹⁸ Dkt. 475.

¹⁹ Dkt. 478.

²⁰ Dkt. 544.

²¹ Dkt. 548.

²² Dkt. 567.

²³ Dkt. 570.

²⁴ Dkt. 596.

²⁵ Dkt. 599.

²⁶ Dkt. 630.

²⁷ Dkt. 633.

²⁸ Dkt. 654.

requested in the Ninth Fee Application on September 18, 2018.²⁹ The Tenth Interim Fee Application was filed on December 7, 2018.³⁰ The Court approved the fees and expenses requested in the Tenth Fee Application on December 10, 2018.³¹ 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):

Aequitas Receivership

Professional Fees & Expenses by Entity (through September 30, 2018)

Entity	Previous Fees	Previous Expenses	Total Previous Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	1,927,113	32,327	1,959,440	385,423	1,574,017
FTI Consulting	10,700,521	432,673	11,133,194	2,140,104	8,993,090
Pepper Hamilton	2,381,728	277,159	2,658,887	476,346	2,182,542
Schwabe, Williamson & Wyatt	5,825,136	34,489	5,859,625	1,165,027	4,694,598
Morrison Foerster	994,123	5,843	999,966	198,825	801,141
Law Office of Stanley H. Shure	797,796	6,642	804,438	159,559	644,879
Snell & Wilmer	216,743	4,817	221,559	43,349	178,211
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:	23,014,017	794,687	23,808,704	4,602,803	19,205,900

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

In the Ninth Circuit, in a common fund case such as this Receivership proceeding, the Court has the “discretion to apply either the lodestar method or the percentage-of-the-fund method when calculating fees.”³² “Under either method, the Court must exercise its discretion to

²⁹ Dkt. 657.

³⁰ Dkt. 665.

³¹ Dkt. 668.

³² *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

achieve a ‘reasonable’ result.”³³

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.”³⁴ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.³⁵ 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.³⁶ The Commission’s approval of an application should be given great weight.³⁷

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 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.”³⁸ The complexity and difficulty associated with the receivership are highly relevant

³³ *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)).

³⁴ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

³⁵ *Id.*

³⁶ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

³⁷ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership).

³⁸ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation

factors in determining the reasonableness of professional fees.³⁹ The benefits bestowed on the estate are a relevant consideration.⁴⁰

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.⁴¹ 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.⁴²

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.⁴³ All of the factors considered in these cases weigh

omitted).

³⁹ 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).

⁴⁰ See *Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

⁴¹ 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).

⁴² 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 cheap.").

⁴³ See *Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. at 1222 (fees awarded in full based on law firm's usual hourly rate and supported by meticulous records).

heavily in favor of approving the fees and expenses requested in the Eleventh Interim Fee Application.

C. The fees and expenses during this Eleventh 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 2019 Report and in each firm's summary invoice.⁴⁴ 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.⁴⁵ 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, 2018 through December 31, 2018:

⁴⁴ Greenspan Declaration, Exhibits A through G.

⁴⁵ Greenspan Declaration, p. 4.

Aequitas Receivership

Professional Fees & Expenses by Entity (from October 1 through December 31, 2018)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	61,751.00	4.3%	1,959.79	8.8%	63,710.79	4.3%
FTI Consulting	723,170.00	49.9%	11,480.30	51.6%	734,650.30	50.0%
Pepper Hamilton	41,435.90	2.9%	1,873.12	8.4%	43,309.02	2.9%
Schwabe, Williamson & Wyatt	440,064.50	30.4%	4,330.27	19.5%	444,394.77	30.2%
Morrison Foerster	5,913.90	0.4%	-	0.0%	5,913.90	0.4%
Law Office of Stanley H. Shure	91,200.70	6.3%	1,098.43	4.9%	92,299.13	6.3%
Snell & Wilmer	84,982.50	5.9%	1,506.01	6.8%	86,488.51	5.9%
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:	1,448,518.50	100%	22,247.92	100%	1,470,766.42	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.⁴⁶ 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.⁴⁷ 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.⁴⁸ This was true regardless of the size of

⁴⁶ *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).

⁴⁷ *W.L. Moody & Co.*, 374 F. Supp. at 481.

⁴⁸ 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.

the case.⁴⁹ The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end of the Eleventh 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 Eleventh Interim Fee Application, for the period from October 1, 2018 through December 31, 2018.

Dated this 21st day of March, 2019.

Respectfully submitted,

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⁴⁹ *Id.*

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