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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 REQUEST FOR (1) FINAL
ALLOWANCE OF THE FEES AND
EXPENSES PREVIOUSLY APPROVED IN
THE PRIOR TWENTY-NINE INTERIM FEE
APPLICATIONS, (2) FINAL ALLOWANCE
AND RELEASE OF THE TWENTY
PERCENT HOLDBACK FROM THE PRIOR
TWENTY-NINE INTERIM FEE
APPLICATIONS, AND (3) FINAL
ALLOWANCE AND PAYMENT OF THE
FEES AND EXPENSES INCURRED FOR
THE PERIOD FROM JULY 1, 2023
THROUGH OCTOBER 31, 2023



LOCAL RULE 7-1

On February 5, 2024, counsel for the Receiver circulated to the approximately 60 counsel of record, via e-mail, copies of this motion, the Declaration of Ronald F. Greenspan, exhibits, and the proposed order, which were substantially the same as the filed versions. The conferral requested that counsel respond by 12:00 p.m. (PST) on February 12, 2024, as to whether their clients object or consent to the motion. As of the time of this filing, the undersigned had received zero objections. Prior to the filing of this Application and in accordance with the direction set forth in the Order Appointing Receiver, the Receiver also provided the Securities and Exchange Commission (the “SEC”) complete copies of this motion, the Declaration of Ronald F. Greenspan, exhibits, and the proposed order and copies of the invoices for the additional application period. The SEC advised the Receiver that it has no objection to the relief requested in this final fee application.

I. BACKGROUND AND RELIEF REQUESTED

This Final Fee Application for the Receiver and Professionals requests (i) allowance on a final basis for the fees and expenses previously approved in the prior Twenty-Nine Interim Fee Applications, (ii) final allowance and release of the twenty percent (20%) holdback from the prior Twenty-Nine Interim Fee Applications (the “Holdback”), and (iii) final allowance and payment of their respective fees and expenses for fees and costs incurred, after the approval of the Twenty-Ninth Interim Fee Application, for the period from July 1, 2023 through October 31, 2023, without holdback of a reserve (the “Final Fee Application”). The Final Fee Application is supported by the Declaration of Ronald F. Greenspan, filed contemporaneously herewith (the “Greenspan Declaration”).

On October 17, 2023, the Receiver filed his motion seeking to terminate the Receivership Estate and requesting further and additional relief (the “Closing Motion”), which is incorporated herein.¹ The Court granted the Receiver’s Closing Motion on November 1, 2023 (the “Closing Order”).² The Closing Order (i) approved the Receiver’s Final Report; (ii) provides for the discharge of the Receiver from the duties and responsibilities set forth in the Order Appointing Receiver; (iii) enjoined claims against the Receiver and his professional advisors; (iv) authorized the appointment of a successor Trustee/Administrator of the Aequitas Qualified Settlement Fund Irrevocable Trust (the “QSF”) to take appropriate actions to complete the remaining functions of the QSF; (v) terminated the Receivership (effective upon the joint notice of termination filed by the Receiver and the QSF Trustee); and (vi) retained Court jurisdiction over the QSF until its termination prior to the dismissal of the captioned matter *SEC v. Aequitas Management, LLC, et al.*, 3:16-CV-00438-JR.

The Closing Motion also advised all interested parties that the Receiver and Professionals³ would file a separate Final Fee Application seeking allowance and payment of

¹ Motion of the Receiver, Ronald F. Greenspan, 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 (the “Closing Motion”) [Dkt. 1042].

² 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 [Dkt. 1045].

³ For the purposes of this Final Fee Application, the Receiver’s “Professionals” are FTI Consulting and the Receiver’s attorneys, Pepper Hamilton, Schwabe, Williamson & Wyatt, Morrison Foerster, Law Office of Stanley H. Shure, Snell & Wilmer, Parsons Farnell & Grein, Pachulski Stang Ziehl & Jones, Akin Gump, and Ater Wynne.

their fees and costs and release of the twenty percent (20%) holdback that has been accumulating since March 16, 2016. At the request of the SEC, the Receiver and Professionals agreed to the twenty percent (20%) holdback in each of the Twenty-Nine Interim Fee Applications approved quarterly by the Court, the payment of which was deferred by agreement until the closing of the Receivership. Additionally, at the request of the SEC in 2016, the Receiver and Professionals discounted their 2016 standard hourly rates for the benefit of the Defrauded Investors and other Claimants.⁴ Moreover, the Receiver and Professionals did not to seek increase the 2016 billing rates charged to the Receivership, despite very substantial increases in their standard billing rates since the inception of the Receivership nearly eight years ago.

II. RECEIVER'S QUARTERLY REPORTS AND TWENTY-NINE INTERIM FEE APPLICATIONS

As mandated by the Order Appointing Receiver, the Receiver's Quarterly Reports, covering the period from March 16, 2016 to June 30, 2023,⁵ contain details of the Receiver's

⁴ Professionals engaged subsequent to 2016 also discounted their standard hourly rates.

⁵ The Receiver filed a voluntary report and recommendations to the Court (the "Initial Report") for the first "stub quarter" ending June 30, 2016 [Dkt. 246], the first mandated quarterly report covering the period through September 30, 2016 [Dkt. 298] and subsequent reports covering the period through December 31, 2016 [Dkt. 365], through March 31, 2017 [Dkt. 444], through June 30, 2017 [Dkt. 491], through September 30, 2017 [Dkt. 559], through December 31, 2017 [Dkt. 587], through March 31, 2018 [Dkt. 610], through June 30, 2018 [Dkt. 644], through September 30, 2018 [Dkt. 662], through December 31, 2018 [Dkt. 674], through March 31, 2019 [Dkt. 700], through June 30, 2019 [Dkt. 749], September 30, 2019 [Dkt. 776], through December 31, 2019 [Dkt. 793], through March 31, 2020 [Dkt. 826], through June 30, 2020 [Dkt. 843], through September 30, 2020 [Dkt. 860], through December 31, 2020 [Dkt. 872], March 31, 2021 [Dkt. 885], through June 30, 2021 [Dkt. 903], through September 30, 2021 [Dkt. 915], and through December 31, 2021 [Dkt. 922], through March 31, 2022 [Dkt. 979], through June 30, 2022 [Dkt. 997], through September 30, 2022 [Dkt. 1006], through December 31, 2022 [Dkt. 1019], through March 31, 2023 [Dkt. 1024], and through June 30, 2023 [Dkt. 1029] (collectively referred to herein as the "Receiver's Reports").

