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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 October 20, 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 October 27, 2021, 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.

**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> Subsequently, the Court entered orders partially lifting the stay, allowing the Receiver to prosecute certain claims on behalf of the Receivership Entity.

B. The Settlement Agreements

5. Since the Receiver filed the last motion to approve settlements (Dkt. No. 889), resulting in entry of this Court’s Order of July 26, 2021(Dkt. No. 898) approving seven prior settlement agreements, the Receiver has entered 25 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. (Greenspan Decl., ¶ 3). The total value of the 25 additional settlements to the Receivership Estate and ultimately the Defrauded Investors is \$1,207,892.90.

(i) Zukis Settlement Agreement

6. On August 17, 2021, the Receivership Entity entered a Settlement Agreement with Bob Zukis. In accordance with the terms of the Settlement Agreement, Mr. Zukis paid the Receivership Entity \$15,000 and released any claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. (Greenspan Decl., ¶ 4, Ex. 1).

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

<sup>3</sup> *Id.*, ¶ 20.

7. As background, Mr. Zukis served on the Aequitas Advisory Board and, during the Ponzi period, received transfers from Aequitas, referred to as “Advisory Fees,” totaling \$25,271. (Greenspan Decl., ¶ 5).

8. Through counsel, Mr. Zukis readily engaged in good faith settlement negotiations with the Receiver. He made financial disclosures and provided information relating to other personal circumstances supporting the compromise resolution outlined above. (Greenspan Decl., ¶ 6).

(ii) Szabo/Atherton Settlement Agreement

9. On October 15, 2021, the Receivership Entity entered a Settlement Agreement with Thomas Szabo, Julia Szabo and Atherton Capital Holdings, LLC (“Atherton Parties”). (Greenspan Decl., ¶ 7, Ex. 2). Under the Settlement Agreement, the Atherton Parties are obligated to pay the Receivership Entity \$500,000 and release all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. *Id.*

10. As background, the Atherton Parties were parties to certain contracts with the Receivership Entity, including contracts governing consulting relationships, the issuance or sale of Aequitas securities and loans from the Receivership Entity. (Greenspan Decl., ¶ 8).

11. On April 5, 2021, the Receiver caused a demand letter to be served on the Atherton Parties, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received prior to and during the Ponzi period, and demanding repayment of \$736,714. (Greenspan Decl., ¶ 9).

12. Through counsel, the Atherton Parties readily engaged in good faith settlement negotiations with the Receiver. They made extensive financial disclosures and provided information relating to personal circumstances supporting the compromise resolution outlined above. (Greenspan Decl., ¶ 10).

(iii) Additional Net Winner Settlement Agreements

13. 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., ¶ 11).

14. 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., ¶ 12).

15. Prior to the Receiver necessarily filing suit, many of the net winners accepted the Receiver’s pre-litigation offer and made the required repayment. (Greenspan Decl., ¶ 13). As of the filing of the Receiver’s last motion to approve settlements, the Receivership Entity had settled with 64 net winners with a combined recovery totaling \$2,921,309.70. (Dkt. No. 889, p. 5, ¶¶ 24 and 25).<sup>4</sup>

16. On June 28, 2021, the Receiver filed suit against 52 net winners – *Greenspan v. Kingstrom, et. al.*, U.S. District Court for the District of Oregon, Case No. 3:21-cv-00954-JR (“Net Winner Lawsuit”). (Greenspan Decl., ¶ 14).

17. Many of the defendants in the Net Winner Lawsuit readily engaged with the Receiver, seeking to resolve the Receivership Entity’s claims. (Greenspan Decl., ¶ 15). Given that the majority of the net winners settled prior to the Receiver filing suit, it is not surprising

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<sup>4</sup> Four additional net winners agreed to the uniform settlement terms prior to the Receiver filing suit, made the necessary payments and received the Settlement Agreement executed by the Receiver. However, they have not yet countersigned and returned the Settlement Agreement.

that many of the remaining net winners who were necessarily named in the Net Winner Lawsuit did not receive the pre-litigation demand letters, as a result of having moved or an inaccurate address contained in the Aequitas books and records. In those circumstances, the Receiver reverted to the pre-litigation offer to release the Receivership Entity's claims in exchange for repayment of 90% of the net winnings. (Greenspan Decl., ¶ 16).

18. The Receiver has reached settlements with 23 of the net winners named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 17, Exs. 3 - 25). The majority of those settlements are with parties who did not receive the pre-litigation demand letters, at the 90% figure. (Greenspan Decl., ¶ 18).<sup>5</sup> The parties who received but ignored the pre-litigation demand letters agreed to return 100% of their net winnings. (Greenspan Decl., ¶ 19).

(iv) Reasonableness and Best Interests

19. 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., ¶ 20).

**II. Points and Authorities**

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> One net winner that did not receive the pre-litigation demand letters was a trust established to benefit a very elderly widow, who has health issues and is reliant upon the trust proceeds. After careful consideration, the Receiver agreed to release the Receivership Entity's claims in exchange for less than 90% of the net winnings (\$2,997 discount).

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.

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**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.

Dated this 27th day of October, 2021.

Respectfully submitted,

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