

**Troy Greenfield**, OSB #892534  
 Email: tgreenfield@schwabe.com  
**Lawrence R. Ream** (Admitted *Pro Hac Vice*)  
 Email: lream@schwabe.com  
**Andrew J. Lee**, OSB #023646  
 Email: ajlee@schwabe.com  
 SCHWABE, WILLIAMSON & WYATT, P.C.  
 1211 SW Fifth Avenue, Suite 1900  
 Portland, OR 97204  
 Telephone: 503-222-9981  
 Facsimile: 503-796-2900

*Attorneys for Receiver for Defendants*  
**AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC;**  
**AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS**  
**CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT**  
**MANAGEMENT, LLC**

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF OREGON  
 PORTLAND DIVISION

SECURITIES AND EXCHANGE  
 COMMISSION,

Plaintiff,

v.

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

Defendants.

No. 3:16-cv-00438-JR

**RECEIVER'S (SECOND) MOTION TO  
 APPROVE CLASSIFICATION OF  
 CERTAIN CLAIMS (ADMINISTRATIVE,  
 FORMER-EMPLOYEES,  
 CONVENIENCE CLASS, DEFRAUDED  
 INVESTORS, CREDITORS, INDIVIDUAL  
 DEFENDANTS, AND PASS-THROUGH  
 INVESTORS), AND ALLOW AND  
 APPROVE DISTRIBUTIONS ON  
 ACCOUNT OF CERTAIN CLAIMS**

**RECEIVER'S (SECOND) MOTION TO APPROVE  
 CLASSIFICATION OF CERTAIN CLAIMS AND ALLOW AND  
 APPROVE DISTRIBUTIONS ON ACCOUNT OF CERTAIN  
 CLAIMS**

SCHWABE, WILLIAMSON & WYATT, P.C.  
 Attorneys at Law  
 1211 SW 5th Avenue, Suite 1900



1600438201022000000000001

## TABLE OF CONTENTS

LOCAL RULE 7-1 CERTIFICATE .....	1
NOTICE .....	1
MOTION.....	1
POINTS AND AUTHORITIES .....	3
I. Factual and Procedural History.....	3
A. Appointment of Receiver, Claims Procedure, and Approval of Distribution Plan .....	3
B. Resolution and Waiver of Objections .....	6
C. The Court-approved Distribution Plan’s Treatment of Classes Addressed in this Motion.....	7
D. Settlements impacting the Court-approved Distribution Plan .....	8
II. This Court Should Approve the Receiver’s Proposed Classification and Proposed Allowed Claims and also Should Authorize the Receiver’s Proposed Distribution.....	11
A. Claims of Specified Claimants in the Administrative Class .....	12
B. Claims of Specified Claimants in the Non-Officer Former Employee Class .....	13
C. Claims of Specified Claimants in the Convenience Class .....	14
D. Claims of Specified Claimants in the Defrauded Investor Class .....	15
E. Classification of Claims of Specified Claimants in the Creditor Class, for Which This Motion Does Not Propose an Allowed Claim or Distribution.....	18
F. Classification of Claims of Specified Claimants in the Individual Defendant Class .....	19
G. Claims of Specified Claimants in the Pass-through Investor Class .....	19
H. Recipients of Distribution Payments .....	20
I. Release and Satisfaction .....	21
CONCLUSION.....	21

## LOCAL RULE 7-1 CERTIFICATE

On October 14, 2020, counsel for the Receiver circulated to all counsel of record in this action, via e-mail, copies of this motion and the accompanying declaration, both of which were substantially the same as this later filed version. The conferral requested that counsel respond by 12:00 p.m. (PST) on October 21, 2020, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received two consents and no objections.

## NOTICE

On October 14, 2020, the Receiver mailed notice to the last known mailing address of those Claimants whose Claims are the subject of this motion, as set forth in Exhibits 1 – 7 (collectively, “Specified Claimants”).<sup>1</sup> A copy of the Notice is attached as Exhibit 8 to the Declaration of Ronald F. Greenspan in Support of Receiver’s (Second) Motion to Approve Classification of Certain Claims (Administrative, Former Employees, Convenience Class, Defrauded Investors, Creditors, Individual Defendants, and Pass-Through Investors), and Allow and Approve Distributions on Account of Certain Claims (the “Receiver’s Declaration”).

## MOTION

To further the distribution of funds pursuant to the Court-approved Distribution Plan,<sup>2</sup> the Receiver moves the Court to enter an order:

(1) To approve the Receiver’s classification of the Claims of Specified Claimants listed on the following Exhibits:

---

<sup>1</sup> All exhibits referenced in this motion are attached to the Receiver’s Declaration.

<sup>2</sup> Receiver’s Motion to Approve Receiver’s Distribution Plan and Determination of a Ponzi Scheme (the “Distribution Plan”) [Dkt. 787]; Findings of Fact and Conclusions of Law (“FF&CL”) [Dkt. 813] (approving same with minor clarifications and modification, as requested by Receiver). Capitalized terms not otherwise defined in this motion shall have the meanings ascribed to them in the Distribution Plan [Dkt. 787].