work stabilizing the Receivership Entity, monetizing assets, assembling and making records available to investors used in litigation by counsel for Defrauded Investors, investigating and preparing the Forensic Report, negotiating extensively with and ultimately settling with the Consumer Financial Protection Bureau, and 14 state attorneys general, implementing a settlement exceeding \$183 million of relief and impacting approximately 47,000 student borrowers, implementing a claims process, developing and implementing a distribution plan (resulting in payments to Defrauded Investors and others in excess of \$222 million), actively participating in the extended mediation process amongst the Defrauded Investors and professional defendants resulting in payments to the investor class-action plaintiffs totaling \$234,613,000, as well as multiple additional seven and eight-figure payments to other non-class plaintiff investor groups subject to confidentiality agreements and pursuing and recovering fraudulent transfers, in the form of commissions, consulting fees and net winner payments. The Receiver's numerous settlements resulted in over \$23.3 million in direct monetary benefits to the Receivership Estate and the elimination of at least \$130 million of claims against the Receivership Estate, materially increasing the recovery on the allowed claims of the Defrauded Investors and others.

The previous Twenty-Nine Interim Fee Applications,⁶ like the Quarterly Reports, are incorporated herein as additional evidence in support of the Final Fee Application. All of the requested fees and expenses are consistent with the Billing Instructions for Receivers in Civil Actions Commenced by the SEC (the "Billing Instructions"). In accordance with the provisions

⁶ Greenspan Declaration, Exhibit C contains a list of the prior Twenty-Nine Interim Fee Applications and the associated Court Order approving each of those interim fee applications.

set forth in the Order Appointing Receiver, the Receiver provided the SEC copies of the detailed invoices of the Receiver and Professionals prior to the filing of each of the Twenty-Nine Interim Fee Applications and this Final Fee Application. After review of each interim fee application and this Final Application, the SEC advised the Receiver that it had no objection the requested fees and expenses (on occasion, the SEC had a question, comment, or modification, which the Receiver addressed) prior to the filing of the related fee application. After conferral and filing, no other interested party filed an objection to any of the Twenty-Nine Interim Fee Applications. The Court granted all of the fees and expenses requested in the prior Twenty-Nine Interim Fee Applications as reasonable and necessary.⁷ The requested Holdback amounts to be released are fees that were previously approved by the Court in each of those Twenty-Nine Interim Fee Applications.

Portions of the prior Receivership Reports and interim fee applications are included herein to assist the Court in its determination that the requested fees and costs, including the Holdback, are reasonable under the circumstances of this matter. The Receiver respectfully asserts that for the reasons stated herein and in each of the Receiver's Reports and Twenty-Nine Interim Fee Applications, the Receiver's request for allowance and payment of the requested fees and costs of the Receiver and Professionals, including release of the Holdback, meets the criteria for allowance and payment under governing law.

III. THE RECEIVER AND PROFESSIONALS

On March 16, 2016, pursuant to the Interim Order, the Receiver engaged FTI Consulting,

⁷ Greenspan Declaration, Exhibit C containing a list of the prior Twenty-Nine Interim Fee Applications and the associated Court Order approving each of those interim fee applications.

Inc. (“FTI”), as well as the law firms of Pepper Hamilton LLP (“Pepper”), Schwabe, Williamson & Wyatt PC (“Schwabe”) and Pachulski Stang Ziehl & Jones LLP (“Pachulski”) on an interim basis. On April 14, 2016, pursuant to the Final Receivership Order, the Receiver engaged FTI, Pepper, Schwabe and Pachulski on behalf of the Receivership Entity.

On July 18, 2016, pursuant to the Order Granting Receiver’s Application To Employ Counsel, the Receiver employed the Law Offices of Stanley H. Shure (“Shure”), Akin Gump Strauss Hauer & Feld LLP (“Akin”), Morrison & Foerster LLP (“MoFo”) and Ater Wynne LLP (“Ater”) *nunc pro tunc* to March 10, 2016.

On May 3, 2018, pursuant to the Order Granting Receiver’s Application to Employ Counsel, the Receiver employed Snell & Wilmer LLP (“Snell & Wilmer”) in order to retain attorney, Ivan B. Knauer, who relocated from Pepper Hamilton to Snell & Wilmer.

On June 10, 2019, pursuant to the Order Granting Receiver’s Application to Employ Counsel, the Receiver employed Parsons, Farnell & Grein, LLP (“Parsons Farnell) as local insurance counsel for the Receiver.

1. FTI Consulting - Receiver, Financial Advisor and On-Site Management

The Receiver is employed as a Senior Managing Director of FTI, which bills and collects for the Receiver’s time and expenses. To support the Receivership, the Receiver has retained FTI and has access to FTI professionals. FTI is serving as financial advisor to the Receiver and providing on-site and remote (given the restraints imposed by the Covid-19 pandemic and the reduced Receivership staffing) management supervision over the operations of the Receivership Entity. Additionally, FTI has been instrumental in preparing assets for market, running certain sale processes, data and information consolidation, investor account data verification,

coordinating and overseeing the forensic accounting, development and implementation of the national Corinthian Colleges student note receivable settlement with the CFPB and fourteen state Attorneys General, planning and implementation of the claims process, distribution plan development and implementation, and the wind down of the estate.

2. Pepper Hamilton - Securities and Exchange Commission Counsel

Pepper was retained by the Receiver in connection with SEC-related matters, including the SEC Complaint and discovery promulgated thereunder. Pepper has also acted as a point of contact for the Receiver with the Consumer Financial Protection Bureau (the “CFPB”) and certain other governmental agencies. Pepper has also assisted the Receiver with certain transactional work.

3. Snell & Wilmer - Securities and Exchange Commission Counsel

Following the move of attorney Ivan Knauer from Pepper to Snell & Wilmer around May 1, 2018, Snell & Wilmer represented the Receiver in connection with SEC-related matters, including the SEC Complaint and discovery promulgated thereunder. Snell & Wilmer also represented the Receiver regarding other regulatory inquiries and acted as a point of contact for the Receiver with the state Attorneys General, the CFPB, and certain other governmental agencies. Counsel was diligently ensuring there was no duplication in work performed by Pepper and Snell & Wilmer.

