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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.  
JESENİK; BRIAN A. OLIVER; and N.  
SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

RECEIVER'S MOTION FOR ORDER  
APPROVING COMPROMISES OF CLAIMS  
AND AUTHORIZING PERFORMANCE OF  
SETTLEMENT AGREEMENTS



**Local Rule 7-1 Certificate**

On June 29, 2021, counsel for the Receiver circulated to the approximately 60 counsel of record, via email, copies of this motion, the supporting declaration and proposed form of order, all in substantially the same form as the filed versions. The conferral requested that counsel respond by 12:00 noon Pacific Time on July 7, 2021, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received three consents and no objections.

**MOTION**

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for the Receivership Entity,<sup>1</sup> hereby moves this Court for the entry of an order (1) approving compromises of claims, and (2) approving and authorizing performance of settlement agreements (the “Motion”).

On behalf of the Receivership Entity, the Receiver has entered numerous settlement agreements with counterparties all of which are expressly subject to approval of this Court.

This Motion is supported by the Declaration of Ronald F. Greenspan (“Greenspan Decl.”) submitted herewith, and the following memorandum.

**I. Procedural and Factual Background**

**A. Appointment of the Receiver**

1. On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (“Individual Defendants”).

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (Dkt. 30) (“Interim Receivership Order”). On April 14, 2016, pursuant to the Final Receivership Order,

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<sup>1</sup> Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 (Dkt. 156) (“Final Receivership Order”).

Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (Greenspan Decl., ¶ 2).

3. Pursuant to the Final Receivership Order, the Receiver is, among other things, charged with marshalling and preserving the assets of the Receivership Entity, and authorized to compromise and settle claims of the Receivership Entity, subject to Court approval.<sup>2</sup>

4. In addition, Article IX of the Final Receivership Order stays all Ancillary Proceedings, which include “[a]ll civil proceedings of any nature” that involve the Receiver, any Receivership Property, and any of the entities comprising the Receivership Entity.<sup>3</sup>

B. The Settlement Agreements

5. Since the Receiver filed the last motion to approve settlements (Dkt. No. 881), resulting in entry of this Court’s Order of May 6, 2021 approving 47 prior settlement agreements, the Receiver has entered seven additional settlement agreements, described in greater detail below (each a “Settlement Agreement,” and collectively, the “Settlement Agreements”). By their terms, all of the Settlement Agreements are expressly subject to approval of this Court. The total value of the seven additional settlements to the Receivership Estate and ultimately the Defrauded Investors is \$1,473,395.71.

(i) Miles Settlement Agreement

6. On April 12, 2021, the Receivership Entity entered a Settlement Agreement with Donna Miles. In accordance with the terms of the Settlement Agreement, Ms. Miles paid the Receivership Entity \$25,000 and released any claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. (Greenspan Decl., ¶ 4, Ex. 1).

7. As background, Ms. Miles served on the Aequitas Advisory Board. She also provided separate professional consulting services to Aequitas prior to and during the Ponzi

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<sup>2</sup> Final Receivership Order, ¶¶ 6 and 26.

<sup>3</sup> *Id.*, ¶ 20.

period. The Receiver reviewed the consulting services provided by Ms. Miles and concluded she provided a measure of value to Aequitas. Accordingly, the Receiver required that Ms. Miles repay all of the funds received in relation to her service as an Advisory Board member during the Ponzi period as well as a portion of the funds she received in relation to her consulting services, totaling \$25,000. (Greenspan Decl., ¶ 5).

(ii) Sidley Settlement Agreement

8. On May 24, 2021, the Receivership Entity entered a Settlement Agreement with Thomas Sidley. (Greenspan Decl., ¶ 6, Ex. 2). Under the Settlement Agreement, Mr. Sidley is obligated to pay the Receivership Entity \$324,000 and release any claims against the Receivership Entity, in exchange for a release of the Receivership Entity's claims. *Id.*

9. As background, Mr. Sidley was a party to certain contracts with the Receivership Entity, including contracts governing the issuance or sale of Aequitas securities. (Greenspan Decl., ¶ 7).

10. On March 25, 2021, the Receiver issued a demand letter to Mr. Sidley, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers he received prior to and during the Ponzi period, and demanding repayment of \$424,471.96. (Greenspan Decl., ¶ 8).

11. Through counsel, Mr. Sidley readily engaged in good faith settlement negotiations with the Receiver. He made full financial disclosures and provided information relating to other personal circumstances supporting the compromise resolution outlined above. (Greenspan Decl., ¶ 9).

(iii) Brown Settlement Agreement

12. On June 7, 2021, the Receivership Entity entered a Settlement Agreement with Patricia Brown. Pursuant to the Settlement Agreement, Ms. Brown is obligated to pay the Receivership Entity \$175,500 and release any claims against the Receivership Entity, in

exchange for a release of the Receivership Entity's claims. (Greenspan Decl., ¶ 10, Ex. 3).

13. Ms. Brown was party to certain contracts with the Receivership Entity including, but not limited to, contracts governing the issuance or sale of Aequitas securities and received certain transfers of value. (Greenspan Decl., ¶ 11).

14. On March 25, 2021, the Receiver issued a demand letter to Ms. Brown, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers she received prior to and during the Ponzi period, and demanding repayment of \$230,832.88. (Greenspan Decl., ¶ 12).

15. Through counsel, Ms. Brown readily engaged in good faith settlement negotiations with the Receiver. She made full financial disclosures and provided information relating to other personal circumstances supporting the compromise resolution outlined above. (Greenspan Decl., ¶ 13).