Exhibit 1	Administrative Class
Exhibit 2	Non-Officer Former Employee Class
Exhibit 3	Convenience Class
Exhibit 4	Defrauded Investor Class
Exhibit 5	Creditor Class
Exhibit 6	Individual Defendant Class
Exhibit 7	Pass-through Investor Class

(2) For those Claims of Specified Claimants in Exhibits 1 – 4, 6, and 7, to allow claim amounts as set forth in those exhibits;

(3) For those Specified Claimants in Exhibits 1 – 3 and 6 with Allowed Claims for which distributions may be had under the Distribution Plan, to approve the final distribution of amounts (which for some Allowed Claims is zero) in full satisfaction of those Allowed Claims; and

(4) For those Specified Claimants in Exhibit 4 with Allowed Claims for which distributions may be had under the Distribution Plan, to approve the initial distribution of amounts as set forth in that exhibit (in the Receiver’s Calculated Interim Distribution [Rising Tide] field) in partial satisfaction of those Allowed Claims, recognizing that certain Defrauded Investors are members of plaintiff groups with intra-group allocation agreements and, as a result, distributions from the Receivership Estate to those Defrauded Investors and/or their portion of the proceeds of the Tort Claim Settlement with the Receivership Entity may be combined with those of other members of the respective plaintiff group and allocated in accordance with an intra-group agreement, which may ultimately result in those Defrauded Investors receiving more or less than the Receiver’s Calculated Interim Distribution [Rising Tide].

By this motion, the Receiver is not currently seeking to adjudicate any rights of Claimants who are not identified as Specified Claimants in this motion nor adjudicate the

classification, Allowed Claim, or Distribution for any Specified Claimant for whom an exhibit field proposes “TBD” or is not specified for that particular determination.

## POINTS AND AUTHORITIES

### I. Factual and Procedural History

In March 2016, the U.S. Securities and Exchange Commission (“SEC”) filed the above-captioned action, alleging violations of federal securities law by Robert Jesenik, Brian Oliver, and N. Scott Gillis, as well as entities that they controlled (the “Entity Defendants”),<sup>3</sup> which were part of the broader Aequis Enterprise and included over 57 affiliated and controlled entities.<sup>4</sup> The Court conclusively determined that the Entity Defendants were operated as a Ponzi scheme no later than July 2014.<sup>5</sup>

#### A. Appointment of Receiver, Claims Procedure, and Approval of Distribution Plan

The Court appointed Ronald F. Greenspan as Receiver for the Entity Defendants and various affiliated entities—initially on an interim basis on March 16, 2016,<sup>6</sup> and later, on April 14, 2016, on an enduring basis.<sup>7</sup> Since then, consistent with that role and the powers authorized by the Court, the Receiver has, among other activities, operated the Receivership

---

<sup>3</sup> Complaint [Dkt. 1]. In addition to the Entity Defendants, Jesenik, Oliver, and Gillis controlled various other Aequis subsidiaries and/or majority-owned affiliates (or their predecessors in interest). For purposes of this motion and events that pre-date the Receivership, the Receivership Defendants and the entities set forth in Exhibit A and Exhibit B to the Order Appointing the Receiver [Dkt. 156], shall be referred to collectively as the “Aequis Enterprise.”

<sup>4</sup> FF&CL [Dkt. 813] at 5-6.

<sup>5</sup> *Id.* at 14.

<sup>6</sup> Stipulated Interim Order Appointing Receiver [Dkt. 30].

<sup>7</sup> Order Appointing Receiver [Dkt. 156]. The Receivership Estate consisted of the Entity Defendants, as well as 43 other related entities. *Id.* at Ex. A (listing related entities). Nine Extended Entities in which the Aequis Enterprise had a material investment were also required by Court order to cooperate with the Receiver. *Id.* at Ex. B.

Estate, performed reporting obligations, made records available to Investors for use in litigation, and substantially monetized the assets of the Receivership Estate.<sup>8</sup>

On April 25, 2019, on the Receiver's motion, the Court fixed a Claims Bar Date of July 31, 2019; approved the manner of notice of the Claims Bar Date; and approved the Proof of Claim Form, the Claims Procedure, and associated exhibits and attachments.<sup>9</sup> The Claims Bar Date operated as "the deadline for Claimants and Administrative Claimants to submit a completed and signed Proof of Claim Form under penalty of perjury, together with supporting documentation against one or more of the Aequitas Entities."<sup>10</sup> Certain Claimants, however, had the option to be treated as having timely asserted claims without actually filing a proof of claim if they agreed with the Receiver as to their claim and the amount thereof. As stated in this Court's order:

The Receiver has determined in his sole and absolute discretion that certain [Claimants and Administrative Claimants] are entitled to an Allowed Claim and will receive a Notice of Receiver's Initial Determination, with attachments containing information and amounts, which together constitute the Receiver's initial determination of the Allowed Claim. [A Claimant or Administrative Claimant] who **AGREES** with the information and amounts in the attachments to the Notice of Receiver's Initial Determination need **NOT** submit a Proof of Claim. [A Claimant or Administrative Claimant] who **DISAGREES** with the information or amounts in the attachments to the Notice of Receiver's Initial Determination and wants to assert a Claim that is different, **MUST** timely and properly submit a Proof of Claim, including supporting documents in compliance with the Notice of Claims Bar Date and Procedures for Submitting a Proof of Claim. ....<sup>11</sup>

---

<sup>8</sup> See generally the Receiver's Quarterly Reports.

<sup>9</sup> 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 [Dkt. 683].

<sup>10</sup> *Id.* at ¶ 4.

<sup>11</sup> *Id.* at ¶ 10 (emphasis in original).

Such initial determinations, which the Receiver refers to as “NODs” as a shorthand for “Notice of Determination,” form the basis for many of the Claims of the Specified Claimants addressed in this motion.