4. Schwabe, Williamson & Wyatt – General Receivership and Litigation Counsel

As general counsel to the Receiver, Schwabe provides general outside counsel advice, as well as the majority of transactional and litigation support for all matters other than the SEC

action. As periodically requested by the Receiver and as required of local counsel, Schwabe assists in the SEC enforcement action. Schwabe also communicates with the SEC Staff regarding operations, asset sales and other issues related to the administration of the Receivership.

5. Pachulski Stang Ziehl & Jones – Bankruptcy Counsel

Pachulski has been retained to provide advice involving bankruptcy related matters, if needed. Pachulski also advised the Receiver at outset of the case on various receivership set up and administration matters and performed lien perfection analyses.

6. Stanley H. Shure – Insurance Counsel

The Law Offices of Stanley H. Shure was retained to provide counsel on all insurance coverage issues pertaining to the Receivership Entity, including but not limited to: (a) reviewing and analyzing the Receivership Entity’s liability insurance policies with respect to the claims made against it, (b) providing counsel in connection with insurance coverage disputes with the Receivership Entity’s insurers, (c) evaluating the “Bankers Bond” policy for scope of coverage and whether the Receivership Entity holds any claims under the policy, and (d) analyzing and providing counsel with respect to claims, if any, that the Receivership Entity may have against former directors and officers of the Receivership Entity.

7. Morrison & Foerster – Consumer Financial Protection Bureau

Before the SEC filed suit, MoFo was counsel for three entities within the Receivership Entity: Aequitas Capital Management, Inc., Aequitas Commercial Finance, LLC, and Campus Student Funding, LLC on two matters. Specifically, MoFo represented those three entities with respect to (a) the Corinthian Colleges’ bankruptcy case, and (b) an investigation initiated by the CFPB and certain state attorneys general relating to Corinthian-related student loans owned by Campus Student Funding (the “CFPB Matter”). The Receiver has retained MoFo with respect to

ongoing representation in the CFPB Matter only and assistance with various consumer finance matters.

8. Akin Gump Strauss Hauer & Feld – Special Litigation Counsel

Prior to entry of the Interim Order, Akin was counsel to certain entities within the Receivership Entity in two matters. First, Akin represented Aequitas Capital Management, Inc. in the matter of American Student Financial Group, Inc., et al. v. Aequitas Capital Management, Inc., Case No. 12-cv-02445-CAB-JMA (S.D. Cal.). Akin also represented Robert Jesenik and Andrew MacRitchie in that action but claims against those individuals were dismissed on summary judgment. Second, Akin has represented the following companies in the Receivership Entity, in the matter of American Student Financial Group, Inc. v. Campus Student Funding, LLC, et al., Case No. 37-2013-00028562-CU-IP-CTL (San Diego Superior Court): Aequitas Commercial Finance, LLC; Aequitas Investment Management, LLC; Aequitas Income Protection Fund, LLC; Aequitas Income Opportunity Fund, LLC; and Aequitas Capital Management, Inc. Akin has also represented Campus Student Funding, LLC, f/k/a ASFG, LLC, Thomas Szabo, and Thomas Reiter in the same matter.

9. Parsons Farnell & Grein, LLP-Local Counsel for Insurance Matters

Parsons Farnell is special co-counsel serving as local insurance recovery counsel for the Receiver in connection with claims implicating the directors' and officers' insurance coverage issued to one or more of the entities comprising the Receivership Entity and assisting the Receiver regarding general insurance matters.

10. Ater Wynne – Conflicts Counsel Regarding Wells Fargo Bank, NA

Ater was retained to represent the Receiver with respect to matters adverse to Wells

Fargo Bank and other matters where the Receiver's retained counsel had a conflict of interest. The Wells Fargo liability has been retired. Ater withdrew as counsel to the Receiver effective April 4, 2017 [Dkt. 396].

IV. THE RECEIVER REQUESTS FINAL ALLOWANCE AND PAYMENT OF FEES AND EXPENSES AND RELEASE OF THE TWENTY PERCENT (20%) HOLDBACK

A. Allowance on a final basis should be granted for the fees and expenses of the Receiver and Professionals, previously approved in the prior Twenty-Nine Interim Fee Applications and for release of the associated Twenty Percent (20%) Holdback.

The Order Appointing Receiver provides that “[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense Reimbursement from the Receivership Estates....”⁸ Applications for compensation and expense reimbursement are on an interim basis, subject to final review at the close of the Receivership.⁹ Allowed fees are subject to a twenty percent (20%) holdback pending final review and closing of the Receivership. Allowed expenses were not subject to a holdback and were paid on a quarterly basis. The Quarterly Reports and the prior Twenty-Nine Interim Fee Applications set forth the bases upon which the Court previously allowed the requested fees and expenses of the Receiver and Professionals as reasonable and necessary. The Receiver requests final allowance of the fees and expenses of the Receiver and Professionals, previously approved in the prior Twenty-Nine Interim Fee Applications and release of the related twenty percent (20%) Holdback.

In 2016, the Receiver and Professionals agreed to substantial discounts to their customary hourly fees, which have not increased during the almost eight-year duration of this proceeding.

⁸ Dkt. 156, ¶ 45.

⁹ Dkt. 156, ¶ 47.

Those meaningful and continuing discounts constituted a substantial benefit to the Receivership Entity. The time spent, services performed, hourly rates charged, and expenses incurred were in the best interests of the Receivership Entity and were indeed essential for the Receiver to perform his Court-ordered duties.¹⁰

The Receiver and Professionals now request final allowance of the previously approved Twenty-Nine Interim Fee Applications and release of the twenty percent (20%) Holdback as reasonable and necessary, now that the Closing Order has been entered.

As this Court is well aware, this proceeding arose from a Ponzi scheme perpetrated against more than a thousand investors. In March 2016, the U.S. Securities and Exchange Commission filed the above-captioned action, alleging violations of federal securities law (the “Enforcement Action”).¹¹ The SEC alleged that, following failed investments in 2014, Robert Jesenik, Brian Oliver, and N. Scott Gillis transformed entities that they controlled, the above-captioned Entity Defendants, into a “Ponzi-like” scheme and, by the end of 2015, those entities owed approximately 1,500 investors more than \$600 million and “had virtually no operating income to repay them.”¹²

The Receiver was appointed by this Court pursuant to its equitable powers as a “necessary and appropriate” measure to “marshal[] and preserv[e] all assets of [the Entity Defendants].”¹³ Since then, pursuant to Court-authorized powers and duties, the Receiver has

¹⁰ Greenspan Declaration, p. 10.

