

**Troy D. Greenfield**, OSB #892534  
Email: tgreenfield@schwabe.com  
**Lawrence R. Ream** (Admitted *Pro Hac Vice*)  
Email: lream@schwabe.com  
Schwabe, Williamson & Wyatt, P.C.  
Pacwest Center  
1211 SW 5th Ave., Suite 1900  
Portland, OR 97204  
Telephone: 503.222.9981  
Facsimile: 503.796.2900

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

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

**ORDER (1) APPROVING THE FINAL  
REPORT AND ACCOUNTING; (2)  
DISCHARGING AND RELEASING THE  
RECEIVER; (3) ENJOINING CLAIMS  
AGAINST THE RECEIVER AND THE  
RECEIVER’S PROFESSIONAL  
ADVISORS; (4) AUTHORIZING THE  
APPOINTMENT OF A SUCCESSOR  
TRUSTEE/ADMINISTRATOR OF THE  
AEQUITAS QUALIFIED SETTLEMENT  
FUND IRREVOCABLE TRUST (“QSF”);  
AND (5) TERMINATING THE  
RECEIVERSHIP**



This matter having come before the Court on Receiver's Motion For Entry of An Order: (1) Approving the Final Report and Accounting; (2) Discharging and Releasing the Receiver; (3) Enjoining Claims Against the Receiver and the Receiver's Professional Advisors; (4) Authorizing the Appointment of a Successor Trustee/Administrator of the Aequitas Qualified Settlement Fund Irrevocable Trust ("QSF") to Complete the Administrative Functions of the QSF After the Termination of the Receivership Estate; and (5) Terminating the Receivership ("Motion") [Dkt. 1042] and the Court, having given all counsel and interested parties an opportunity to oppose the Motion, and being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the five entity defendants and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed for the Receivership Entity<sup>1</sup> on an interim basis. On April 14, 2016, pursuant to the Order Appointing Receiver, the Receiver was appointed on a final basis.

C. Due, timely, and adequate notice of the Motion was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. The Receiver has fulfilled substantially all of the obligations under the Order Appointing Receiver as described in the Final Report.

E. Resolution of the Receivership's potential federal and state income tax liability, including the analysis and actions related to the formation of the QSF and transfer of

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Order Appointing Receiver.

Receivership assets to the QSF, consumed considerable staff and professional time, but significantly reduced the Receivership's income tax burden, preserving as much as \$2 Million for distribution to claimants. The Receiver, staff, and professionals have worked diligently to fulfill all of the Receiver's tax-related duties and legal obligations as efficiently as possible, including filing tax and informational returns as required.

F. The Receiver has filed all necessary and appropriate federal, state, and local tax returns, and paid all amounts properly due since being appointed. The Receiver has responded timely to all inquiries and correspondence from taxing authorities and resolved them as efficiently as reasonably possible. To the best of the Receiver's knowledge, there are no additional amounts of tax owed, and the Receiver has no knowledge of any audits being conducted or contemplated by any taxing authority.

G. The QSF has filed federal, state, and local tax returns annually since its inception, and will continue to file such returns, as required by law.

H. There is no ongoing or threatened litigation involving the Receivership that the Receiver is aware of, as all known litigation has been resolved.

I. All claims have been resolved, major distributions made on account thereof,<sup>2</sup> and all assets readily monetized have been disposed of by the Receivership.

J. The Receiver has made reasonable and necessary efforts to (1) recover, review, and analyze Receivership Entity business records and documents; (2) complete the Forensic Report reflecting the Receivership Entity financial activities; (3) monetize Receivership assets; (4) resolve litigation recoveries (other than receipt of certain payments due pursuant to court-approved Settlement Agreements that will be collected and administered by the QSF Trustee); and (5) develop and administer an equitable claims and distribution process for Defrauded Investors and other Allowed Claimants.

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<sup>2</sup> The Receiver is in the process of executing the Court-approved fourth distribution.

