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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 December 5, 2022, 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 December 12, 2022, as to whether their clients object or consent to the relief sought by way of this motion. As of the time of filing, the undersigned had received two consents and no objections.

MOTION

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

This Motion is supported by the Declaration of Ronald F. Greenspan submitted herewith and the following memorandum.

I. Procedural and Factual Background

A. Appointment of the Receiver and the Final Receivership Order

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. 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 (“Interim Receivership Order”). (Dkt. No. 30). On April 14, 2016, pursuant to the

¹ 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) (the “Final Receivership Order”).

Final Receivership Order, Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (Dkt. No. 156).

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.²

B. The Settlement Agreements

Since the Receiver filed the latest motion to approve settlements (Dkt. No. 980), resulting in entry of this Court's Order of October 14, 2022 (Dkt. No. 1004) approving nine settlement agreements, the Receiver has entered six 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 Settlement Agreements provide for the following benefits to the Receivership Estate and ultimately the Defrauded Investors:

- Payments from the counterparties to the Receivership Estate totaling \$1,096,183.48; and
- Release of counterparties' claims against the Receivership Estate that totaled more than \$7,663,129.00.³

² Final Receivership Order, ¶¶ 6 and 26.

³ This figure does not include interest that was purportedly accruing on claims presented by the RP Parties (defined below). As addressed in detail below, TCH (defined below) will pay the Receivership Estate \$308,046.48 and release all claims, in exchange for release of \$300,000.00 of the total \$608,046.48 that would have previously been distributed to TCH as a properly classified Defrauded Investor (absent the Receivership Entity's claims against TCH and a related party) and the ability to participate in any later distributions from the Receivership Estate ordered by this Court.

1. Gladstone Settlement Agreement

On August 18, 2022, the Receivership Entity entered a Settlement Agreement with Gladstone Technology Partners, LLC, Gladstone Associates, LLC, Gladstone Group, Inc., D.A. Kreuter Associates, Inc. dba DAK Associates, and Daniel A. Kreuter (“Gladstone Parties”). (Greenspan Decl., ¶ 4, Ex. 1). Under the terms of the Settlement Agreement, the Gladstone Parties have paid the Receivership Entity \$150,000.00 and released all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims.

On or about August 15, 2014, Aequitas Commercial Finance, LLC (“ACF”) transferred \$530,000.00 to Gladstone Technology Partners, LLC and received a Convertible Promissory Note. In November 2016, Gladstone Technology Partners, LLC sold its principal assets to a third party. (Greenspan Decl., ¶ 5).

On March 25, 2022, the Receiver issued a demand letter to certain of the Gladstone Parties, outlining the claims of the Receivership Entity. (Greenspan Decl., ¶ 6). Through their counsel, the Gladstone Parties engaged in good faith settlement negotiations with the Receiver. They also made extensive disclosures and provided information supporting the compromise resolution outlined above. The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity, particularly given the fact the maker of the Convertible Promissory Note lacks sufficient assets to satisfy a judgment. (Greenspan Decl., ¶ 7).

2. TCH Settlement Agreement

On October 17, 2022, the Receivership Entity entered a Settlement Agreement with the Liquidating Trustee for the bankruptcy estate of Trust Capital Holdings S.à.r.l., a Luxembourg private limited liability company (“TCH” or “TCH Bankruptcy Estate”). (Greenspan Decl., ¶ 8, Ex.

2). Under the Settlement Agreement, the TCH Bankruptcy Estate will pay the Receivership Entity \$308,046.48 and release all claims against the Receivership Entity, in exchange for release of \$300,000.00 of the total \$608,046.48 that would have previously been distributed to the TCH Bankruptcy Estate as a properly classified Defrauded Investor (absent the Receivership Entity's claims against the TCH Bankruptcy Estate and a related party) and the ability to participate in any later distributions from the Receivership Estate ordered by this Court. *Id.*

TCH was properly classified as a Defrauded Investor, with a Total Investment – Allowed Claim of \$2,025,000.00. However, in accordance with the provisions of the Court-approved Distribution Plan (Dkt. No. 787), in light of the fact TCH and its affiliated entity owed an obligation to the Receivership Estate, prior distributions on the \$2,025,000.00 claim were withheld. (Greenspan Decl. ¶ 9).

On February 16, 2015, Euro Investment Partners, LLC (“EIP”) issued a promissory note to Aequitas Commercial Finance, LLC (“ACF”) in support of a revolving line of credit. On February 26, 2015, ACF transferred \$300,000.00 to EIP, and on March 31, 2015 transferred another \$200,000. (Greenspan Decl., ¶ 10). EIP indirectly held a 33.32% ownership interest in TCH. Some of the \$500,000.00 that ACF loaned to EIP was subsequently transferred to TCH. (Greenspan Decl., ¶ 11).

EIP was a Delaware limited liability company that was “voluntarily cancelled” in 2019. TCH is presently the subject of a bankruptcy liquidation proceeding in Luxembourg. (Greenspan Decl., ¶ 12). Over the course of a number of months, the Receiver and the TCH Liquidating Trustee exchanged information and engaged in negotiations to resolve all claims between the Receivership Estate and the TCH Bankruptcy Estate. (Greenspan Decl., ¶ 13). As addressed above, under the terms of the resulting Settlement Agreement, the TCH Bankruptcy Estate will pay the Receivership

Entity \$308,046.48.⁴ The Receivership Estate will release the balance of withheld distributions totaling \$300,000.00 and the TCH Bankruptcy Estate will be entitled to receive any subsequent distributions ordered by this Court. (Greenspan Decl., ¶ 14). The Receiver believes the terms of the compromise resolution with the TCH Bankruptcy Estate are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 15). The settlement was recently approved by the bankruptcy court in Luxembourg. *Id.*

3. RP Settlement Agreement

On November 3, 2022, the Receivership Entity entered a Settlement Agreement with RP Capital, LLC (“RP”), Strategic Capital Group, LLC (“SCG”), Norman Gary Price, Christina A. Price, Aaron Douglas Maurer and Laura Michelle Maurer (collectively, the “RP Parties”). (Greenspan Decl., ¶ 16, Ex. 3). Under the terms of the Settlement Agreement, the RP Parties have paid the Receivership Entity \$150,000.00, will make two additional payments totaling \$250,000.00, and have released all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims.

