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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 August 22, 2023, 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 August 29, 2023, 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 3 consents and 0 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

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”).

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

1. Introduction

Since the Receiver filed the latest motion to approve settlements (Dkt. No. 1010), resulting in entry of this Court’s Order of December 28, 2022 (Dkt. No. 1017), approving six settlement agreements, the Receiver has entered two additional settlement agreements, described in greater detail below (each a “Settlement Agreement,” and collectively, the “Settlement Agreements”). By their terms, 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:

1. Payment from the counterparties to the Receivership Estate totaling \$16,500;
2. Contingent payment of \$100,000 from another counterparty; and
3. Full releases of all claims by all counterparties.

2. Net Winner Settlement Agreements

The Receiver deems investors in Aequitas securities who received distributions during the

² Final Receivership Order, ¶¶ 6 and 26.

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., ¶ 4). 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).³ (Greenspan Decl., ¶ 5).

On June 28, 2021, the Receiver filed suit relating to 49 net winner accounts – *Greenspan v. Kingstrom, et. al.*, U.S. District Court for the District of Oregon, Case No. 3:21-cv-00954-JR (“Net Winner Lawsuit”).⁴ (Greenspan Decl., ¶ 6). Many of the defendants in the Net Winner Lawsuit readily engaged with the Receiver, seeking to resolve the Receivership Entity’s claims. (Greenspan Decl., ¶ 7). As of December 12, 2022, when the Receiver last sought an order approving compromises of claims against net winners (Dkt. No. 1010), the Receiver had reached settlements with the holders of 41 net winner accounts who were named in the Net Winner

³ 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.

⁴ In addition to the holders of the net winner accounts, the Receiver also filed suit against three possible subsequent transferees.

Lawsuit. (Greenspan Decl., ¶ 8).

Since the filing of the latest Motion (Dkt. No. 1010), the Receiver reached settlements with the holders of two additional net winner accounts who were named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 9, Exs. 1-2).

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., ¶ 10).

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 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 F.3d

632, 635 (1st Cir.), *cert. denied*, 531 U.S. 960, 120 S.Ct. 2661 (2000). Here, the Receiver believes, in the exercise of his discretion and business judgment, that the recoveries 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.

Dated this 31st day of August, 2023.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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