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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION,

No. 3:16-cv-00438-JR

Plaintiff,

v.

**QSF TRUSTEE’S REQUEST FOR
APPROVAL OF FIRST INTERIM FEE
APPLICATION FOR THE PERIOD
NOVEMBER 2023 THROUGH
AUGUST 2024; DECLARATION OF
DAVID STAPLETON IN SUPPORT
THEREOF**

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.

LR 7-1 CERTIFICATION

Owing to the complexity and volume of the QSF Trustee’s Request for Approval of First Interim Fee Application, the QSF Trustee has not sought to confer with the other parties or counsel as would normally be required under Local Rule 7-1. In accordance with the direction

**QSF TRUSTEE’S REQUEST FOR APPROVAL OF FIRST
INTERIM FEE APPLICATION**

BUSH KORNFELD LLP
LAW OFFICES
601 Union St, Suite 5000



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1 set forth in the Order Appointing Receiver, the Receiver provided the Securities and Exchange
2 Commission (the “Commission”) copies of this Application prior to filing and conferred only with the
3 Commission. The Commission indicated it has no objection to this Application.

4
5 **I. RELIEF REQUESTED**

6 David Stapleton of the Stapleton Group (the “QSF Trustee”) as successor
7 Trustee/Administrator of the Aequitas Qualified Settlement Fund Irrevocable Trust (the “QSF”),
8 respectfully requests the Court’s approval to pay the interim fees and expenses on behalf of the QSF
9 for the period from November 1, 2023 through August 31, 2024 (the “Application Period”).
10 Specifically, the QSF Trustee requests that the Court approve, on an interim basis, (1) his fees and
11 expenses in the amounts of \$203,757.50 and \$2,013.76, respectively, and (2) Bush Kornfeld’s fees
12 and expenses in the amounts of \$11,022.00 and \$300.00, respectively.

13 The QSF Trustee requests authorization to pay 80% of its fees, or \$163,006.00, and 100% of
14 \$2,013.76 in costs. It further requests authorization to pay 80% of Bush Kornfeld’s fees, or \$8,817.60,
15 and 100% of \$300 in costs. The QSF has sufficient funds on hand to pay the requested fees and costs.
16 The QSF Trustee will seek payment of the remaining 20% balance at a later date.

17 The efforts of the QSF Trustee and Bush Kornfeld on behalf of the QSF are set forth in the
18 invoices for the QSF Trustee and Bush Kornfeld’s summary invoice, which are attached to the
19 Declaration of David Stapleton (“Stapleton Declaration”) file contemporaneously herewith. The fees
20 and expenses submitted to the Court for approval are consistent with the Billing Instructions for
21 Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (the
22 “Billing Instructions”). In accordance with the direction set forth in the Order Appointing Receiver,
23 the QSF Trustee provided the Commission complete copies of the detailed invoices prior to the filing

1 of this Application and the Commission does not object to the Application. This is the QSF Trustee’s
2 first Application.

3 **II. BACKGROUND**

4 Following the liquidation of the entity Defendants’ (the “Entity Defendants”) assets and the
5 distribution of proceeds by Court-appointed receiver, Ronald Greenspan (the “Receiver”), the
6 Receiver, as approved by the Court, established the QSF to resolve or satisfy claims of liability
7 against the receivership estate (the “Receivership Estate”). On November 1, 2023, the Court
8 authorized the appointment of the QSF Trustee as successor trustee/administrator of the QSF,
9 effective upon filing the Joint Notice of Termination, by the Receiver and the QSF Trustee [Dkt.
10 1045]. The Receiver and the QSF Trustee filed the Joint Notice of Termination on March 29, 2024,
11 providing for the termination of the Receivership and transfer of authority and control of the QSF to
12 the QSF Trustee effective as of April 1, 2024 [Dkt. 1052].

13 **A. Employed Professionals**

14 On June 13, 2024, the Court entered an order approving the employment of Bush Kornfeld
15 LLP (“Bush Kornfeld”) as counsel for the QSF Trustee, effective November 9, 2023 [Dkt. 1059].

16 As general counsel to the QSF Trustee, Bush Kornfeld provides general outside counsel advice
17 and support with respect to all matters related to the administration of the QSF, except for litigation.
18 Bush Kornfeld communicates with the Commission staff and prepares and files pleadings as necessary
19 related to the administration of the QSF.

20 **B. Services Rendered During the Application Period**

21 **1. The QSF Trustee**

1 During the Application Period, the QSF Trustee incurred fees and expenses in the amounts of
2 \$203,757.50 and \$2,013.76, respectively. The QSF Trustees services generally correspond to the
3 following categories

4 a. *Accounting and Taxes*

5 [145.20 Hours; Total Fees \$56,061.50]

6 During the Application Period, the QSF Trustee and his staff reviewed and approved Accounts
7 Payable invoices and examined and approved time recorded for professional and other services by the
8 Trustee, his staff, and by the retained contractor employees of the QSF.