¹¹ *See* Complaint Dkt. 1.

¹² *Id.* at ¶¶ 3, 5, 56.

¹³ Order Appointing Receiver, Dkt. 156 at ¶ 1.

preserved, managed and liquidated assets, investigated, litigated, and settled a broad range of claims, disbursed funds to Defrauded Investors and other claimants, and reported to this Court about the prior operations and status of the Receivership Estate.

The Quarterly Reports and Twenty-Nine Interim Fee Applications summarize the almost eight years the Receiver and Professionals worked on this matter, stabilizing the Receivership Entity, running the operations, preserving value when possible, facilitating the monetization of virtually all of the material Receivership assets, obtaining approval of the Distribution Plan and completing four Court-approved interim distributions of Receivership assets reasonably available for distribution. Through October 31, 2023 (the end of the Final Fee Application Period), the Receiver sold Receivership Entity gross assets and collected receivables totaling approximately \$325 million, plus an additional \$32 million of gross assets owned by CPFIT (an affiliate of the Receivership Entity but excluded from the Receivership itself), collected proceeds from litigation and settlements totaling approximately \$21.5 million, and negotiated claims reductions exceeding at least \$130 million as part of approved settlement agreements.

Through the end of the Final Fee Application period, the Receiver also completed the implementation of a settlement with the CFPB and fourteen state Attorneys General in connection with the Corinthian Colleges student loan portfolio held by Campus Student Funding, LLC, including modification or cancellation of each of the approximately 47,000 loans, and appropriate notification to each of the borrowers, together with maintaining a help/hotline that received over 2,530 calls from borrowers. The Receivership staff separately addressed over 1,940 direct borrower inquiries.

The Receiver avoided potentially costly and long-drawn out litigation by securing a settlement with the SEC regarding its complaint against the five Aequitas Entity Defendants. On

June 6, 2016, in resolution of the SEC's March 16, 2016 complaint against the Aequitas Entity Defendants, the SEC and the Receiver (acting on behalf of the Aequitas Entity Defendants) filed a consent judgment with the Court, which resolved the claims set forth in the SEC Complaint against the Entity Defendants only, without admitting or denying the numerous allegations [Dkt. 188]. As to Aequitas Management, LLC; Aequitas Holdings, LLC; Aequitas Commercial Finance, LLC; Aequitas Capital Management, Inc; and Aequitas Investment Management, LLC the Court entered a final judgement on April 13, 2020 [Dkt. 822]. As part of the final judgment, the SEC agreed there would be no financial penalty assessed against the Aequitas Receivership entities, thereby enhancing Defrauded Investor recoveries.

As mandated by the Final Receivership Order, the Receiver conducted his forensic investigation and the resulting forensic report (the "Forensic Report") was filed with the Court on November 21, 2018 [Dkt. 663]. The Forensic Report concluded that Aequitas was insolvent on or before July 3, 2014 and continued to be insolvent up to the SEC's filing of the Enforcement Action in March 2016. The Forensic Report was instrumental in the litigation pursued by the Defrauded Investors against the Professional Firm Defendants and others outside the Receivership that resulted in several hundred million dollars of additional recoveries.

On April 25, 2019, the Court entered the 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 (the "Claims Procedures Order"). Thereafter, the Receiver implemented the claims process, as mandated in the Claims Procedures Order. The Receiver researched and analyzed a myriad of Aequitas legacy records and then issued 4,830 initial

Notices of Receiver's Initial Determination¹⁴ and received 343 claims. If an investor or creditor agreed with the NOD, then it did not need to file a proof of claim. The Receiver's NOD process affectively eliminated the need by over 90% of the investors and creditors to incur the time and expense of filing claims, while also greatly reducing the Receivership's cost to evaluate and resolve filed claims. The Receiver successfully resolved or adjudicated all of the claims filed against the Receivership Estate.

On December 23, 2019, the Receiver filed his motion and the Court entered the Order to Authorize, Approve, and Take Continuing Jurisdiction Over a Qualified Settlement Fund ("QSF"), and For Related Relief [Dkt. 781], mitigating certain tax consequences, which arose from a change in Oregon law and maximizing future distributions on Allowed Claims.

On December 31, 2019, the Receiver filed his Motion to Approve the Receiver's Distribution Plan And Determination Of A Ponzi Scheme [Dkt. 787]. The Court held a telephonic hearing on this Motion on March 31, 2020 and, following no objections raised at the hearing or otherwise remaining unresolved, the Court entered Findings of Fact and Conclusions of Law, approving the Receiver's Distribution/Ponzi Determination Motion, as expressly modified by the Receiver [Dkt. 813] (the "Court-approved Distribution Plan").

In furtherance of the Court-approved Distribution Plan, the Receivership staff and Professionals expeditiously managed the distribution plan noticing campaign, based on the form and manner of notice approved by the Court. Not less than 4,796 notices were sent to the parties

¹⁴ Certain claimants agreed with the Notice of Receiver's Initial Determination ("NOD"), and a number of filed claims were duplicative. Therefore, the number of actual claims is less than the sum of the filed claims and NODs issued.

that the Court required to be noticed and relevant information was posted on the Receivership website.

Based on the filing of four separate motions, the Receiver obtained Court approval for the classification, claim amount and distribution amount and payment (as calculated pursuant to the Court-approved Distribution Plan) for all holders of Administrative Class Claims, Convenience Class Claims, Creditor Class Claims, Defrauded Investor Class Claims, Former-Employment Class Claims, Individual Defendant Class Claims, and Pass-Through Investor Class Claims.¹⁵ In total, the Receivership will have distributed in excess of \$117 million to Defrauded Investors and other claimants of the Receivership Estate,¹⁶ in addition to the over \$105 million paid by the Receivership to secured creditors and other counterparties.

From the outset of the Receivership and through the Final Fee Application period, the Receiver and Professionals expended considerable time and effort orchestrating the successful resolution of investors' claims against the professional firms that served the various Aequitas

¹⁵ (1) 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 Approving Distributions to those Claimants [Dkt. 835], granted by the Court on June 1, 2020 [Dkt. 838]; (2) 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 [Dkt. Nos. 848-850], granted by the Court on November 10, 2020 [Dkt. 861]; (3) Receiver's Third Motion to Approve Classification of Certain Claims (Administrative, Convenience Class, Creditors, and Defrauded Investors), Allow and Approve Distributions on Account of Certain Claims, and Approving Distributions to Claimants Who Elect Reclassification To Convenience Class Status [Dkt. 895], granted by the Court on August 5, 2021 [Dkt. 902]; and (4) Receiver's (Fourth) Motion to Approve (1) Classification and Allowance of Certain Administrative and Creditor Class Claims, and (2); Approve Distributions on Account of Certain Allowed Administrative and Defrauded Investor Class Claims [Dkt. 1034], granted by the Court on September 19, 2023 [Dkt. 1038].