On December 23, 2019, the Court approved the creation of a Qualified Settlement Fund (“QSF”), over which it would retain jurisdiction and from which distributions would be made on Allowed Claims, including any distributions to the Specified Claimants holding Claims that are the subject of this motion.<sup>12</sup>

On December 31, 2019, the Receiver filed the Motion to Approve Receiver’s Distribution Plan and Determination of a Ponzi Scheme.<sup>13</sup> That same day, the Receiver moved the Court to approve a notice procedure, briefing schedule, and hearing date.<sup>14</sup>

On January 14, 2020, the Court approved the Receiver’s proposed means of providing interested parties notice of the Receiver’s proposed distribution plan and Ponzi determination.<sup>15</sup> The Court set briefing deadlines, including a February 20, 2020 deadline for interested parties to file objections.<sup>16</sup> The Court additionally set March 31, 2020, as the hearing date on the Receiver’s motion regarding a Ponzi determination and Distribution Plan.<sup>17</sup>

---

<sup>12</sup> Order Granting Receiver’s Motion for Order to Authorize, Approve, and Keep Continuing Jurisdiction over a Qualified Settlement Fund, and Related Relief [Dkt. 781].

<sup>13</sup> [Dkt. 787].

<sup>14</sup> Receiver’s Motion for Order (1) Approving Form and Manner of Notice Regarding Approval of Proposed Distribution Plan and Ponzi Determination, (2) Approving Procedures and Deadlines, (3) Setting a Hearing, and for Related Relief [Dkt. 785].

<sup>15</sup> Order: (1) Approving Form and Manner of Notice Regarding Approval of Proposed Distribution Plan and Ponzi Determination, (2) Approving Procedures and Deadlines, (3) Setting a Hearing, and for Related Relief [Dkt. 790].

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> *Id.* at 3.

On March 31, 2020, following the scheduled hearing, this Court concluded that the Aequitas Enterprise operated as a Ponzi scheme.<sup>18</sup> Relatedly, the Court approved the Receiver's proposed Distribution Plan, as modified.<sup>19</sup>

### **B. Resolution and Waiver of Objections**

In formulating his proposed distribution plan, the Receiver received numerous inquiries (and a few potential objections to some provisions). The Receiver responded to all of these and ultimately all parties were satisfied with the merits and equity of the Receiver's proposed Distribution Plan and did not file objections. Only one party filed an objection and did so without first communicating with the Receiver. Upon becoming aware of this objection, the Receiver considered the information provided by the objecting party, conducted further research, and resolved the objection by modifying the definition of Non-Officer Former Employee Claim.<sup>20</sup> No other objections were asserted before the Court-approved deadline of February 20, 2020, and, as such, all objections to the Distribution Plan have been resolved or waived.<sup>21</sup>

---

<sup>18</sup> FF&CL [Dkt. 813] at 14.

<sup>19</sup> *Id.* at 18.

<sup>20</sup> *See* Receiver's Reply ISO the Distribution/Ponzi Determination Motion [Dkt. 807] (pursuant to Brett M. Brown's Objection [Dkt. 799], the following individuals were omitted from the list of individuals precluded from holding a Non-Officer Former Employee Claim: Brett Brown; Patricia Brown; Bill Malloy; and Thomas Szabo); *see also* FF&CL [Dkt. 813] (approving same).

<sup>21</sup> *See Garvin v. Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031, 1034 (9th Cir. 2019) (bankruptcy trustee waived objection by failing to raise it in conjunction with plan confirmation); *see also* FF&CL [Dkt. 813] at 18-19 ("All objections to the Receiver's Distribution/Ponzi Determination Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are overruled.").



The Receiver and this Court have begun implementing the Distribution Plan. For some Claims, this Court has already approved classifications, Allowed Claim amounts, and approved distributions and the Receiver has issued checks for the majority of such distributions.<sup>22</sup>

**C. The Court-approved Distribution Plan's Treatment of Classes Addressed in this Motion**

The Court-approved Distribution Plan establishes, among other classes, the following classes of Claims (which definitions are reiterated in later sections) and related treatments that are pertinent to making distributions pursuant to this motion:

- Allowed Administrative Claims. Each such claim shall be paid the full amount of the Allowed Claim from the QSF.<sup>23</sup>
- Allowed Non-Officer Former Employee Claims. Each such Claim shall be paid the full amount of the Allowed Claim (which shall not exceed \$12,850) from the QSF.<sup>24</sup>
- Allowed Convenience Class Claims. Each such Claim shall be paid an amount equal to twenty percent (20%) of the Allowed Convenience Class Claim from the QSF.<sup>25</sup>
- Allowed Claims of Defrauded Investors. Defrauded Investors' Claims are calculated on the basis of their Total Investment, and each such Claim shall be paid under the rising tide methodology without interest, costs, or fees from the QSF.<sup>26</sup>

---

<sup>22</sup> See Order Granting Receiver's Motion to Approve Classification, Allowance of the Amount of Claims for Certain Claimants (Administrative Claims, Convenience Class Claims, and Former-Employment Claims), and Approve Distributions to Those Claimants [Dkt. 838]. The Receiver sent out distributions pursuant to this order.

<sup>23</sup> Distribution Plan [Dkt. 787] at 65. See also FF&CL [Dkt. 813] (approving same).

<sup>24</sup> Distribution Plan [Dkt. 787] at 65. See also FF&CL [Dkt. 813] (approving same).

<sup>25</sup> Distribution Plan [Dkt. 787] at 65-66. See also FF&CL [Dkt. 813] (approving same). The amount of an Allowed Convenience Class Claim cannot exceed \$20,000.

<sup>26</sup> Distribution Plan [Dkt. 787] at 4, 66. See also FF&CL [Dkt. 813] (approving same). Exhibit 4 to Receiver's Declaration, including footnotes, further details the basis and payment to Defrauded Investors.

The Court-approved Distribution Plan also establishes, among other classes, the Creditor Class of Claims (which definition is reiterated in a later section), that this motion addresses, but without further proposing an Allowed Claim amount or distribution at this time.