K. At the initiation of the Receivership, the Receiver took control of the books and records of the Receivership Entity. Additionally, in order to maximize the recovery of assets, including under the various insurance policies, and at the same time clear a path for Defrauded Investors to pursue recovery against third-parties (on claims not held by the Receivership Entity), the Receiver consolidated certain digital data within his control into a centralized, organized, searchable database, which the Receiver made available to interested parties (the “Ringtail Database”). The Ringtail Database contains approximately 17.5 million documents and was also used extensively by the U.S. Attorney’s Office and counsel for the criminal defendants. With the completion of the criminal trial, it is not anticipated that those parties will use the Ringtail Database further. The minimal current and future value of this database to the Receivership Entity and QSF is far outweighed by the significant monthly maintenance costs that will have to continue to be borne the Defrauded Investors and other Claimants.

L. In connection with the winding up and dissolution of Delaware related Aequitas entities that were or are currently part of the Receivership Entity (the “Delaware Entities”), the Receiver has, to the extent possible and pursuant to the Distribution Plan, paid claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to such Delaware Entities. With respect to unknown claims, the Receiver has evaluated claims that are likely to arise or become known as to any such Delaware Entities within 10 years of its dissolution. No additional provisions or reserves are necessary or appropriate for such unknown claims; especially given the expansive and thorough nature of the claims process conducted by the Receiver and the Court-approved bar date for claims. Additionally, there are no pending claims related to the Delaware Entities.

M. The continued administration of the instant Receivership will not result in the recovery of meaningful additional Receivership Assets.

N. The final administrative functions related to the QSF and to the entities that currently constitute the Receivership Entity should be transferred to the control of and completed

by the QSF Trustee, as the costs and expenses of keeping the Receivership open far exceed the much lower costs and expenses of completing the final administrative tasks through the QSF, as administered by the QSF Trustee.

O. In accordance with Article 12.1 of the QSF, the Receiver provided proper notice of his resignation as Trustee and Administrator of the QSF, effective upon termination of the Receivership.

P. The Court having reviewed the Motion, and having considered any objections filed to the Motion, and it appearing that the relief sought in the Motion is in the best interest of the Receivership Entity and its estate,

IT IS HEREBY ORDERED AND DECREED as follows.

1. The Motion is granted in its entirety and the Court hereby orders:
  - (a) The Receiver is authorized to perform any remaining administrative tasks that may arise in connection with winding up the Receivership, and to take all actions necessary to transfer all of the Receiver's rights and authority related to the Receivership Entity, including control over any remaining Receivership assets, to the QSF and implement the relief requested in the Motion. The Receiver's authority shall continue unabated until he has determined, in his sole business judgment, that all tasks have been completed to implement the relief requested in this Motion, resulting in termination of the Receivership and transfer of authority to the QSF Trustee.
  - (b) The Receiver and the QSF Trustee will jointly file notice of the termination of the Receivership and transfer of authority to the QSF Trustee, upon which the Receivership shall terminate.
  - (c) The Receiver is authorized to pay post-receivership fees and expenses in a self-executing manner, without further Court order, upon the consent of the SEC. In addition, the Receiver, at the appropriate time and based upon the Receiver's determination that no further post-Receivership fees and expenses remain outstanding, is authorized to transfer all remaining Receivership funds to the QSF Trustee.
  - (d) The Receiver's resolution of federal, state, and local tax matters are approved.
  - (e) Upon termination of the Receivership, the QSF Trustee shall file all appropriate tax returns for any remaining Receivership Entity and the QSF

itself, and pay all taxes actually owed by the QSF itself, for each calendar year of the pendency of the QSF.

