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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 TWELFTH 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 Twelfth 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 January 1, 2019 through March 31, 2019 (the "Twelfth Application Period").

The efforts of the Receiver and the professionals on behalf of the Receivership Entity are set forth in detail in the April 30, 2019 Report of the Receiver (the "April 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 As the

¹ Dkt. 700.

² Greenspan Declaration, Exhibits B through G.

Court is aware, this is a very complex and otherwise difficult case. The information contained in the April 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 the Commission does not object to this application. 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

³ Dkt. 1.

⁴ Dkt. 1, ¶¶ 1-7. Of note, one of the Individual Defendants, Brian Oliver, recently plead guilty to conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349 and conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). Additionally, the former CFO

Commission further alleges that “[b]y the end of 2015 [Aequitas] owed investors \$312 million 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], through September 30, 2018 [Dkt. 662], and through December 31, 2018 [Dkt. 674], which are collectively referred to herein as the “Receiver’s Reports”. The April 2019 Report is the

Olaf Janke recently plead guilty to the same charges. The Receiver and others anticipate additional former directors and officers will be charged.

⁵ Dkt. 1, ¶ 5.

⁶ Dkt. 156.

Receiver's report and recommendations to the Court for the quarter ending March 31, 2019. The contents of the Twelfth Interim Fee Application, like the focus of the April 2019 Report, provides the basis for the fees and expenses incurred by the professionals on behalf of the Receivership for the quarter ending March 31, 2019.

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 quarter ended March 31, 2019, the Receiver has sold assets and collected receivables totaling approximately \$318.4 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 previously discussed, on March 10, 2016, the SEC filed a complaint in this Court alleging that certain Aequis executives and five entities had violated various federal securities laws. On June 6, 2016, the SEC and the Receiver, acting on behalf of the Aequis Entity Defendants, filed a consent judgment with the Court, which resolved the claims set forth in the SEC Complaint against the Entity Defendants only, without admitting or denying the numerous allegations.

Having made substantial progress on the asset dispositions and resolution of the numerous governmental investigations, the Receiver proceeded with an investor claim validation process involving the compilation and dissemination of 2,561 individually tailored investment

data verification packets.

As mandated by the Final Receivership Order, the Receiver has concluded his forensic investigation and the resulting forensic report (the “Forensic Report”) was filed with the Court on November 21, 2018 [Dkt. 663] and posted to the Receiver’s website⁷.

During the reporting period, the Receiver continued to expend significant efforts in data analysis and financial modeling necessary for an efficient claims process as well as analyses of potential distribution plans. As the result of these efforts, on February 12, 2019, the Receiver circulated to the approximately 68 counsel of record, via email, a version of the claims motion, related exhibits, and proposed form of order. Following the conferral and after incorporating some minor changes as a result, on April 23, 2019, the Receiver filed a claims and bar date motion. On April 25, 2019, the Court entered the Order (1) Establishing Claims Bar Date, (2) Approving The Form And Manner Of Notice, And (3) Approving The Proof Of Claim Form, Procedures And Other Related Relief (the “Claims Procedures Order”). The Receiver is proceeding expeditiously to implement the claims process as mandated in the Claims Procedures Order.

Further, the Receiver and his team coordinated and participated in two mediation sessions with the Receivership Entity’s insurers, the Individual Defendants and counsel for the investor groups in an effort to broker 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.

⁷ <http://www.kccllc.net/aequitasreceivership/document/16004381811210000000000001>

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 Aequitas Entities and alleged by the various investor groups to have aided and abetted in the fraud. The Tonkon Torp settlement is subject to approval by this Court as well as the Court in the matter of *Ciuffitelli, et. al. v. Deloitte & Touche, et. al.*, Case No. 3:16-cv-00580-AC (“Investor Class Action”). On March 19, 2019, Judge Acosta issued Findings and Recommendations granting preliminary approval of the partial class settlement with Tonkon Torp [Dkt. No. 481]. Judge Hernandez recently adopted those Findings and Recommendations in their entirety [Dkt. No. 566].

As addressed in detail below, during the reporting period, the Receiver successfully resolved significant claims against the Receivership. Additionally, the Receiver was instrumental in organizing and facilitating a mediation of remaining claims among investors, Deloitte & Touche, Eisner Amper, Sidley Austin, Duff & Phelps, TD Ameritrade, as well as Receivership Entity.