¹⁶ Not including Receiver and professional compensation.

entities such as Tonkon Torp, Integrity Bank & Trust, Deloitte & Touche, EisnerAmper, Sidley Austin, Duff & Phelps, and TD Ameritrade (“Professional Firm Defendants”).

In particular, development of the Receivership Entity’s consolidated database, preparation of the Forensic Report and facilitation of multiple large-scale, multi-day mediation sessions paved the way for the following:

- Payments from the Professional Firm Defendants to the class totaling \$234,613,000, as well as multiple additional seven- and eight-figure payments to other plaintiff groups presently subject to confidentiality agreements;
- Releases of contribution and other claims of the Professional Firm Defendants against the Receivership Entity, including the release of \$50 million contribution claim presented by Deloitte; and
- Contingent releases of contribution and other claims of the Professional Firm Defendants against the Individual Defendants, Advisory Board members and other former officers and directors. The original releases were contingent upon those parties releasing claims to the proceeds of the insurance policies maintained by entities comprising the Receivership Entity.

The Receiver’s efforts developing the consolidated database and investigating and completing the Forensic Report, which were relied upon by the Defrauded Investor Groups in their claims against the Professional Firm Defendants, greatly accelerated and increased the distributions to the investors, both direct distributions of the settlement proceeds and ultimately distributions from the Receivership estate and meaningfully reduced the cost of administering the

Receivership. Further, to increase the amount of these settlements and to expedite receipt of money by the Defrauded Investors, as part of the global settlement, the Receivership agreed to contribute its claims against the Professional Firm Defendants and Individual Defendants to the settlements.

On October 22, 2020, the Receiver filed a Motion for Order (1) Approving Compromises of Claims, (2) Approving and Authorizing Performance of Settlement Agreements, (3) Entering Claims Bars, and (4) Removing a Receivership Entity and an Extended Entity (“Motion to Approve Settlements”) and related pleadings [Dkt. Nos. 852 – 855] encompassing 36 settlements. Amongst other requested relief, the Receiver sought approval of the settlement agreement resolving all claims presented in the consolidated insurance coverage action other than those of the Receiver against Catlin. On December 11, 2020, Judge Hernandez issued an Order adopting Judge Russo’s Findings and Recommendation and granted the Receiver’s Motion to Approve Settlements [Dkt. 866] and entered the Amended Limited Judgment As To The Professional Firms And The Terrell Parties, including Permanent Injunctions [Dkt. 876].

On April 16, 2021, the Receiver filed a Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlement Agreements (“Second Motion to Approve Settlements”) and related pleadings [Dkt. Nos. 881-883] involving 47 additional settlements. On May 6, 2021, the Court entered an order granting the Receiver’s Second Motion to Approve Settlements. [Dkt. 886].

On July 7, 2021, the Receiver filed another Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlement Agreements (“Third Motion to Approve Settlements”) and related pleadings [Dkt. Nos. 889-891], that was granted by the Court on July 26, 2021 [Dkt. 898].

On October 27, 2021, the Receiver filed another Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlement Agreements (“Fourth Motion to Approve Settlements”) and related pleadings [Dkt. Nos. 912-914], seeking the Court’s approval of 25 additional settlement agreements that collectively result in payments to the Receivership Estate totaling \$1,207,892.90. On November 23, 2021, the Court entered an order granting the Receiver’s Fourth Motion to Approve Settlements [Dkt. 916].

On March 24, 2022, the Receiver filed another Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlement Agreements (“Fifth Motion to Approve Settlements”) and related pleading [Dkt. Nos. 961-963], seeking the Court’s approval of 16 additional settlement agreements that collectively result in payments to the Receivership Estate totaling \$1,111,798.00. On April 12, 2022, the Court entered an order granting the Receiver’s Fifth Motion to Approve Settlements [Dkt. 974].

On May 26, 2022, the Receiver filed a Motion for Order (1) Approving Compromises of Claims, (2) Authorizing Performance of Settlement Agreements, and (3) Authorizing Disbursement of Funds Held in a Segregated Account (“Sixth Motion to Approve Settlements”) and related pleadings [Dkt. Nos. 980 - 982], seeking the Court’s approval of nine additional settlements, including a settlement with the Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc., (fka American Student Financial Group, Inc. “ASFG”). TRD Consulting, LLC subsequently filed a limited objection to the subject motion. On June 23, 2022, the Receiver filed a reply and supporting declaration [Dkt. 988-989]. On August 22, 2022, Judge Jolie A. Russo granted the Receiver’s Sixth Motion to Approve Settlements by entry of her Findings And Recommendation [Dkt. 998], which were simultaneously referred to Judge Marco A. Hernandez for review [Dkt. 999] and subsequently approved by Judge Hernandez on October 14, 2022

during this Application Period. This settlement resulted in payments to the Receivership Estate totaling \$128,510; release of counterparties' claims against the Receivership Estate in excess of \$29 million; and release of \$1,683,403.38 plus accrued interest from a segregated account.

On December 12, 2022, the Receiver filed a Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlement Agreements ("Seventh Motion to Approve Settlements") and related pleadings [Dkt. Nos. 1010-1012], seeking the Court's approval of six additional settlements that collectively result in payments to the Receivership Estate totaling \$1,096,183.48 and release of counterparties' claims against the Receivership Estate totaling in excess of \$7,663,129.00. On December 28, 2022, the Court entered an order granting the Receiver's Seventh Motion to Approve Settlements [Dkt. 1017].

On August 31, 2023, the Receiver filed a Motion for Order Approving Compromises of Claims and Authorizing Performance of Settlements ("Eighth Motion to Approve Settlements") and related pleadings [Dkt. Nos. 1031-1033] seeking the Court's approval of two additional settlements. On September 19, 2023, the Court entered an order granting the Receiver's Eighth Motion to Approve Settlements [Dkt. 1037].