- (f) In addition to authority and responsibility for all QSF related tax matters, upon termination of the Receivership, the QSF Trustee shall have sole responsibility for and authority over all Receivership related tax matters, including all dealings with the Internal Revenue Service, state departments of revenue, and all other taxing authorities. The QSF Trustee will determine whether there will be further distributions. Following the final distribution or, in the event such a distribution is not possible, upon his determination that the QSF should be terminated, the QSF Trustee will provide notice to the Court together with his recommendation to terminate the QSF. All necessary and appropriate tax returns will be submitted prior to or contemporaneously with termination of the QSF.
- (g) Upon the termination of the Receivership, all cash and other assets of whatever nature and wherever situated, including, but not limited to, all tangible and intangible personal property (other than ownership of any remaining Receivership Entity), savings accounts, checking accounts, investments, and the right to payments of any kind, not previously transferred from the Receivership Entity to the QSF Trustee are deemed held by the QSF, without further action. The Receiver and QSF Trustee are authorized but not required to take such other steps deemed appropriate to confirm such ownership.
- (h) Upon termination of the Receivership, all of the rights and authority previously granted to the Receiver by this Court, including the Receiver's authority to manage and control the Receivership Entity and their assets, shall be granted to the QSF Trustee. The Receiver and QSF Trustee are authorized but not required to take such other steps deemed appropriate to confirm such management and control.
- (i) Any Administrative claims not sought and allowed by the Court prior to termination on the Receivership are barred, waived, released and void as against the Receivership Entity, the Receiver, the Professionals, the QSF Trustee, and the QSF.
- (j) Unless another party in interest is willing to compensate the QSF for the monthly costs to maintain the Ringtail Database, the Receiver and the QSF Trustee are authorized to suspend and/or terminate the current service for the Ringtail Database, in their sole discretion, based on their reasonable business judgment.
- (k) The Receiver and the QSF Trustee are authorized but not required to dispose of and/or destroy the hard copy and electronic records of the Receivership Entity within their possession, custody, or control, in their sole discretion,

based upon their reasonable business judgment.

- (k) Based on the expansive and thorough nature of the claims process conducted by the Receiver and the Court-approved bar date for claims, the Receivership is not required to reserve any funds or other assets for unknown claims against the Delaware Entities for the next 10 years.
- (l) In accordance with Articles 12.3, 12.4, 13.11 and 13.12 of the QSF, Mr. David Stapleton, of the Stapleton Group, is hereby appointed as the Successor Trustee and Administrator of the QSF (“QSF Trustee”).
- (m) The QSF Trustee shall be the real party in interest and designated payee of all assets and obligations owed to the Receivership Entity and/or the QSF, including but not limited to obligations owed pursuant to previously approved settlement agreements and Court orders.
- (n) Upon termination of the Receivership, the QSF Trustee is authorized to bring, defend, and settle claims or other litigation directly, without reopening the Receivership case and without a Court Order, but in no case or circumstance purport to bind or obligate the Receivership. The QSF Trustee shall use, in his sole discretion, reasonable business judgment regarding any such decisions.
- (o) With the limited exception that QSF Trustee will not be required to file quarterly reports (Article XIV), the QSF Trustee shall have all of the powers, authorities and duties granted to the Receiver by the Order Appointing Receiver and the QSF Trustee is hereby authorized to amend the Trust accordingly. Further, the provisions of the Order Appointing Receiver shall govern the rights, duties, and powers of all persons, governmental entities, and courts in relation to the QSF, the QSF Trustee, the assets of the QSF, and all actions taken by the QSF Trustee in relation to the QSF, including without limitation in relation to the services of the Successor Trustee and Administrator of the QSF and any persons or professionals retained by Mr. Stapleton in those additional capacities.
- (p) The QSF Trustee is further authorized to pay the costs of administration of the QSF, including the fees and costs of the QSF Trustee and his Professionals, in accordance with the process set forth in the Order Appointing Receiver.
- (q) The QSF Trustee is authorized to make a final distribution to Allowed Claimants including Defrauded Investors, after monetizing the remnant assets, winding up the other affairs of the Receivership Entity, and paying the expenses for the administration of the QSF.
- (r) The QSF Trustee is authorized to abandon, or transfer any assets or unliquidated interests of the Receivership or the QSF as the QSF Trustee

deems appropriate in his sole discretion. The QSF Trustee shall use his reasonable business judgment regarding any such decisions.