Finally, the Receivership continues to facilitate discovery, with over 260 people having accessed the database with 17.5 million documents, and to provide financial and tax administration including preparing and filing over 100 entity tax returns annually.

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. Remaining assets should be monetized 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 is in process, 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 the constituent's 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 has also 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): Aequitas Commercial Finance, LLC; Aequitas Investment Management, LLC; Aequitas Income Protection Fund, LLC; Aequitas Income Opportunity Fund, LLC; and Aequitas 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, 2017.⁸

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

As of March 31, 2019, the Receivership Entity had cash balances of approximately \$122.0 million. The Standardized Fund Accounting Report, which is included in the Receiver's April 2019 Report, provides a detailed statement of cash receipts and disbursements. Over the period from March 16, 2016 to March 31, 2019, the overall cash balance of the Receivership Entity increased by approximately \$106.0 million.

The April 2019 Report also contains detailed accounts of the asset monetization and wind down activities completed during the Twelfth Application Period, as well as the ongoing sales

⁸ Dkt. 396.

efforts. The following are brief summaries of the transactions and efforts undertaken during the Twelfth 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 and in the first quarter of 2019, Receivership staff continued to work closely with CPYT to finalize separation of the CarePayment platform from the Receivership. The Receivership completed negotiates and executed 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 previously 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, has continued to work on terminating or transitioning the remaining contractual relationships with marketing partners. As of the date of this application, all such agreements have been either assigned to CPYT or terminated.

2. Coeur d'Alene, Idaho real estate

The Receivership has a third position lien on a lake-front, recreational home in Coeur

d'Alene, Idaho, legally described as: Lots 4 and 5, Washington Place Subdivision, according to the plat recorded in the office of the County Recorder in Book F of Plats at Page 4, records of Kootenai County, Idaho, along with all furniture, fixtures, rugs, window coverings, and household appliances (subject to some exclusions). The lien is the result of a certain Joint Sales Agreement, Promissory Note and Deed of Trust, each dated March 1, 2011, between Ronald F. Pirello ("Pirello") and Aequitas Equipment Financing, LLC and Aequitas Hybrid Fund, LLC, because of a defaulted loan from Aequitas Equipment Financing, LLC and Pirello's guaranty of it.

On or about February 15, 2019, the Receiver commenced foreclosure proceedings and caused to be recorded a Notice of Default with the Kootenai County Recorder. Under Idaho law, the recordation of a notice of default is the first step in foreclosing on real property secured by a deed of trust. That same day, a trustee's sale to foreclose on the Property was scheduled for June 20, 2019.

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 Aequitas 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. Accordingly, the Receivership is seeking compensation in the amount of \$75,000 plus reasonable costs from Sycronex’s CEO based on representations and warranties made by him in conjunction with the Purchase agreement.

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.

E. Compromise of Claims

During the reporting period, the Receiver successfully settled significant claims against the Receivership. The resolution of these claims provides a substantial benefit to investors and represents a major development in advancing the Receivership towards a consensual distribution plan.

1. Fieldstone Parties

On February 1, 2019, the Court approved the settlement of the Receivership Entity's claims against Fieldstone Financial Management Group, LLC, Kristofor Behn and Christine Behn (collectively the "Fieldstone Parties").⁹ The Fieldstone Parties repaid the Receivership Entity \$1 million on a \$1.5 million note. Due to claims concurrently asserted by the SEC and others against the Fieldstone Parties, the Receiver was pleased to recover \$1 million for the benefit of the Receivership Entity and its investors/creditors.

2. Terrell Parties

After considerable investigation and negotiation, the Receiver executed a settlement agreement with Patrick Terrell, Richard Terrell, Kimberly Terrell, Megan Terrell, Terrell Group Management, LLC, and PatRick Investments, LLC, (collectively, the "Terrell Parties"). The Terrell Parties were parties to certain contracts with the Receivership Entity, including, but not limited to contracts governing the issuance or sale of Aequitas securities and loans from the Receivership Entity. Additionally, certain of the Terrell Parties were a lender to a Receivership Entity which lender alleged it held a senior

⁹ Dkt. 673.

lien¹⁰ on certain assets in the amount of \$10.6 million (principal and accrued interest).