The Court-approved Distribution Plan also establishes the Individual Defendant Class of Claims (which definition is reiterated in a later section), and this motion proposes, pursuant to the terms of the Court-approved Distribution Plan, an Allowed Claim amount of \$0 and no monetary distribution for the single Claim classified in the Individual Defendant Class.

The Court-approved Distribution Plan also establishes the Pass-through Investor Class of Claims (which definition is reiterated in a later section), and this motion proposes, pursuant to the terms of the Court-approved Distribution Plan, an Allowed Claim amount of \$0 and no monetary distribution for Claims classified in the Pass-through Investor Class pursuant to this motion, but that Claimants with such Claims retain their equity interests in the Pass-through Entities (and/or any equity interest resulting therefrom).

#### **D. Settlements impacting the Court-approved Distribution Plan**

The following parties have entered settlement agreements with the Receivership Entity and, in doing so, have released all claims relating to Receivership Property, the Receivership Estates (as those terms are defined in the Order Appointing Receiver – Dkt. No. 156), or any other assets of the Receivership Entity, including but not limited to any claim under the Court-approved Distribution Plan:

- Keith Barnes
- Deloitte & Touche LLP
- N. Scott Gillis
- William Glasgow
- Income Opportunities (Luxembourg) S.A.
- Olaf Janke
- Edmund Jensen
- Robert J. Jesenik
- Andrew MacRitchie

- William M. Malloy III
- William McCormick
- Brian Oliver
- PartnerRE Ireland Insurance DAC
- Brian K. Rice
- Starr Indemnity & Liability Company
- Patrick Terrell

(Receiver's Declaration, ¶ 12).

The settlements with each of these parties will be addressed in a separate motion—specifically, the Receiver's Motion for Order (1) Approving Compromises of Claims, (2) Approving and Authorizing Performance of Settlement Agreements, (3) Entering Claims Bar, and (4) Removing a Receivership Entity and an Extended Entity (hereinafter referred to as the "Motion to Approve Settlements"). Accordingly, the claims of the parties listed above are not addressed in the Exhibits attached to the Receiver's Declaration. (Receiver's Declaration, ¶ 13).

As the Court is aware, the Receiver resolved the tort claims of four investor litigation groups, including the class ultimately certified in the matter of *Ciuffitelli et al. v. Deloitte & Touche LLP, et al.*, Case No. 3:16-cv-00580-AC, U.S. District Court for the District of Oregon (the "Tort Claims Settlement"). Under the Tort Claims Settlement, the Receivership Estate will distribute a total of \$30 million to those four investor litigation groups (the "Tort Settlement Payment"). As set forth in the Court-approved Distribution Plan, regardless of how those four investor litigation groups internally allocate their portion of the Tort Settlement Payment among their respective members, for purposes of calculating additional distributions, the Receiver will apply the Tort Settlement Payment as if it were allocated among the members of each of the groups and as if it were distributed under the rising tide methodology of the Court-approved Distribution Plan. That treatment preserves equity, to the extent within the Receiver's control, between those Defrauded Investors that were members of the four investor litigation groups that

were party to the Tort Claims Settlement and those Defrauded Investors that were not. (Receiver's Declaration, ¶ 14).

The Tort Claims Settlement is addressed in the Receiver's Motion to Approve Settlements, that will likely be decided prior to or contemporaneously with this motion. (Receiver's Declaration, ¶ 15).

At the time the Settlement Term Sheet was executed, class counsel contemplated undertaking the significant tasks associated with securing approval of a class action settlement with the Receivership Entity. Subsequently, class counsel concluded that doing so would actually reduce the total amount of funds available to class members. (Receiver's Declaration, ¶16).

The distribution methodology set forth in the Court-approved Distribution Plan differs from the combined effect of the *Ciuffitelli* class definition and plan of allocation. Both were developed well after the Settlement Term Sheet was executed. (Receiver's Declaration, ¶17).

In recognition of these circumstances, class counsel and the Receiver have agreed that the class portion of the Tort Claims Settlement (\$20,910,000) will simply be distributed in accordance with the Court-approved Distribution Plan. (Receiver's Declaration, ¶18).

The Receiver greatly appreciates the professionalism and sacrifice of class counsel, as it makes more funds available to distribute to Defrauded Investors who are members of the certified class. In the Class Action, the Court awarded attorney fees of 24.6%. The class portion of the Tort Claims Settlement is \$20,910,000. Obviously, a similar fee award would greatly reduce the funds that would otherwise be distributed to Defrauded Investors in the certified class. (Receiver's Declaration, ¶ 19).

## II. This Court Should Approve the Receiver's Proposed Classification and Proposed Allowed Claims and also Should Authorize the Receiver's Proposed Distribution.

This motion is accompanied by the Receiver's Declaration, which includes Exhibits 1 –

7. For each exhibit,<sup>27</sup> the following fields may be included as pertinent to the Class of Claims and the treatment proposed in this motion:

- Name(s). This field specifies the name or names associated with a Claim.
- Receiver's Classification. This field specifies how the Receiver has classified the Claim if the Receiver is proposing by this motion that this Court classify the claim.
- NOD Claim Amount. This field contains the amount specified in NOD(s) for the Claim, if applicable.
- Proof of Claim Amount. This field contains the amount specified in a Proof of Claim(s) submitted by or on behalf of the Claimant. In setting forth a Proof of Claim Amount, the Receiver has made a good faith effort to include the claim amounts quantified by the Claimant but has not endeavored to include any amounts unquantified by the Proof of Claim form and/or the amounts that could not be clearly ascertained based on the provided information that accompanied the Proof of Claim form.
- Proposed Allowed Claim Amount. The amount that the Receiver proposes be determined as the Claimant's Allowed Claim, if applicable. For Claims where the Receiver is not in this motion proposing an Allowed Claim, the Proposed Allowed Claim Amount is listed as "TBD."
- Proposed Distribution. The distribution amount calculated pursuant to the Court-approved Distribution Plan, if specified or "TBD".
- Notes. This field contains information regarding some component of or treatment of the Claim. For example, a Claimant may have submitted duplicate copies of a Proof of Claim, which are being treated as a single claim. Another example would be a Proof of Claim that was filed after the Claims Bar Date.