- (s) To the extent not otherwise distributed, the QSF Trustee is authorized to transfer any remaining funds to the Treasury Department.
- (t) This Court retains continuing jurisdiction over the QSF as well as any and all matters relating to the QSF and the Successor QSF Trustee. To the extent any dispute arises concerning the Receiver's administration of the Receivership Entity, or to the extent any person or entity seeks to pursue or assert any claim or action against the Receivership Entity, the Receiver, or his Professionals arising out of or related to this Receivership or the QSF, the Court shall retain jurisdiction to hear and resolve any such dispute or claim. Additionally, the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.
- (u) The litigation stay previously entered by this Court shall remain in place to prevent further post-discharge expenses by the Receiver, his Professionals, the QSF Trustee, or the QSF, after entry of this Order. Leave of this Court shall be required before any claim, cause of action or other filing can be lodged against any entity included within the Receivership Entity during the course of the Receivership, the Receiver, his Professionals, the QSF Trustee, or the QSF. All creditors, investors, and other parties in interest are permanently enjoined and forever barred and restrained from taking any action to impose or seek to impose liability on the Receiver, his Professionals, or the QSF Trustee, without first obtaining relief to do so from this Court.
- (v) Upon the termination of the Receivership, the Receiver and his Professionals shall be fully relieved and discharged of all duties and obligations under the March 16, 2016 Order Appointing Receiver, and any other duties or obligations incident to the Receiver's service or appointment as Receiver in this case, including, without limitation, any duties or obligations incident to services provided to the Receiver in this case upon (1) the expiration of the deadline for any person to file a notice of appeal in connection with this Order or (2) the exhaustion of any appeal and any further proceedings before this Court following an appeal, whichever is later.
- (w) Upon termination of the Receivership, the Receiver and his Professionals and their agents, members, managers, partners, attorneys or associates, and affiliates (the "Released Parties") are, and shall be, fully and completely released and discharged from any and all claims, causes of action, suits, charges, complaints, counterclaims, actions, grievances, demands, rights, accounts, judgments, damages, costs and all other liabilities of any kind or description whatsoever, whether direct or indirect, known or unknown, in

law or in equity, which anyone has, or will have, against them for matters arising from their administration of the Receivership Entity and the QSF, including, without limitation, (1) any and all known and unknown claims subject to the Claims Bar Date Order and the Court-approved Distribution Plan, (2) any duties, liabilities, responsibilities, and claims that may be imposed by, concerning, or relating to any federal, state, municipal, local, or corporate authority tax returns, taxes, penalties, and interest related to the Receivership Entity and the QSF; (3) any liability to any person or entity for any action taken in connection with the Receivership or the QSF, including, without limitation, actions taken in connection with carrying out any orders entered in this case. In no event shall the Released Parties be liable to anyone for their good faith compliance with: (i) any order, rule, law, judgment or decree; (ii) the duties and responsibilities as Receiver or as a professional to the Receiver; and/ or (iii) any actions taken or omitted by them, except on a finding by this Court that he, she, it or they acted or failed to act as a result of bad faith or gross negligence or in reckless disregard of his, her, it's or their duties.

- (x) Upon filing notice of the termination of the Receivership and transfer of authority to the QSF Trustee, the Receiver is discharged from his appointment and is relieved of all obligations under the Order Appointing Receiver.
- (y) All disbursements made by the Receiver, as identified in the Final Report, are approved.

2. All objections to the Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are hereby overruled.

3. This Court shall retain jurisdiction over any issues relating to the interpretation or enforcement of this Order.

4. This Order shall be binding in all respects on the Receiver, the QSF, the QSF Trustee, all creditors, other parties in interest, and interest holders of the Receivership Entity, and their successors and assigns.

Dated this 1st day of November, 2023.

/s/ Jolie A. Russo  
United States Magistrate Judge Jolie A. Russo

SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: *s/ Troy Greenfield*

Troy D. Greenfield, OSB #892534

tgreenfield@schwabe.com

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

lream@schwabe.com

Telephone: 503.222.9981

Facsimile: 503.796.2900

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