Finally, certain of the Terrell Parties received compensation from the Receivership Entity including advisory fees.

With regard to the senior lien, the Receiver reviewed the note and certain UCC lien filings that formalized the claim to the collateral that Aequitas pledged to secure the financing. As part of the forensic investigation, the Receiver determined that certain aspects of the financial transaction were not supported by cash consideration and could be contested as a fraudulent conveyance. To resolve the dispute over the validity of the debt, the Terrell Parties and the Receiver entered into the settlement.

The Terrell Parties agreed to pay the Receivership Entity \$4.4 million and also release both the alleged senior lien in the amount of \$10.6 million and any claim to a distribution from the Receivership Estate. In return, the Receiver agreed to release claims of the Receivership Entity against the Terrell Parties and either secure releases from the investor groups or indemnify the Terrell Parties in the event any investor pursues a claim. In the interests of judicial economy and preserving receivership estate assets, the Receiver will present the settlement to the Court for approval, together with other recently-obtained settlements, during the third or fourth quarter of 2019.

¹⁰ Terrell Group Management, LLC (“TGM”), claimed a security interest in substantially all of the personal property of Aequitas Corporate Lending, LLC (“ACL”). In the course of selling assets, the Receiver agreed to hold the proceeds of certain assets in a segregated account, subject to further order of the Court. At the date of the settlement agreement, the amount of segregated funds totaled \$4.8 million.

3. Weider/Forman

Receivership creditors Weider Health & Fitness and Bruce Forman (Weider/Forman) alleged a security interest in the medical receivables held by certain affiliates of CarePayment Holdings LLC, purportedly securing a roughly \$14 million dollar obligation arising from a \$10.5 million promissory note together with accrued interest, and demanded adequate protection related to the sale of those medical receivables. As previously reported, on April 6, 2018, Weider/Forman filed a petition to the Ninth Circuit,¹¹ asking the appellate court to overturn this Court and require imposition of a dedicated reserve for their benefit.¹² On April 26, 2018, the Ninth Circuit denied Weider/Forman's petition and motion.¹³

With regard to the purported senior lien under which Weider/Forman claimed the security interest, the Receiver reviewed the note and certain UCC lien filings that formalized the claim to the equity collateral that Aequis pledged to secure the financing. As part of the forensic investigation, the Receiver determined that certain aspects of the financial transaction were not supported by cash consideration and could be contested as a fraudulent conveyance. To resolve the dispute over the validity of the debt, Weider/Forman and the Receiver entered into the settlement.

Weider/Forman agreed to abandon its claim of roughly \$14 million, releasing both the alleged senior lien and any claim to a distribution from the Receivership Estate.

¹¹ Case No. 18-70984, Ninth Circuit Court of Appeals, Dkt. 1.

¹² *Id.* at Dkt. 2.

¹³ *Id.* at Dkt. 10.

As with the Terrell Parties, the Receiver agreed to release claims of the Receivership Entity against Weider/Forman and either secure releases from the investor groups or indemnify Weider/Forman in the event any investors pursue claims. In the interests of judicial economy and preserving receivership estate assets, the Receiver will present the settlement to the Court for approval, together with other recently-obtained settlements, during the third or fourth quarter of 2019.

F. 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 Aequitas 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 April 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 March 31, 2019, the Receivership Entity had 9 full-time employees and 1 part-time employee (a decrease of one from the prior quarter). 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 March 31, 2019, the Receivership employed two full-time equivalent accounting contractors 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

Since the inception of the Receivership, 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

Required 2018 tax reporting and return preparation is underway. 1099 information reporting was completed in January 2019.

Estimates of 2018 taxable income was provided to fund members for the remaining funds and to equity members of Aequis entities in March and April 2019 consistent with timing in prior years. 2018 form K-1s will be provided as returns are completed later this year.

The remaining investor equity funds are:

Aequis Income Protection Fund LLC

Aequis Enhanced Income Fund LLC

Aequis Hybrid Fund LLC

Extensions for the 2018 returns for all the remaining Aequis entities were filed in March and April 2019. The completed returns are due in September and October 2019.

Federal and state tax reporting for the Aequis multi-tier structure will continue to be required until there is a conversion of the structure. Depending on the timing, short prior returns could be required.

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 non-working 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 no costs incurred in excess thereof are charged to the Receivership.