Regardless of whether the Receiver has noted a factual, legal or procedural defense or avoidance of a Claim, the Receiver reserves the right to litigate all defenses (a) in the event the Claimant opposes this motion; or (b) in future motions adjudicating a Claim (*i.e.* litigating issues

---

<sup>27</sup> Exhibit 4 includes some of these fields, but also supplements the Defrauded Investor exhibit with other fields, which are separately summarized in subsection D below.

unresolved by this motion about the Claim's classification, validity, allowance, amount, or distribution). Further, even if a defense or avoidance is not litigated against one or more Claims, the Receiver reserves the right to litigate a similar defense or avoidance against any other Claim.<sup>28</sup>

Based on the Receiver's reasonable investigation, the classifications and distributions proposed in this motion are consistent with the Court-approved Distribution Plan and, following these distributions, the QSF will have sufficient funds to make distributions to other Claimants with Allowed Claims estimated, pursuant to the priority provisions of the Court-approved Distribution Plan, to receive distributions.<sup>29</sup> To the extent the Court's determination of this motion affects any proposed distribution, as reflected in the Exhibits attached to the Receiver's Declaration, the Receiver requests that he be permitted to revise the distributions consistent with the Court's determination, without further notice and motion.

#### **A. Claims of Specified Claimants in the Administrative Class**

In Exhibit 1, the Receiver identifies certain Specified Claimants that the Receiver has concluded each hold a Claim that is appropriately classified in the Administrative Class or that filed a Proof of Claim that asserts their Claim is, in whole or part, an Administrative Claim. Exhibit 1 includes a mix of (1) Claims for which the Receiver's Classification, Proposed Allowed Claim Amount, or Proposed Distribution is listed as "TBD" or with an otherwise specified reference, and (2) other Claims that should be classified in the Administrative Class and allowed in specified amounts, and for which the Receivership should be authorized to make

---

<sup>28</sup> In the event that a Claimant files an opposition, the Receiver will decide whether to litigate that opposition now or file an amended Exhibit to this motion that, by removing that Claimant, renders the Claimant's opposition moot as to this motion.

<sup>29</sup> Receiver's Declaration, ¶ 12.

a distribution from the QSF. Under the terms of the Court-approved Distribution Plan, an Administrative Claim is:

An Allowed Claim based on: (i) the provision of goods or services for the benefit of the Receivership Estate or at the request of the Receiver beginning on or after March 16, 2016, or related to the administration of the QSF, which remain unpaid, (ii) any taxes arising from or attributable to tax periods beginning on or after March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities, which remain unpaid, (iii) an uncashed check issued on or after March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or other overpayment, or (iv) any current, future, or contingent contractual obligations (including indemnification obligations) arising from any contract entered into by or on behalf of the Receivership Estate.<sup>30</sup>

As noted above, under the terms of the Court-approved Distribution Plan, Allowed Administrative Claims are paid in full from the QSF.<sup>31</sup>

#### **B. Claims of Specified Claimants in the Non-Officer Former Employee Class**

In Exhibit 2, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Non-Officer Former Employee Class, further specifies amounts that should be allowed on those claims, and seeks authorization to distribute specified amounts to them from the QSF. Under the terms of the Court-approved Distribution Plan, Non-Officer Former Employee Claims are:

Claims that accrued on behalf of a Non-Officer Former Employee prior to the Aequis Enterprise being placed in receivership for services provided in accordance with the terms of employment, including for the amount of paid time off that accrued and was unused as of the separation date (“Accrued PTO”); amounts owing under the provisions of the Worker Adjustment and Retraining Notification Act (“Warn Act”); and amounts owing pursuant to contract, including but not limited to severance pay,

<sup>30</sup> Distribution Plan [Dkt. 787] at 62-63. *See also* FF&CL [Dkt. 813] (approving same).

<sup>31</sup> Distribution Plan [Dkt. 787] at 65. *See also* FF&CL [Dkt. 813] (approving same).



retirement pay, expense reimbursement, and relocation or other bonus as of the separation date.<sup>32</sup>

Certain individuals are expressly excluded from the definition of a Non-Officer Former Employee.<sup>33</sup> As noted above, under the terms of the Court-approved Distribution Plan, Non-Officer Former Employee Claims are paid the full amount of their Allowed Non-Officer Former Employee Claim (in an amount, which shall not exceed \$12,850) from the QSF.<sup>34</sup>

### **C. Claims of Specified Claimants in the Convenience Class**

In Exhibit 3, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Convenience Class, further specifies amounts that should be allowed on those claims, and seeks authorization to distribute specified amounts to them from the QSF. A Convenience Class Claim is:

An Allowed Creditor Claim (i) equal to or less than \$20,000, or (ii) an Allowed Creditor Claim in excess of \$20,000, where the holder elects to reduce the Allowed Creditor Claim to \$20,000 and waive the balance of the Allowed Creditor Claim.<sup>35</sup>

---

<sup>32</sup> Distribution Plan [Dkt. 787] at 63. *See also* FF&CL [Dkt. 813] (approving same).