The settlements approved by the Court in the Receiver's First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Motions to Approve Settlements and in one prior separate settlement motion resulted in over \$23.3 million in direct monetary benefits to the Receivership Estate. Additionally, these settlements eliminated at least \$130 million of claims against the Receivership Estate, materially increasing the recovery on the allowed claims of the Defrauded Investors and others.

The following is a summary of the fees and expenses requested and approved from the prior Twenty-Nine Interim Fee Applications, the amounts allowed, the amounts paid, and

identification of the twenty percent (20%) Holdback for those fees previously approved and that the Receiver and Professionals now request be released.

Aequitas Receivership

Professional Fees & Expenses by Entity (through June 30, 2023)

Entity	Previous Fees	Previous Expenses	Total Fees & Expenses	Holdback Amounts	Total Amounts Paid
Receiver	2,514,716	45,172	2,559,888	502,943	2,056,945
FTI Consulting	19,537,900	494,849	20,032,750	3,907,580	16,125,170
Pepper Hamilton	2,472,630	282,614	2,755,244	494,526	2,260,718
Schwabe, Williamson & Wyatt	11,551,159	118,366	11,669,525	2,310,232	9,359,293
Morrison Foerster	1,015,841	5,843	1,021,684	203,168	818,516
Law Office of Stanley H. Shure	1,514,882	9,588	1,524,470	302,976	1,221,493
Snell & Wilmer	540,808	10,645	551,453	108,162	443,291
Parsons Farnell & Grein	542,808	18,983	561,792	108,562	453,230
Pachulski Stang Ziehl & Jones	39,984	471	40,455	7,997	32,458
Akin Gump	60,259	133	60,392	12,052	48,340
Ater Wynne	10,356	-	10,356	2,071	8,285
Total:	39,801,342	986,665	40,788,007	7,960,268	32,827,739

B. Final allowance and payment of the respective fees and expenses of the Receiver and Professionals for the period from July 1, 2023 through October 31, 2023 are reasonable and necessary and should be granted, without holdback of a reserve (the “Final Application Period”).

The Receiver and Professionals request approval and payment for the fees and expenses for the period from July 1, 2023 through October 31, 2023, which is the period after approval of the Twenty-Nine Interim Fee Applications and just prior to the entry date of the Closing Order. The efforts of the Receiver and Professionals during the Final Application Period are supported by the information in the Closing Motion, as well as the detail set forth in the summary invoices, which are attached as Exhibits A and B to the Greenspan Declaration. The information contained in the Closing Motion and the summary invoices demonstrates both the necessity of the services provided, as well as the reasonableness of the resulting fees and expenses.

During the Final Application Period, the Receiver and Professionals spent the majority of their time and efforts on tasks necessary to continue the wind down the Receivership and

preparation for the future transition of the remaining administrative and related functions to the successor QSF Trustee. Other major tasks included the development and filing of the Receiver's Fourth Distribution Motion, which the Court granted on September 19, 2023 [Dkt. 1038], and preparation for the implementation of the distributions, which have now been completed.

As supported by the Closing Motion and the summary invoices, the Receiver requests approval and payment of the fees and expenses incurred during the Final Application Period, without holdback of a reserve. As noted above, the Receiver and Professionals agreed to substantial discounts of their customary fees, which have not increased during the almost eight-year duration of this proceeding. The amounts requested reflect those substantial discounts. The time spent, services performed, hourly rates charged, and expenses incurred from July 1, 2023 through October 31, 2023 were in the best interests of the Receivership Entity and were indeed essential for the Receiver to perform his Court-ordered duties.¹⁷ The following chart is a summary of the fees and expenses reasonably incurred in the service of the Receivership Entity from July 1, 2023, through October 31, 2023:

¹⁷ Greenspan Declaration, p. 10.

Aequitas Receivership

Professional Fees & Expenses by Entity (from July 1 to October 31, 2023)

Entity	Fees (\$)	Percentage	Expenses (\$)	Percentage	Total (\$)	Percentage
Receiver	10,065.00	3.6%	-	0.0%	10,065.00	3.6%
FTI Consulting	146,074.50	51.6%	-	0.0%	146,074.50	51.6%
Pepper Hamilton ^[1]	-	0.0%	-	0.0%	-	0.0%
Schwabe, Williamson & Wyatt	126,902.50	44.8%	41.69	100.0%	126,944.19	44.8%
Morrison Foerster ^[1]	-	0.0%	-	0.0%	-	0.0%
Law Office of Stanley H. Shure ^[1]	-	0.0%	-	0.0%	-	0.0%
Snell & Wilmer ^[1]	-	0.0%	-	0.0%	-	0.0%
Parsons Farnell & Grein ^[1]	-	0.0%	-	0.0%	-	0.0%
Pachulski Stang Ziehl & Jones ^[1]	-	0.0%	-	0.0%	-	0.0%
Akin Gump ^[1]	-	0.0%	-	0.0%	-	0.0%
Ater Wynne ^[1]	-	0.0%	-	0.0%	-	0.0%
Total:	283,042.00	100%	41.69	100%	283,083.69	100%

[1] Pepper Hamilton, Morrison Foerster, Law Office of Stanley H. Shure, Snell & Wilmer, Parsons Farnell & Grein, Pachulski Stang Ziehl & Jones, Akin Gump, and Ater Wynne did not incur fees or expenses during the billing period.

Based on the foregoing, the Receiver requests that the Court approve the final allowance of fees and expenses incurred by the Receiver and Professionals for the period from July 1, 2023 through October 31, 2023 as reasonable and necessary and without a holdback.

V. AUTHORITY SUPPORTING REQUEST FOR FINAL APPROVAL OF FEES AND EXPENSES AND RELEASE OF PRIOR HOLDBACK

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken and relief to be granted in the administration of a receivership include extremely broad powers and wide discretion. In receivership cases, courts may exercise this discretion to award reasonable compensation to the court appointed receiver and his professionals.¹⁸ The amount of compensation to be awarded a court-appointed receiver is within the Court's reasonable discretion.¹⁹ In this Receivership, the Order Appointing Receiver provides that "[t]he Receiver and Retained Personnel are entitled to reasonable compensation and expense

¹⁸ *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

¹⁹ *SEC. v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff'd*, 609 F.3d 87 (2d Cir. 2010).