RP was a securities broker-dealer firm that was administratively dissolved in early 2018. During the Ponzi Period, RP provided services to Aequitas and received payments from Aequitas totaling \$4,710,590.98. (Greenspan Decl., ¶ 17). As former employees and members of RP, Mr. Price and Mr. Maurer received periodic distributions from the entity, some of which were presumably comprised of funds the entity received from Aequitas. (Greenspan Decl., ¶ 18).

SCG was an investment advisory firm owned, in part, by Mr. Price. On July 1, 2014, SCG sold all of its investor accounts to Aspen Grove Equity Solutions, LLC (“AGES”), an entity owned

⁴ The Receivership Estate will retain \$308,046.48 as an offset from withheld distributions.

by Aequitas Capital Management, Inc. (one of the Receivership Defendants), Mr. Price and two others. The purchase price was \$6,810,419.00, with \$2,043,125.00 down and the remaining \$4,767,294.00 obligation memorialized by a promissory note issued by AGES to SCG. On November 17, 2015, AGES made a single payment of \$242,895.15 on the outstanding obligation of \$4,767,294.00 plus interest accruing at 5% per annum. (Greenspan Decl., ¶ 19).

Individually and on behalf of SCG, Mr. Price submitted a proof of claim to the Receiver in the amount of \$5,638,129.00 (“SCG Claim”).⁵ SCG and Mr. Price would argue that the SCG claim should offset any recovery by the Receivership Entity in litigation brought by the Receiver against the RP Parties. (Greenspan Decl., ¶ 20).

The RP Parties were defendants in an investor class action lawsuit that was resolved by settlement – *Brown, et. al. v. Price, et. al.*, U.S. District Court for the District of Oregon, Case No. 3:17-cv-00869. In approving the settlement, Judge Hernández noted that there were “substantial risks that defendants would be unable to pay a judgment....” *Id.* The settlement exhausted insurance proceeds and included personal contributions by a number of the RP Parties. (Dkt. No. 94). Class counsel sought and received sworn financial statements from defendants necessary to evaluate their ability to make individual contributions toward the settlement. *Id.* Based on review of those sworn financial statements, class counsel sought approval of the settlement. *Id.* The Receiver did not release the claims of the Receivership Entity as part of the class action settlement. However, the Receiver was made aware that the settlement benefiting the Aequitas investors comprising the class largely exhausted the assets of the RP Parties. (Greenspan Decl., ¶ 21).

Through their counsel, the RP Parties engaged in good faith settlement negotiations with the

⁵ As of July 31, 2019, with interest continuing to accrue.

Receiver. (Greenspan Decl., ¶ 22). In that process, the Receiver requested and the RP Parties readily provided thorough, sworn financial disclosures. *Id.*

In light of the information contained in the financial disclosures, the prior payments made to resolve the investor class action claims and the release of the SCG Claim of nearly \$6,000,000.00, the Receiver believes the terms of the compromise resolution with the RP Parties are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 23).

4. Additional Net Winner Settlement Agreements

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 (9th Cir. 2008). Accordingly, the Receiver is pursuing recovery of the net winnings received by Aequitas investors.

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., ¶ 24). Prior to the Receiver necessarily filing suit, 64 of the net winners accepted the Receiver’s pre-litigation offer and made the required repayment. Those pre-litigation settlements resulted in a combined recovery totaling \$2,921,309.70. (Dkt. No. 889, p. 5, ¶¶ 24 and 25).⁶ (Greenspan Decl., ¶ 25).

On June 28, 2021, the Receiver filed suit relating to 49 net winner accounts – *Greenspan v.*

⁶ Three 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.

Kingstrom, et. al., U.S. District Court for the District of Oregon, Case No. 3:21-cv-00954-JR (“Net Winner Lawsuit”).⁷ (Greenspan Decl., ¶ 26). Many of the defendants in the Net Winner Lawsuit readily engaged with the Receiver, seeking to resolve the Receivership Entity’s claims. (Greenspan Decl., ¶ 27). As of May 26, 2022, when the Receiver last sought an order approving compromises of claims against net winners (Dkt. No. 980), the Receiver had reached settlements with the holders of 38 net winner accounts who were named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 28).

Since the filing of the latest Motion (Dkt. No. 980), the Receiver reached settlements with the holders of three additional net winner accounts who were named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 29, Exs. 4-6).

C. Reasonableness and Best Interests

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., ¶ 30).

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 ...” (Dkt. No. 156, ¶ 26). Here, the compromises of claims and causes of action are outside of the ordinary course of business, and the Settlement Agreements are conditioned on Court

⁷ In addition to the holders of the net winner accounts, the Receiver also filed suit against three possible subsequent transferees.

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

The Receiver's compromises under the Settlement Agreements are comparable to a bankruptcy trustee's compromises 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 (1st Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, the Receiver has investigated the claims asserted by each of 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 the subject Settlement Agreements represent fair compromises that are in the best interests of the Receivership Entity, the Defrauded Investors, and creditors.

III. Conclusion

For the foregoing reasons, the Receiver respectfully requests this Court enter an order approving the compromises of claims set forth in the Settlement Agreements and authorizing performance upon the Settlement Agreements.

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Dated this 12th day of December, 2022.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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