<sup>33</sup> The definition of “Non-Officer Former Employee Claims” excludes the past officers and directors of the Aequis-affiliated companies, including without limitation, Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, and Tom Goila. Distribution Plan [Dkt. 787] at 57-58 n. 174; Receiver’s Reply ISO the Distribution/Ponzi Determination Motion [Dkt. 807] (pursuant to Brett M. Brown’s Objection [Dkt. 799], the following individuals were omitted from the list of individuals precluded from holding a Non-Officer Former Employee Claim: Brett Brown; Patricia Brown; Bill Malloy; and Thomas Szabo); FF&CL [Dkt. 813] 8-9, 18 (approving same).

<sup>34</sup> Distribution Plan [Dkt. 787] at 65. *See also* FF&CL [Dkt. 813] (approving same). To the extent the employment-related claim of a Non-Officer Former Employee exceeds the \$12,850 limit, the remainder is scheduled as a Creditor Claim or, if that amount is \$20,000 or less, classified as an Allowed Convenience Class Claim with allowance and treatment as provided for in this motion in conformity with the terms of the Court-approved Distribution Plan.

<sup>35</sup> Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same). The process for electing convenience class status will be presented to the court for approval by separate motion in the near future.



Under the terms of the Court-approved Distribution Plan (and relating to the Aequitas Enterprise being placed into receivership on March 16, 2016):

A Creditor Claim is a Claim against an Aequitas Entity, including but not limited to transactions based on, related to, arising from, or in connection with: (i) any contract, lease, or other agreement entered into prior to March 16, 2016, for which payment has not been made in whole or in part or for which payment has or will become due prior to, on, or after March 16, 2016, (other than Defrauded Investors or Pass-through Investors), (ii) goods or services provided prior to March 16, 2016, (iii) an uncashed check issued prior to March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or any other overpayment, (iv) unpaid wages, compensation, or other employment benefits, that accrued prior to March 16, 2016, that exceed the priority wage claim cap of \$12,850, or (v) taxes payable by an Aequitas Entity arising from or attributable to tax periods beginning prior to March 16, 2016, even if due and payable subsequent to March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities. To the extent that a Claim meets the definition of both a Creditor Claim and some other classification of Claim, each Claim shall be determined and treated based on the portion of the Claim that falls within each classification.<sup>36</sup>

As noted above, under the terms of the Court-approved Distribution Plan, Allowed Convenience Class Claims are paid an amount equal to twenty percent (20%) of that allowed amount from the QSF.<sup>37</sup>

#### **D. Claims of Specified Claimants in the Defrauded Investor Class**

In Exhibit 4, the Receiver identifies (1) certain Specified Claimants holding Claims that are appropriately classified in the Defrauded Investor Class, (2) information material to calculating their entitlement to a rising tide distribution under the terms of the Court-approved Distribution Plan, and (3) the proposed calculated interim distribution, if any, that the Receiver be authorized to make from the QSF. Under the terms of the Court-approved Distribution Plan,

<sup>36</sup> Distribution Plan [Dkt. 787] at 64. *See also* FF&CL [Dkt. 813] (approving same).

<sup>37</sup> Distribution Plan [Dkt. 787] at 65-66. *See also* FF&CL [Dkt. 813] (approving same). The amount of an Allowed Convenience Class Claim cannot exceed \$20,000.

Defrauded Investors were either Direct Investors or Fund Investors and had an account balance as of July 1, 2014, or account activity during the Ponzi Period.<sup>38</sup> Further:

Defrauded Investor Claims include all of the Allowed Claims of Defrauded Investors including, without limitation, a Claim based on an investment transaction in, with, or through an Aequitas Entity (excluding Pass-through Entities), including but not limited to transactions based on or related to: (i) promissory notes or other money loaned to an Aequitas Entity, and (ii) investments (by subscription or otherwise) in an Aequitas Entity (excluding Pass-through Entities).<sup>39</sup>

As noted above, under the terms of the Court-approved Distribution Plan, Defrauded Investors' claims are calculated on the basis of their Total Investment, and each such claim shall be paid under the rising tide methodology from the QSF.<sup>40</sup>

Three items warrant further comment from the Receiver. First, in addition to the Name(s) field, which contains the main contact name(s), Exhibit 4 also has two fields supplying "Account" information (*e.g.*, name, number, and/or investor ID), which will identify each account associated with the Claim. The "Account" fields may contain multiple accounts if multiple accounts were aggregated for the purpose of determining the Proposed Distribution. As explained in the Court-approved Distribution Plan, "[a] Defrauded Investor in the Aequitas Ponzi scheme is not injured more or less simply by virtue of investing money in multiple Aequitas

---

<sup>38</sup> Distribution Plan [Dkt. 787] at 13-14 & n. 36, App. A at 5-6 (defining terms and specifying nature of investments and involved entities). *See also* FF&CL [Dkt. 813] (approving same).

<sup>39</sup> Distribution Plan [Dkt. 787] at 63-64. *See also* FF&CL [Dkt. 813] (approving same). A Defrauded Investor Claim is exclusive of other types of claims. *See* Distribution Plan [Dkt. 787] at 63-64 ("Defrauded Investor Claims exclude any Claim that is otherwise classified herein. If an Investor meets the definition of both a Defrauded Investor and a Pass-through Investor, the Investor's Distribution shall be calculated based on those portions of the Investor's Claim that make the Investor a Defrauded Investor with no increase or decrease in that amount in relation to those portions of the Claim that make the Investor a Pass-through Investor."); *see also* FF&CL [Dkt. 813] (approving same).

<sup>40</sup> Distribution Plan [Dkt. 787] at 4, 66. *See also* FF&CL [Dkt. 813] (approving same). Exhibit 4 to Receiver's Declaration, including footnotes, further details the basis and payment to Defrauded Investors.

