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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 OBJECTION TO PROOFS OF  
CLAIM FILED BY ELLIOT HAYES D/B/A  
GLOBAL MERCHANT HOUSE

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LOCAL RULE 7-1 CERTIFICATE

Pursuant to Local Rule 7-1(a), counsel for the Receiver certifies that good faith efforts were made with Elliot Hayes, d/b/a Global Merchant House (“Mr. Hayes”), to resolve the dispute at issue in this Objection to Proofs of Claim. Several conversations occurred with Mr. Hayes regarding his proofs of claim. The parties are not able to resolve this dispute without the assistance of the Court. This objection is based on the Court files and records and on the Declaration of Mr. Greenspan (“Greenspan Decl.”).

On March 3, 2022, counsel for the Receiver circulated to the approximately 60 counsel of record, via email, a copy of this objection, the supporting declaration and the 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 March 10, 2022, as to whether their clients object or consent to the objection. As of the time of filing this objection, the undersigned had received two consents and no objections.

Notice

Unless otherwise ordered by the Court, Mr. Hayes shall file with the Court and serve upon the Receiver his response to the Receiver’s claim objection within thirty (30) calendar days of the date on which the Receiver filed his written objection to the Claims. The Receiver shall have thirty (30) calendar days to file and serve his reply.<sup>1</sup>

**Procedural and Factual Background**

On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint against Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance,

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<sup>1</sup> See, the Claims Bar Date and Procedures Order, para. 18 [Dkt. 683] and the Court-approved Distribution Plan, Article IX.A.1. [Dkt. 787].

LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Ronald F. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis. On April 14, 2016, pursuant to the Receivership Order (defined below), Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis. Greenspan Decl. ¶ 2.

On April 25, 2019, the Court fixed a Claims Bar Date of July 31, 2019; approved the manner of notice of the Claims Bar Date; and approved the Proof of Claim Form, the Claims Procedure, and associated exhibits and attachments (the “Claims Bar Date and Procedures Order”). The Claims Bar Date has passed. Greenspan Decl. ¶ 3.

Pursuant to the terms of the Claims Bar Date and Procedures Order, if the Receiver is unable to resolve a disputed Claim:

the Receiver shall file a written objection to the Claim with the Court. The objection shall include: i) a detailed statement of the reasons for the Receiver’s objection, and ii) copies of any document or other writing upon which the Receiver relies. Unless otherwise ordered by this Court, the Claimant or Administrative Claimant’s response to the Receiver’s claim objection shall be filed with the Court and a copy served on the Receiver and his counsel, within thirty (30) calendar days of the date on which the Receiver filed his written objection to the Claim.<sup>2</sup>

The Claims Bar Date and Procedures Order also provides that:

Submission of a Proof of Claim in this case constitutes consent to the jurisdiction of the Court for all purposes and constitutes agreement to be bound by its decisions, including, without limitation, a determination as to the extent, validity and amount of any Claim asserted against the Receivership Estate. The submission of a Proof of Claim shall constitute consent to be bound by the decisions of the Court as to the treatment of the

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<sup>2</sup> See, the Claims Bar Date and Procedures Order, para. 18 [Dkt. 683] and the Court-approved Distribution Plan, Article IX.A.1. [Dkt. 787].

Claim in a Court approved distribution plan.<sup>3</sup>

On August 19, 2019, Mr. Hayes submitted two proofs of claim, each asserting a Creditor Claim, one in the amount of \$15,000.00 and one in the amount of \$150,000.00 (the “Disputed Hayes Claims”). Mr. Hayes confirmed in writing that his \$150,000.00 claim replaced the earlier filed \$15,000.00 claim. Greenspan Decl. ¶ 4.

On March 31, 2020, the Court entered its Findings of Fact and Conclusions of Law approving the Receiver’s Distribution Plan (the “Court-approved Distribution Plan”). Greenspan Decl. ¶ 5.

The Court-approved Distribution Plan provides for the classification and treatment of Allowed Claims, including what constitutes a Creditor Claim. Greenspan Decl. ¶ 6.

## **I. Points and Authorities**

1. Definitions. The following defined terms are contained in the Court-approved Distribution Plan:

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

**b. Creditor Claim** means a Claim against an Aequitas Entity, including but not limited to transactions based on, related to, arising from or in connection with: (i) any contract, lease, or other agreement entered into prior to March 16, 2016, for which payment has not been made in whole or in part or for which payment has or will become due prior to, on, or after March 16, 2016, (ii) goods or services provided prior to March 16, 2016, (iii) an uncashed check issued prior to March 16, 2016, for refund on account of a healthcare account receivable

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<sup>3</sup> See, the Claims Bar Date and Procedures Order, para. 20 [Dkt. 683].

overpayment, student loan account receivable overpayment, or any other overpayment, (iv) unpaid wages, compensation, or other employment benefits, that accrued prior to March 16, 2016 (which are not a Non-Officer Former Employee Claim or exceed the \$12,850 limit), or (v) taxes payable by an Aequitas Entity arising from or attributable to tax periods beginning prior to March 16, 2016, even if due and payable subsequent to March 16, 2016, including those that may be asserted by federal, state, local, or other governmental entities or authorities. To the extent that a Claim meets the definition of both a Creditor Claim and some other classification of Claim, each Claim shall be determined and treated based on the portion of the Claim that falls within each classification.

**c. Disallowed Claim** means a Claim or a portion thereof that has been disallowed pursuant to i) a Final Order, ii) an agreement between the Receiver and the Claimant or Administrative Claimant, or iii) the terms of a Court-approved distribution plan.

**d. Disputed Claim** means a Claim that has not been allowed or disallowed and as to which a Proof of Claim has been filed and the Receiver, Trustee, or another party in interest (authorized by the Court) has filed an objection to the Claim.

**e. Final Order** means an order of the Court which has not been reversed, stayed, modified or amended and as to which the time to appeal or seek reconsideration or rehearing thereof has expired; or (i) in the event a motion for reconsideration or rehearing is filed, such motion shall have been denied by an order of the Court and all means for reconsideration or further appeal have expired; or (ii) in the event an appeal is filed, that appeal has been dismissed, or the order affirmed and all means for reconsideration or further appeal have expired.

**f. Receiver** refers to Ronald F. Greenspan, in his capacity as the Court-appointed Receiver for the Receivership Entity, pursuant to the Receivership Order.

**g. Receivership Entity** means, individually and collectively, Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC and each of their 43 subsidiaries and/or majority-owned affiliates, as set forth on Exhibit A of the Receivership Order.

**h. Receivership Order** means the Final Order Appointing Receiver, entered on or about April 14, 2016 [Dkt. 156].

### OBJECTION TO THE DISPUTED HAYES CLAIMS

For the reasons set forth herein, Ronald F. Greenspan, the duly appointed Receiver, objects to the Creditor Claims filed by Mr. Hayes in the amount of \$15,000.00 and \$150,000.00 (the “Disputed Hayes Claims”).

1. The Disputed Hayes Claims were not timely filed and do not include a claim for

services provided to the Receivership or any Receivership Entity. Greenspan Decl. ¶ 8.

2. The documents attached to the proofs of claim are inadequate to support the asserted claims. One document is an invoice in the amount of \$7,109.50 for legal services related to corporate formation and foreign tax issues. Mr. Hayes has not provided any evidence that the legal services relate to his claims or that the invoice was paid. Greenspan Decl. ¶ 9, Ex. 1.

4. The other document attached to the claims appears to be a copy of a 2015 Memorandum of Understanding (“MOU”) with Aequitas Capital Management, with the stated purpose of the acquisition of additional investors. Mr. Hayes has not provided any evidence that his efforts developed additional investors for Aequitas and the Receiver is unaware of any such investors. Greenspan Decl. ¶ 10, Ex. 2.

5. The Disputed Hayes Claims do not comply with the definition of a Creditor Claim nor do they evidence any other form of claim validly asserted against the Receivership as determined in accordance with the Court-approved Distribution Plan. Greenspan Decl. ¶ 11.

## **II. Conclusion**

The Receiver respectfully requests that the Court disallow the Disputed Hayes Claims in their entirety.

Dated this 10th day of March, 2022.

SCHWABE, WILLIAMSON & WYATT, P.C.

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