Reimbursement from the Receivership Estates....”²⁰ The Receivership Order further provided that interim fee applications were subject to a twenty percent (20%) holdback (the “Holdback”) pending final review and approval by the Court in its review of the final fee application submitted at the close of the Receivership.²¹ This Final Fee Application on behalf of the Receiver and Professionals supports a determination by this Court that the final allowance of fees and expenses and release of the Holdback is appropriate at this time.

A. The Court in the exercise of its discretion should approve final allowance of all of the fees and expenses requested by the Receiver and Professionals as reasonable and necessary in light of the successful outcome benefiting Defrauded Investors and other Claimants in this enormous and complex case.

Following a determination that services were rendered and costs expended in furtherance of the Receivership, the Court may award compensation for presented fees and expenses.²² A receiver and his professionals who reasonably and diligently discharge their duties are entitled to be fairly compensated for the services they render and the expenses they incur.²³ “In setting a reasonable fee, the court is to consider all of the factors involved in the particular receivership. These factors include, *inter alia*, the complexity of problems faced, the benefits to the receivership estate, the quality of the work performed, and the time records presented. While the results obtained by a receiver clearly are important, the benefits to a receivership estate may take

²⁰ Dkt. 156, ¶ 45.

²¹ Dkt. 156, ¶ 47.

²² *See, e.g., Sec. & Exch. Comm’n v. Striker Petroleum, LLC*, No. 3:09-CV-2304-D, 2012 WL 685333, at *2 (N.D. Tex. Mar. 2, 2012) (“A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred”) (internal citation and quotation omitted).

²³ *SEC. v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008), *aff’d*, 609 F.3d 87 (2d Cir. 2010).

more subtle forms than a bare increase in monetary value. The complexity of the problems faced, and the benefit of the services rendered to the receivership estate is particularly relevant in the context of a Securities and Exchange Commission receivership.²⁴

In the Ninth Circuit, the Court when determining an award of fees has the discretion to apply either the lodestar method or the percentage-of-the-fund method in common fund cases.²⁵

When determining the reasonableness of an award of fees, the lodestar is determined by multiplying the number of hours reasonably expended by a reasonable hourly rate.²⁶ In

percentage of fund cases (where a common fund has been created), the Ninth Circuit has established a “benchmark” of allowable fees up to twenty-five percent (25%) of the common fund that can then be adjusted upward or downward to account for unusual circumstances.²⁷

Under either test, the requested fees and expenses of the Receiver and Professionals are reasonable, necessary, and provided a substantial benefit to the beneficiaries in this matter.

1. Under the Lodestar Method, the fees and expenses requested by the Receiver and Professionals are reasonable and necessary.

Under the lodestar method, the Court multiplies the number of hours reasonably

²⁴ *SEC. v. Fifth Ave. Coach Lines, Inc.*, 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973).

²⁵ *Herman v. Wagoner*, 2014 U.S. Dist. Lexis 86027 at *7 (C.D. Cal. 2014); *see also Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002) (class action case creating a common fund).

²⁶ *Herman v. Wagoner*, 2014 U.S. Dist. Lexis 86027 at *7 (C.D. Cal. 2014); *see also SEC vs. Davison*, 2023 U.S. Dist. Lexis 73470 at *18 (M.D. Fla. 2023)(When determining the reasonableness of an award of fees to a receiver and any retained professionals, courts typically begin the analysis with the lodestar method . . .).

²⁷ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002)(Citing, *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989).

expended by a reasonable hourly rate.²⁸ The party seeking fees bears the burden of submitting documentation that details the hours were reasonably expended.²⁹ In calculating the reasonable rate, the Ninth Circuit has explained that the court should use the prevailing market rate in the community for similar services of professionals of reasonably comparable skill, experience, and reputation. Either current or historical prevailing rates may be used. The use of current rates may be necessary to adjust for inflation if the fee amount would otherwise be unreasonable and the district court must look to the totality of the circumstances, including delay in payment.³⁰ There is a "strong presumption" that the lodestar represents a reasonable fee.³¹

- a) The hours expended by the Receiver and Professionals are reasonable given the enormous size and complexity of this Receivership.

This Final Fee Application, the prior Twenty-Nine Interim Fee Applications, and the Receiver's Quarterly Reports adequately detail the complexity of problems faced in this large Receivership, the quality of the work performed, the litigation and other successes and results obtained, the substantial distributions paid to the Defrauded Investors and other Claimants, and the other benefits reaped by the Receivership Estate. In order to ensure that the fees and expenses requested in the Twenty-Nine Interim Fee Applications and in this Final Fee Application were appropriate, the Receiver and Professionals presented in each instance their respective invoices

²⁸ *Herman v. Wagoner*, 2014 U.S. Dist. Lexis 86027 at *7 (C.D. Cal. 2014), *Sec. & Exch. Comm'n v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008).

²⁹ *Herman v. Wagoner*, 2014 U.S. Dist. Lexis 86027 at *8 (C.D. Cal. 2014).

³⁰ *Id.* At *8-9. (citing, *D'Emanuele v. Montgomery Ward & Co. Inc.*, 904 F.2d 1379, 1384 (9th Cir. 1990) (citations and quotation omitted), overruled on other grounds as recognized in *Fischel v. Equitable Life Assurance Soc'y*, 307 F.3d 997, 1007 (9th Cir. 2002).

³¹ *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1384 (9th Cir. 1990), overruled on other grounds by *Burlington v. Dague*, 505 U.S. 557, 120 L. Ed. 2d 449, 112 S. Ct. 2638 (1992).

to the SEC for review prior to filing.³² After review of each interim fee application and this Final Application, the SEC advised the Receiver that it had no objection the requested fees and expenses (on occasion, the SEC had a question, comment, or modification, which the Receiver addressed) prior to the filing of the related fee application. After conferral and filing, no other interested party filed an objection to any of the Twenty-Nine Interim Fee Applications. The Court granted all of the fees and expenses requested in the prior Twenty-Nine Interim Fee Applications as reasonable and necessary.³³ The requested Holdback amounts to be released are fees that were previously approved by the Court in each of those Twenty-Nine Interim Fee Applications.

The Receiver and Professionals have endeavored to staff matters as efficiently as possible in light of the level of experience required and the complexity of the issues presented.³⁴ During the entire administration of this Receivership matter, the Receiver was consistently mindful of the professional expenses and managed the work in the most cost-effective manner possible under the circumstances. Management included avoiding duplication of effort by the engaged professionals and leveraging professional firm resources. FTI provided access to various resources and services at no additional charge to the Receivership. Additionally, FTI provided as-needed tele-conferencing and web-conferencing capabilities to the Receivership Entity at no charge. Schwabe provided meeting space and infrastructure at no charge to the Receivership Entity, which allowed the Receiver to minimize costs associated with in-person Defrauded

³² Greenspan Declaration, p. 15.