Entities, multiple accounts, or accounts differently titled” and Defrauded Investors’ distributions in general should not be affected by certain Defrauded Investors’ method of holding title to multiple accounts.”<sup>41</sup> The Court-approved Distribution Plan details when and how a Defrauded Investor’s accounts can be aggregated for the purposes of calculating a distribution.<sup>42</sup> Following reasonable investigation, the Receiver’s proposed treatment of Defrauded Investors complies with those aggregation provisions.<sup>43</sup>

Second, Exhibit 4 includes Investor-specific information that is material to calculating a Defrauded Investor’s rising tide distribution pursuant to the Court-approved Distribution Plan—specifically,

- Total Investment – Allowed Claim. For most Defrauded Investors, this amount is the Defrauded Investor’s book balance as of July 1, 2014 (including prior accrued interest or reinvested amounts) plus any cash the Defrauded Investor conveyed to the Aequitas Entity between July 1, 2014 and March 16, 2016.<sup>44</sup>
- Pre-Receivership Return. For most Defrauded Investors, this amount is the sum of cash paid to the Defrauded Investor between July 1, 2014 and March 16, 2016.<sup>45</sup>
- Pre-Receivership Return Percentage. This is equal to Pre-Receivership Return divided by Total Investment, expressed as a percentage.
- Proposed Distribution. For Defrauded Investors, the field is titled as “Receiver’s Calculated Interim Distribution [Rising Tide]”.<sup>46</sup>

<sup>41</sup> Distribution Plan [Dkt. 787] at 55. *See also* FF&CL [Dkt. 813] (approving same).

<sup>42</sup> Distribution Plan [Dkt. 787] at 55-57. *See also* FF&CL [Dkt. 813] (approving same).

<sup>43</sup> Receiver’s Declaration, ¶ 11.

<sup>44</sup> *See* Distribution Plan [Dkt. 787] at 39-41, 55. *See also* FF&CL [Dkt. 813] (approving same). The Court-approved Distribution Plan more fully defines the calculation of Total Investment.

<sup>45</sup> *See* Distribution Plan [Dkt. 787] at 39-41, 55. *See also* FF&CL [Dkt. 813] (approving same). The Court-approved Distribution Plan more fully defines the calculation of Pre-Receivership Return.

<sup>46</sup> Exhibit 4 to Receiver’s Declaration, including footnotes, further details the basis and payment amounts for Defrauded Investors.

Third, the Court-approved Distribution Plan establishes the means by which rising tide distributions are calculated for Defrauded Investors.<sup>47</sup> For purposes of this motion, the Interim Recovery Threshold is twenty-eight percent (28%). If the Receiver is specifying a Receiver's Calculated Interim Distribution, that amount is the greater of ((Total Investment x Interim Recovery Threshold) – Pre-Receivership Return) or zero.<sup>48</sup> The Defrauded Investors with a Pre-Receivership Return Percentage greater than twenty-eight percent (28%) may become eligible for a future distribution.

**E. Classification of Claims of Specified Claimants in the Creditor Class, for Which This Motion Does Not Propose an Allowed Claim or Distribution**

The Receiver is not in this motion proposing an Allowed Claim and, relatedly, is not proposing any distribution for Specified Claimants holding or asserting Creditor Class Claims (Exhibit 5). Nonetheless, classification of such claims is material to effectuating the Court-approved Distribution Plan and making the above-described distributions.

In Exhibit 5, the Receiver identifies certain Specified Claimants holding Claims that are appropriately classified in the Creditor Class or that filed a Proof of Claim that asserts a pre-Receivership Claim on a basis that would warrant classification, in whole or part, in the Creditor Class. As noted above, under the terms of the Court-approved Distribution Plan:

A Creditor Claim is a Claim against an Aequitas Entity, including but not limited to transactions based on, related to, arising from, or in connection with: (i) any contract, lease, or other agreement entered into prior to March 16, 2016, for which payment has not been made in whole or in part or for which payment has or will become due prior to, on, or after March 16, 2016, (other than Defrauded Investors or Pass-through Investors), (ii) goods or services provided prior to March 16, 2016, (iii) an uncashed check issued prior to March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or any other overpayment, (iv) unpaid wages,

<sup>47</sup> Distribution Plan [Dkt. 787] at 45-55. *See also* FF&CL [Dkt. 813] (approving same).

<sup>48</sup> Distribution Plan [Dkt. 787] at 45-55. *See also* FF&CL [Dkt. 813] (approving same).

compensation, or other employment benefits, that accrued prior to March 16, 2016, that exceed the priority wage claim cap of \$12,850, or (v) taxes payable by an Aequis Entity arising from or attributable to tax periods beginning prior to March 16, 2016, even if due and payable subsequent to March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities. To the extent that a Claim meets the definition of both a Creditor Claim and some other classification of Claim, each Claim shall be determined and treated based on the portion of the Claim that falls within each classification.<sup>49</sup>

Each Claim on Exhibit 5 should be classified in the Creditor Class.

**F. Classification of Claims of Specified Claimants in the Individual Defendant Class**

In Exhibit 6, the Receiver identifies a Claimant who filed a Proof of Claim that the Receiver proposes be classified in the Individual Defendant Class because that Claim asserts interests of an Individual Defendant to “assets of the Receivership Estate, or for any interest in any entity now part of the Receivership Estate.” The Claim listed in Exhibit 6 should be classified as a Claim in the Individual Defendant Class and determine that the Allowed Claim is zero.<sup>50</sup>

**G. Claims of Specified Claimants in the Pass-through Investor Class**

In Exhibit 7, the Receiver identifies certain Specified Claimants holding Claims that the Receiver has concluded are appropriately classified in the Pass-through Investor Class. Under the terms of the Court-approved Distribution Plan: “Pass-through Investors are those Investors whose Claims are predicated on their investment transactions in, with, or through COF/CCM, ETCFF, LUX Entities, WRFF, AHF, and APF.”<sup>51</sup> Each Claim listed in Exhibit 7 should be classified in the Pass-through Investor Class.