(iv) Sica Settlement Agreement

16. On June 28, 2021, the Receivership Entity entered a Settlement Agreement with Jeffrey C. Sica, Sica Wealth Management, LLC and Circle Squared Alternative Investments, LLC (collectively, the "Sica Parties"). (Greenspan Decl., ¶ 14, Ex. 4). Pursuant to that Agreement, the Sica Parties are obligated to pay \$800,000 to the Receivership Entity and release any claims against the Receivership Entity, in exchange for a release of the Receivership Entity's claims. The payment obligation is secured by a Security Agreement containing a pledge of the assets of Sica Wealth Management, LLC and Circle Squared Alternative Investments, LLC, as well as a mortgage on the home of Mr. Sica and his wife.

17. Sica Wealth Management, LLC and Circle Squared Alternative Investments, LLC were parties to certain contracts with the Receivership Entity including, but not limited to, contracts governing consulting relationships and loans from the Receivership Entity. Both received transfers of value prior to and during the Ponzi period. (Greenspan Decl., ¶ 15).

18. Sica Wealth Management, LLC and Circle Squared Alternative Investments, LLC subsequently transferred certain funds received from the Receivership Entity to Jeffrey C. Sica. (Greenspan Decl., ¶ 16).

19. On October 26, 2020, the Receiver provided courtesy copies of the draft complaint and arbitration demand to counsel for the Sica Parties, and indicated a willingness to explore a negotiated resolution before initiation of litigation. (Greenspan Decl., ¶ 17).

20. Through their counsel, the Sica Parties readily engaged in good faith settlement negotiations. Over the course of the next nine months, each of the Sica Parties completed extremely thorough financial disclosures.<sup>4</sup> Mr. Sica also advised the Receiver of other personal circumstances material to the Receiver's determination that the terms of settlement are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 18).

(v) Additional Net Winner Settlement Agreements

21. The Receiver deems investors in Aequitas securities who received distributions during the Ponzi period in excess of their investment balance, determined as of July 1, 2014, to be "net winners." It is well settled that net winners in a Ponzi scheme such as Aequitas are obligated to repay the net winnings and, in most cases, interest on those net winnings to the receivership estate. *E.g., Donell v. Kowell*, 533 F.3d 762 (9<sup>th</sup> Cir. 2008). Accordingly, the Receiver is pursuing recovery of the net winnings received by Aequitas investors. (Greenspan Decl., ¶ 19).

22. The Receiver issued written pre-litigation demand letters to net winners, offering to release the Receivership Entity's claims relating to the net winnings in exchange for repayment of 90% of the net winnings. (Greenspan Decl., ¶ 20).

23. Many of the net winners have accepted the Receiver's pre-litigation offer and

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<sup>4</sup> Mr. Sica and his wife are working to retire substantial existing debts including federal and state tax liens.

made the required repayment. The Receiver will soon file suit against those who have not settled with the Receivership Entity. (Greenspan Decl., ¶ 21).

24. As of the filing of the Receiver's last motion to approve settlements (Dkt. No. 881), the Receivership Entity had settled with 61 net winners with a combined recovery totaling \$2,772,413.99. (Dkt. No. 881, p. 8, ¶¶ 32-33).<sup>5</sup>

25. Since the filing of the Receiver's last motion to approve settlements, the Receivership Entity has executed Settlement Agreements with three additional net winners, acknowledging the repayments and mutually releasing claims. (Greenspan Decl., ¶ 22, Exs. 5-7). The combined value of the settlements with the additional three net winners is \$148,895.71, bringing the pre-litigation net winner recovery to \$2,921,309.70. *Id.*

(vi) Reasonableness and Best Interests

26. The terms of the Settlement Agreements outlined above are the result of good faith negotiations among the Receiver on behalf of the Receivership Entity and the various counterparties. After diligent investigation by the Receiver and, in the exercise of the Receiver's business judgment, the Settlement Agreements are in the best interests of the creditors of, and investors in, the Receivership Entity. (Greenspan Decl., ¶ 23).

## II. Points and Authorities

### A. Approval of the Settlement Agreements

Pursuant to the Final Receivership Order, the "Receiver may, without further Order of this Court ... compromise ... Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity ...." (Receivership Order, ¶ 26). Here, the compromises of the claims are outside of the ordinary course of business, and the Settlement Agreements are conditioned on Court approval.

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<sup>5</sup> Four additional net winners have agreed to the uniform settlement terms, made the necessary payments and received the Settlement Agreement executed by the Receiver. However, they have not yet countersigned and returned the Settlement Agreement.

Accordingly, the Receiver seeks this Court's approval of, and authority to perform, the Settlement Agreements.

The Receiver's compromises under the Settlement Agreements are comparable to a bankruptcy trustee's compromise of claims in a bankruptcy proceeding under Federal Rule of Bankruptcy Procedure 9019. That rule authorizes a bankruptcy trustee to seek court approval of a settlement, after notice and a hearing. FRBP 9019(a). A bankruptcy trustee is to "proceed in settling [an estate's] accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors." *In re Mailman Steam Carpet Cleaning Corp.*, 212 F3d 632, 635 (1<sup>st</sup> Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, the Receiver has investigated the claims asserted against the counterparties to the Settlement Agreements and believes, in the exercise of his discretion and business judgment, that the various recoveries, releases, and other consideration provided in each of the subject settlement agreements represent fair compromises that are in the best interests of the Receivership Entity, and its creditors and investors.

### **III. Conclusion**

For the foregoing reasons, the Receiver respectfully requests that the Court enter an order (1) approving the compromises of claims set forth in the Settlement Agreements, and (2) approving and authorizing performance of the Settlement Agreements.

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Dated this 7<sup>th</sup> day of July, 2021.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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Entity