G. 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 potential 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 were 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, Aequis Peer-to-Peer Funding, CarePayment Holdings, ML Financial Holdings, and MotoLease Financial.

During the last half of 2018 and the first quarter of 2019, 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 Aequis Excel-based schedules capture the relevant information involving approximately 19,000 transactions, and then map and integrate such information into the existing database. As of the date of this application, this work has been completed 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 thereafter, filed it with the Court. On April 25, 2019, the Court entered an Order 1) Establishing

Claims Bar Date, (2) Approving Form and Manner of Notice, and (3) Approving the Proof of Claim Form, Procedures and Other Related Relief [Dkt. 683]

H. 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. Since the filing of the Forensic Report, the Receiver has reviewed and subsequently addressed a number of comments and objections provided by certain parties, as discussed in further detail in the Receiver’s January 2019 and April 2019 Reports.

III. AUTHORITY SUPPORTING REQUEST FOR APPROVAL OF FEES AND EXPENSES INCURRED FROM JANUARY 1, 2019 THROUGH MARCH 31, 2019

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”¹⁴ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.¹⁵ Allowed fees are subject to a twenty percent (20%) holdback pending final review and closing of the Receivership. Allowed expenses

¹⁴ Dkt. 156, ¶ 45.

¹⁵ Dkt. 156, ¶ 47.

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 January 1, 2019 through March 31, 2019.

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

This is the Twelfth Interim Fee Application of the Receiver and his retained professionals. The initial Interim Fee Application was filed on September 22, 2016.¹⁶ The Court approved the fees and expenses requested in the Interim Fee Application on October 21, 2016.¹⁷ The Second Interim Fee Application was filed on December 12, 2016.¹⁸ The Court approved the fees and expenses requested in the Second Fee Application on February 22, 2017.¹⁹ The Third Interim Fee Application was filed on April 4, 2017.²⁰ The Court approved the fees and expenses requested in the Third Fee Application on April 20, 2017.²¹ The Fourth Interim Fee Application was filed on July 14, 2017.²² The Court approved the fees and expenses requested in the Fourth Fee Application on July 17, 2017.²³ The Fifth Interim Fee Application was filed on October 11,

¹⁶ Dkt. 251.

¹⁷ Dkt. 273.

¹⁸ Dkt. 315.

¹⁹ Dkt. 370.

²⁰ Dkt. 393.

²¹ Dkt. 416.

²² Dkt. 475.

²³ Dkt. 478.

2017.²⁴ The Court approved the fees and expenses requested in the Fifth Fee Application on October 12, 2017.²⁵ The Sixth Interim Fee Application was filed on December 12, 2017.²⁶ The Court approved the fees and expenses requested in the Sixth Fee Application on December 12, 2017.²⁷ The Seventh Interim Fee Application was filed on March 16, 2018.²⁸ The Court approved the fees and expenses requested in the Seventh Fee Application on March 20, 2018.²⁹ The Eighth Interim Fee Application was filed on June 26, 2018.³⁰ The Court approved the fees and expenses requested in the Eighth Fee Application on June 26, 2018.³¹ The Ninth Interim Fee Application was filed on September 17, 2018.³² The Court approved the fees and expenses requested in the Ninth Fee Application on September 18, 2018.³³ The Tenth Interim Fee Application was filed on December 7, 2018.³⁴ The Court approved the fees and expenses requested in the Tenth Fee Application on December 10, 2018.³⁵ The Eleventh Interim Fee Application was filed on March 21, 2019.³⁶ The Court approved the fees and expenses requested

²⁴ Dkt. 544.

²⁵ Dkt. 548.

²⁶ Dkt. 567.

²⁷ Dkt. 570.

²⁸ Dkt. 596.

²⁹ Dkt. 599.

³⁰ Dkt. 630.

³¹ Dkt. 633.

³² Dkt. 654.

³³ Dkt. 657.

³⁴ Dkt. 665.

³⁵ Dkt. 668.