---

<sup>49</sup> Distribution Plan [Dkt. 787] at 64. *See also* FF&CL [Dkt. 813] (approving same).

<sup>50</sup> Distribution Plan [Dkt. 787] at 65. *See also* FF&CL [Dkt. 813] (approving same).

<sup>51</sup> Distribution Plan [Dkt. 787] at 65; FF&CL [Dkt. 813] (approving same).

Under the Court-approved Distribution Plan, Pass-through Investors “were not defrauded because their moneys were used as represented and used for their intended purposes,” and, as such, “Pass-through Investors shall retain their respective ownership interests in the Pass-through Entities” but “will receive no distribution from the QSF.” Accordingly, Exhibit 7 includes Proposed Allowed Claim Amounts of \$0 for each Pass-through Investor and “Equity Interest” for a Proposed Distribution Amount.<sup>52</sup>

#### **H. Recipients of Distribution Payments**

As set forth in the Court-approved Distribution Plan and the FF&CL, “[a]ccount and claim ownership shall be ... determined as of the Claims Bar Date.”<sup>53</sup> Where a Specified Claimant informed the Receiver in writing prior to the filing of this motion that the ownership of the Claim had been transferred, the Receiver will make a good faith effort to direct payment to the last known owner of the claim. Where appropriate, distributions may also be made to a Specified Claimant’s investment custodian or counsel. Some Defrauded Investors, for example, have investments relating to their accounts held through custodians or Specified Claimants may be represented by counsel. The Receiver is authorized and has discretion to make distributions to a Specified Claimant’s custodian or counsel.

The Court-approved Distribution Plan provides that the Receiver is not required to pay *de minimis* claims that would result in a distribution of less than \$50.00.<sup>54</sup> For the purposes of this motion, the Receiver proposes to make distributions on Allowed Claims where the distribution will be \$25 or greater. No distribution will be made on allowed *de minimis* claims where the

---

<sup>52</sup> Distribution Plan [Dkt. 787] at 6, 67, 44. *See also id.* at 6 (“the Distribution Plan does not direct any payment to the Pass-through Investors on account of such investment”); FF&CL [Dkt. 813] (approving same).

<sup>53</sup> Distribution Plan [Dkt. 787] at 55 n. 170; FF&CL [Dkt. 813] (approving same).

<sup>54</sup> Distribution Plan [Dkt. 787] at 67. *See also* FF&CL [Dkt. 813] (approving same).

distribution is less than \$25 because the cost of handling the distribution, including such items as printing, postage, returned checks, and inquiries, is disproportionate to the benefit.

### **I. Release and Satisfaction**

As set forth in the Court-approved Distribution Plan and the FF&CL, except as to Defrauded Investors—for whom the Receiver seeks approval to make an interim distribution—receipt of payment is a release and satisfaction in full of the Claim.<sup>55</sup>

### **CONCLUSION**

By this motion, the Receiver is not currently seeking to adjudicate any rights of Claimants who are not identified as Specified Claimants in this motion nor adjudicate the classification, Allowed Claim, or Distribution for any Specified Claimant for whom an exhibit field proposes “TBD” or is not specified for that particular determination. The Receiver moves the Court to enter an order:

(1) To approve the Receiver’s classification of Claims of Specified Claimants listed on the following Exhibits:

Exhibit 1	Administrative Class
Exhibit 2	Non-Officer Former Employee Class
Exhibit 3	Convenience Class
Exhibit 4	Defrauded Investor Class
Exhibit 5	Creditor Class
Exhibit 6	Individual Defendant Class
Exhibit 7	Pass-through Investor Class

(2) For those Claims of Specified Claimants in Exhibits 1 – 4, 6, and 7, to allow claim

---

<sup>55</sup> Distribution Plan [Dkt. 787] at 65 (“Distributions on Allowed Claims is governed by, and subject to the terms of the Court-approved Distribution Plan as implemented through the QSF and shall be in full and complete satisfaction, settlement, and release of all such claims.”); FF&CL [Dkt. 813] (approving same).



amounts as set forth in those exhibits;

(3) For those Specified Claimants Exhibits 1 – 3 and 6 with Allowed Claims for which distributions may be had under the Distribution Plan, to approve the final distribution of amounts (which for some Allowed Claims is zero) in full satisfaction of those Allowed Claims; and

(4) For those Specified Claimants in Exhibit 4 with Allowed Claims for which distributions may be had under the Distribution Plan, to approve the initial distribution of amounts as set forth in that exhibit (in the Receiver's Calculated Interim Distribution [Rising Tide] field) in partial satisfaction of those Allowed Claims, recognizing that certain Defrauded Investors are members of plaintiff groups with intra-group allocation agreements and, as a result, distributions from the Receivership Estate to those Defrauded Investors and/or their portion of the proceeds of the Tort Claim Settlement with the Receivership Entity may be combined with those of other members of the respective plaintiff group and allocated in accordance with an intra-group agreement, which may ultimately result in those Defrauded Investors receiving more or less than the Receiver's Calculated Interim Distribution [Rising Tide].

Dated this 21st day of October, 2020.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Troy Greenfield

Troy Greenfield, OSB #892534

Email: tgreenfield@schwabe.com

Lawrence R. Ream (Admitted *Pro Hac Vice*)

Email: lream@schwabe.com

Andrew J. Lee, OSB #023646

Email: ajlee@schwabe.com

Telephone: 503-222-9981

Facsimile: 503-796-2900

*Attorneys for Receiver for Defendants Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC*