

**CHRISTOPHER W. PETERMAN**, OSB#034212  
chris@chrispetermanlaw.com  
MAHLER LAW GROUP PLLC  
Telephone: (541) 229-0202

**PETER H. WHITE**, Admitted Pro Hac Vice  
peter.white@srz.com

**JEFFREY F. ROBERTSON**, Admitted Pro Hac Vice  
jeffrey.robertson@srz.com  
SCHULTE ROTH & ZABEL LLP  
901 Fifteenth Street, NW  
Suite 800  
Washington, DC 20005  
Telephone: (202) 729-7470

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

Defendants.

No. 3:16-cv-00438-JR

**DEFENDANT ROBERT J. JESENİK'S  
OBJECTION TO THE PURPORTED  
"JOINT STIPULATION AND  
[PROPOSED] ORDER PERMITTING  
DEPOSITIONS OF CERTAIN FORMER  
AEQUITAS PERSONNEL"**

Defendant Robert J. Jesenik, by and through undersigned counsel, hereby objects to the so-called "Joint Stipulation and [Proposed] Order Permitting Depositions of Certain Former Aequitas Personnel" (Dkt. No. 756) (the "Proposed Stipulation") submitted by the



Receiver for the Receivership Entities.<sup>1</sup> The Proposed Stipulation purports to be filed on behalf of some of the parties to this case—namely, the Defendant Receivership Entities and the Plaintiff Securities and Exchange Commission (“SEC”)—as well as non-parties Deloitte & Touche LLP and Eisner Amper, LLP (the “State Court Defendants”) who are defendants in the action *Wurster, et al. v. Deloitte & Touche LLP, et al.*, case number 16CV36439 pending in the Oregon Circuit Court for the County of Multnomah (the “Wurster Action”).

The parties to the Proposed Stipulation (two of which have not sought to intervene and are not parties to this case) purport to “stipulate” to modify the Court’s order appointing the Receiver (Dkt. No. 156) and allow certain former employees of the Receivership Entities, including Mr. Jesenik, the former Chief Executive Officer of these entities, to be deposed in connection with the *Wurster* Action. According to the Proposed Stipulation, the State Court Defendants face secondary liability claims for alleged violations of the Oregon Securities Laws by the Receivership Entities’ employees and agents. *See* Dkt. 756 at 5.

Mr. Jesenik objects to the Proposed Stipulation on several grounds:

***First***, no party to the Proposed Stipulation provided notice to Mr. Jesenik’s counsel in advance of unilaterally filing what purports to be a “Stipulation,” much less met and conferred regarding the relief sought by the Proposed Stipulation. We suspect the Receiver likewise failed to confer with counsel for Defendants Brian Oliver and Scott Gillis—even though Mr. Oliver, like Mr. Jesenik, is one of the individuals who would be deposed in the *Wurster* Action if the Court approves the Proposed Stipulation. *See* Dkt. 756 at 4 (identifying Mr. Oliver as a potential deponent). Requests for relief like that sought through the Proposed Stipulation—modifying this Court’s order appointing the Receiver and staying all legal proceedings or actions involving the Receivership Entities and their former employees—typically would be addressed through motions practice, especially where, as here, all parties have not consented. And as the

---

<sup>1</sup> The “Receivership Entities” include Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Financial, Inc., Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC.

Receiver knows all too well, Local Rule 7-1(a)(1) requires that a movant first “confer with the parties who may be affected by the relief sought in the motion.”<sup>2</sup> Moreover, it is not clear from the Proposed Stipulation that the individuals who would be deposed—particularly those who are not parties to this litigation—are even aware of this attempt to eliminate the protections they enjoy under the Receivership Order.

**Second**, the Proposed Stipulation fails to address why Mr. Jesenik’s deposition—or *any* deposition for that matter—is necessary in the *Wurster* Action. The Receiver has represented repeatedly to this Court that the *Wurster* Action was among the litigation matters that was resolved pursuant to the Receiver’s purported \$30 million settlement agreement with investors. *See, e.g.*, Dkt. 745 at 11-14 (arguing that Receiver’s agreement to resolve the *Wurster* Action and other investor claims is legally valid and enforceable); *see also* “Settlement Term Sheet” (purporting to resolve the *Wurster* Action, among others) (Dkt. 746-1; Exhibit 1 to Receiver counsel Stanley H. Shure’s August 9, 2019 declaration); Dkt. 750 at 1 (referencing “undisputed fact that the Receivership Entity already sustained **Loss** (in the form of its February 8, 2019 \$30 million settlement of the Investor Claims)”) (emphasis in original). If, as the Receiver has asserted, the *Wurster* Action was settled six months ago, then the need for any additional discovery is not apparent.

**Third**, apart from the alleged settlement, it is unclear why only the State Court *Defendants* in the *Wurster* Action are parties to the Proposed Stipulation, and not the investor plaintiffs. Query whether the *Wurster* Action plaintiffs are aware of efforts underway to permit discovery by the State Court Defendants. Nor does the Proposed Stipulation indicate why the Receiver is attempting to accommodate the State Court Defendants’ eleventh-hour effort to obtain discovery that is otherwise prohibited by the Receivership Order prior to the September

---

<sup>2</sup> *See, e.g.*, Dkt. 696, at 2-3 (Receiver admonishing other parties for failing to “meaningfully compl[y] in good faith with the letter and spirit of local Rule 7-1); *id.* at 6 (Receiver urging this Court to not reward a movant for failure to comply with Local Rule 7-1); *see also* Dkt. 697 (SEC joinder in Dkt. 696 and request that the Court deny the requested relief “for the reasons stated by the Receiver,” that is, failure to comply with Local Rule 7-1).

20 discovery cutoff in the *Wurster* Action, even though that case has been pending since 2016. Presumably the State Court Defendants believe such discovery will bolster their position. Efforts by the Receiver to assist in that endeavor seem to conflict with this Court’s directive that the Receiver “use Receivership Property for the benefit of the Receivership Entity.” *See* Order Appointing Receiver, Dkt. 156, ¶ 6.D.

**Fourth**, it is troubling that the Receiver seeks to force Mr. Jesenik and other former employees of the Receivership Entities to appear for depositions—in a “settled” case no less—while simultaneously asserting that neither Mr. Jesenik nor the other potential deponents is entitled to D&O insurance to pay reasonable and necessary defense costs incurred as a result, or in connection with other covered claims. *Compare* Dkt. 753 at 2-3 (Receiver’s Opposition to Olaf Janke’s motion to permit payment of defense costs from D&O insurance) *with* Dkt. 756 at 5 (Proposed Stipulation identifying Messrs. Janke and Jesenik as among the prospective deponents in the *Wurster* Action). *See also* Dkt. 754 at 3 (Receiver asserting the \$30 million “settlement” of the *Wurster* Action and other investor claims as a basis to deny insurance coverage to individual insured). This Court should not provide its imprimatur to the Receiver’s attempt to whipsaw Mr. Jesenik and others.

In light of the foregoing, Mr. Jesenik respectfully requests that the Court decline to approve the Proposed Stipulation.

DATED: August 27, 2019

SCHULTE ROTH & ZABEL LLP

By: /s/ Jeffrey F. Robertson  
 Peter H. White, Admitted *Pro Hac Vice*  
 Jeffrey F. Robertson, Admitted *Pro Hac Vice*  
 901 Fifteenth Street, NW  
 Suite 800  
 Washington, DC 20005  
 Phone: 202-729-7470  
[peter.white@srz.com](mailto:peter.white@srz.com)  
[jeffrey.robertson@srz.com](mailto:jeffrey.robertson@srz.com)

Counsel for Defendant Robert J. Jesenik

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2019, I served a true and correct copy of the foregoing Defendant Robert J. Jesenik's Objection to the Purported "Joint Stipulation and [Proposed] Order Permitting Depositions of Certain Former Aequitas Personnel."

/s/ Jeffrey F. Robertson

Jeffrey F. Robertson