³³ Greenspan Declaration, Exhibit C containing a list of the prior Twenty-Nine Interim Fee Applications and the associated Court Order approving each of those interim fee applications.

³⁴ Greenspan Declaration, p. 16.

Investor meetings. The Receiver, FTI and the majority of legal counsel only charged 50 percent (50%) of actual non-working travel time. Schwabe never charged for travel time or travel expenses related to travel to Portland, Oregon. The Receiver imposed a per diem limit on meal expenses and no excess costs were charged to the Receivership.³⁵ The Receiver believes and asserts that the hours he and the Professionals expended are consistent with the Court's orders and were reasonable and necessary.³⁶

b) The discounted hourly rates of the Receiver and Professionals are reasonable

At the request of the SEC, the Receiver and Professionals discounted their rates in 2016, when the Receivership commenced. The discounted rates of the Receiver and Professionals were never increased, benefiting the Receivership Estate for the almost eight years administering this matter.³⁷ For example, the Receiver's current standard hourly rate is nearly double the charged in this matter. The rates charged by the Receiver and Professionals are reasonable based on the prevailing market rate in the community for similar services of professionals of reasonably comparable skill, experience, and reputation.³⁸

The Receiver reviewed the Twenty-Nine Interim Fee Applications and this Final Fee Application and believes the hourly rates charged were appropriate, given the requirements of the instant receivership, and that the total fees for which the Receiver and Professionals seek authorization for payment are fair and reasonable.³⁹ The Receiver likewise believes that the

³⁵ Greenspan Declaration, p. 17.

³⁶ Greenspan Declaration, p. 9.

³⁷ Greenspan Declaration, p. 7.

³⁸ Greenspan Declaration, p. 9.

³⁹ Greenspan Declaration, p. 9.

Receivership Estate, the Defrauded Investors, and other parties-in-interest have benefited from the services of the Receiver and Professionals as further evidenced by the lack of any objections to the rates requested by the Receiver and Professionals.⁴⁰

The Receiver and Professionals thus respectfully request that the Court determine that under the lodestar method, the fees and expenses of the Receiver and Professionals are reasonable, necessary and should be allowed and paid on a final basis, including the release of the twenty percent (20%) Holdback.

2. The Percentage-Of-Recovery Method supports the fees and expenses requested by the Receiver and Professionals as they provided substantial benefits to the Receivership.

When professionals recover a common fund that confers a “substantial benefit” upon the beneficiaries, the professionals are entitled to recover their attorneys’ fees from the fund.⁴¹ In a common fund case, the court has the discretion to apply either the lodestar method or the percentage-of-fund method.⁴² When utilizing the percentage-of-fund method, fees equal to twenty-five percent (25%) of the common fund recovered are reasonable under Ninth Circuit authority.⁴³ The fees and expenses incurred in this case are a small percentage of the substantial benefits conferred by the Receiver and Professionals on the beneficiaries of the common fund. The fees and expenses of the Receiver and Professionals equal (i) ~13.9% of the total of the net assets recovered, (ii) ~14.5% of the total disbursements made to Defrauded Investors, Claimants,

⁴⁰ Greenspan Declaration, p. 11.

⁴¹ *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir 2002)(Citing, *Lewis v. Anderson*, 692 F.2d 1267, 1270 (9th Cir. 1982).

⁴² *Id.* at 1007.

⁴³ *Id.* at 1006.

and for the administrative expenses operating the Receivership, and (iii) ~18.5% if measured solely against the disbursements made to the Defrauded Investors and other Claimants.⁴⁴ Moreover, the Receiver and Professionals actively supported the efforts of the Defrauded Investors to recover directly from the Professional Firm Defendants and others, including contributing the Receivership's claims to such settlements. The resulting \$300,000,000+ settlements are not included when calculating the percentage of recoveries represented by the Receiver and Professionals' fees (despite the Receiver, FTI, and Schwabe spending hundreds of hours to facilitate such settlements or including the value of the Receivership's claims which the Defrauded Investors were able to monetize directly (and quicker) through the litigation settlements).

Additionally, the fees of the Receiver and Professionals compare favorably with the fees awarded in other complex receivership cases.⁴⁵ Moreover, the size and scope of this equitable Receivership (one of the largest and most complex equity receiverships ever in Oregon federal court, involving over \$600 million of investor funds) are much greater than the size and scope of many of the receiverships in the reported cases cited in this Final Fee Application.⁴⁶ Finally, courts have noted that compensation to equitable receivers is analogous to compensation to

⁴⁴ Greenspan Declaration, p. 18.

⁴⁵ *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. June 24, 2008) (approving final request for fees and expenses comprising 22.4% of total recovery by Receiver in light of complexities of case, difficulties in tracing proceeds, and results obtained); *SEC v. Funding Res. Group*, No. Civ.A.3:98-CV-2689-M, 2003 WL 145411, at *1 (N.D. Tex. Jan. 15, 2003) (costs of administration totaled 21% of cash and assets finally recovered by receiver).

⁴⁶ *Id.*

trustees in bankruptcy.⁴⁷ The United States Department of Justice reported that from 1994 to 2000, in Chapter 7 asset cases, 30% to 40% of total estate receipts were disbursed as fees and expenses to trustees and other professionals.⁴⁸ This was true regardless of the size of the case.⁴⁹

VI. CONCLUSION

The Receiver and Professionals respectfully requests the Court (i) allow on a final basis the fees and expenses previously approved in the prior Twenty-Nine Interim Fee Applications, (ii) allow on a final basis and authorize release of the twenty percent (20%) holdback from the prior Twenty-Nine Interim Fee Applications, and (iii) allow on a final basis and authorize payment of the respective fees and expenses of the Receiver and Professionals incurred for the period from July 1, 2023 through October 31, 2023, without holdback of a reserve.

Dated this 12th day of February, 2024.

Respectfully submitted,

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⁴⁷ *W.L. Moody & Co.*, 374 F. Supp. at 481.

⁴⁸ U.S. DOJ, U.S. Trustee Program Prelim. Rep. on Ch. 7 Asset Cases 1994 to 2000, attached as Exhibit P, App'x 187, 192.

⁴⁹ *Id.*