³⁶ Dkt. 677.

in the Eleventh Fee Application on March 21, 2019.³⁷ 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)³⁸:

Aequitas Receivership

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

Entity	Previous Fees	Previous Expenses	Total Previous Fees & Expenses	Holdback Amounts	Total Paid Amounts
Receiver	1,988,864	34,286	2,023,150	397,773	1,625,378
FTI Consulting	11,423,691	444,153	11,867,844	2,284,738	9,583,106
Pepper Hamilton	2,423,164	279,032	2,702,196	484,633	2,217,563
Schwabe, Williamson & Wyatt	6,265,201	38,819	6,304,020	1,253,040	5,050,980
Morrison Foerster	1,000,037	5,843	1,005,880	200,007	805,873
Law Office of Stanley H. Shure	888,997	7,740	896,737	177,799	718,938
Snell & Wilmer	301,725	6,323	308,048	60,345	247,703
Pachulski Stang Ziehl & Jones	39,984	471	40,455	7,997	32,458
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	24,402,277	816,801	25,219,078	4,880,455	20,338,623

B. The Court should approve as reasonable and necessary all of the fees and expenses requested in this Twelfth 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.”³⁹ “Under either method, the Court must exercise its discretion to

³⁷ Dkt. 680.

³⁸ Due to an inadvertent formula error, the amounts previously reported on this chart for the Pachulski firm were incorrect. The correct amount of fees and expenses incurred, and paid, including the pending 20% holdback, are now accurately reflected in this chart.

³⁹ *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.”⁴⁰

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.”⁴¹ Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.⁴² 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.⁴³ The Commission’s approval of an application should be given great weight.⁴⁴

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.”⁴⁵ The complexity and difficulty associated with the receivership are highly relevant

⁴⁰ *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)).

⁴¹ *Stanger v. China Elec. Motor, Inc.* 812 F.3d 734, 738 (9th Cir 2016) (internal citations omitted) (class action with common fund settlement).

⁴² *Id.*

⁴³ *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

⁴⁴ *Id.* (quoting *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) (securities receivership).

⁴⁵ *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal citation

factors in determining the reasonableness of professional fees.⁴⁶ The benefits bestowed on the estate are a relevant consideration.⁴⁷

The degree of success achieved in solving legal and practical problems should be considered when calculating the fees awarded.⁴⁸ 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.⁴⁹

The Court should consider the usual and customary fees charged and the evidence presented to support the application for fees.⁵⁰ All of the factors considered in these cases weigh

omitted).

⁴⁶ 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).

⁴⁷ See *Fifth Ave. Coach Lines.*, 364 F. Supp. at 1222; *Mobley*, 2000 WL 1702024, at *2 (receiver marshaled assets quickly and efficiently).

⁴⁸ 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).

⁴⁹ 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.").

⁵⁰ 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 Twelfth Interim Fee Application.

C. The fees and expenses during this Twelfth 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 April 2019 Report and in each firm's summary invoice.⁵¹ 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.⁵² 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

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⁵¹ Greenspan Declaration, Exhibits A through G.

⁵² Greenspan Declaration, p. 4.

reasonably incurred in the service of the Receivership Entity from January 1, 2019 through March 31, 2019:

Aequitas Receivership

Professional Fees & Expenses by Entity (from January 1 through March 31, 2019)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	26,070.00	1.7%	633.96	3.7%	26,703.96	1.7%
FTI Consulting	994,729.00	64.2%	12,041.45	70.8%	1,006,770.45	64.2%
Pepper Hamilton	27,885.00	1.8%	1,842.66	10.8%	29,727.66	1.9%
Schwabe, Williamson & Wyatt	334,413.00	21.6%	1,369.30	8.1%	335,782.30	21.4%
Morrison Foerster	3,663.00	0.2%	-	0.0%	3,663.00	0.2%
Law Office of Stanley H. Shure	98,370.51	6.3%	-	0.0%	98,370.51	6.3%
Snell & Wilmer	65,205.00	4.2%	1,115.50	6.6%	66,320.50	4.2%
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:	1,550,335.51	100%	17,002.87	100%	1,567,338.38	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.⁵³ 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.⁵⁴ 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

⁵³ *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).

⁵⁴ *W.L. Moody & Co.*, 374 F. Supp. at 481.

as fees and expenses to trustees and other professionals.⁵⁵ This was true regardless of the size of the case.⁵⁶ The fees incurred in this case are a significantly smaller percentage of the total recoveries through the end of the Twelfth 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 Twelfth Interim Fee Application, for the period from January 1, 2019 through March 31, 2019.

Dated this 27th day of June, 2019.

Respectfully submitted,

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⁵⁵ 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.

⁵⁶ *Id.*

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