9 b. *Asset Analysis and Disposition*

10 [37.80 Hours; Total Fees \$17,683.50]

11 During the Application Period, the QSF Trustee and staff reviewed files and documents of
12 assets held in the QSF and remaining entities and determined the best process to liquidate the assets.
13 Some assets were delinquent and required continuing collection calls and follow-up. Two of the
14 financial assets are investments in funds and businesses and will require additional negotiation and
15 actions to liquidate.

16 c. *Case Management*

17 [242.70 Hours; Total Fees \$115,821.00]

18 During the application period, Case Management required the most time of the QSF Trustee
19 and his staff. As described in more detail in the activity report, the QSF Trustee and his staff met
20 multiple times with the employees of the QSF to learn about the operations, trust and entity assets, and
21 the initial details of the large and encompassing data management, data storage and data inventory.
22 The QSF Trustee selected employees that were invited to continue operational duties as contractors to
23 the QSF. The QSF Trustee's staff and the retained contractors closed the Oregon QSF office, adopted a

1 different accounting system, and supervised completing the 2023 tax returns. QSF Case Management
2 time was also dedicated to understanding the remaining non-financial assets and the complex data
3 operating storage system that required monthly expenses exceeding \$6,000 and required substantial
4 management time provided by the Data and Infrastructure Manager.

5 d. *General Administration and Operations*

6 [35.60 Hours; Total Fees \$12,954.00]

7 During the Application Period, this area of operation includes various members of the QSF
8 Trustee's staff meeting with the retained contractors to discuss issues and procedures and provide
9 guidance and direction for accounting, operational and policy matters.

10 e. *Reporting*

11 [3.1 Hours; Total Fees \$1,237.50]

12 During the Application Period, this activity is time dedicated to completing required local,
13 State and Federal reports and forms.

14 **2. Bush Kornfeld**

15 During the Application Period, Bush Kornfeld performed services generally corresponding to
16 two Billing Instruction Categories: Case Administration and Employees

17 a. *Case Administration*

18 [23.90 Hours; Total Fees \$10,721.50]

19 The majority of Bush Kornfeld's work during the Application encompassed review of relevant
20 pleadings filed in the receivership, including the Order Appointing Receiver and Closing Order,
21 meeting with the SEC's counsel, the Receiver, and its counsel in order to facilitate the smooth
22 transition from Receiver to the QSF Trustee, In addition, Bush Kornfeld conducted status meetings
23

1 with the QSF Trustee and fielded questions from various creditors regarding the status of
2 distributions.

3 b. *Employees*

4 [0.6 Hours; Total Fees \$300.50]

5 Bush Kornfeld advised the QSF Trustee with respect to its authority over the Receivership
6 Entity employees prior to the effective date of the formal transfer of authority from the Receiver to the
7 QSF Trustee.

8 c. *Expenses*

9 Bush Kornfeld incurred expenses totaling \$300.00 for court fees during the Application
10 Period.

11 **III. AUTHORITY**

12 The Closing Order¹ authorizes the QSF Trustee to "...pay the costs of administration of the
13 QSF, including the fees and costs of the QSF Trustee and his Professionals, in accordance with the
14 process set forth in the Order Appointing Receiver." [Dkt. 1045, ¶ 1(o)]. The Order Appointing
15 Receiver provides that "[t]he Receiver and Retained Personnel are entitled to reasonable
16 compensation and expense Reimbursement from the Receivership Estates...." [Dkt. 156, ¶ 45].
17 Applications for compensation and expense reimbursement are on an interim basis, subject to final
18 review [Dkt. 156, ¶ 47]. Allowed fees are subject to a twenty percent (20%) holdback pending final
19 review and termination of the QSF. Allowed expenses are not subject to a holdback.

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22 ¹ The Order (1) Approving the Final Report and Accounting; (2) Discharging and Releasing the
23 Receiver; (3) Enjoining Claims Against the Receiver and the Receiver's Professional Advisors; (4) Authorizing
he Appointment of a Successor Trustee/Administrator of the Aequis Qualifed Settlement Fund Irrevocable
Trust ("QSF"); and (5) Terminating the Receivership [Dkt. 1045, ¶ 1(o,p)].

1 The QSF Trustee requests that the Court approve the fees and expenses incurred by the QSF
2 Trustee and his retained professionals Application Period.

3 This is the first Interim Fee Application. The Court has not previously approved Interim Fees
4 for the QSF Trustee or his retained professionals.

5 **A. The Court has the Authority and Discretion to Approve the Requested Interim Fees and**
6 **Expenses.**

7 The district court has discretion in awarding fees to the receiver and his professionals. *SEC v.*
8 *BIC Real Est. Dev. Corp.*, No. 116CV00344LJOJLT, 2018 WL 3701964, at *1 (E.D. Cal. Aug. 2,
9 2018). The fees should be “reasonable under the circumstances.” *Id.* “The receiver bears the burden to
10 demonstrate to the court entitlement to payment of fees and costs in the amount requested.” *SEC v.*
11 *Total Wealth Mgmt., Inc.*, No. 15-CV-226-BAS-DHB, 2016 WL 727073, at *1 (S.D. Cal. Feb. 24,
12 2016) (citation omitted).

13 The court should consider the “time, labor and skill required, but not necessarily
14 that actually expended, in the proper performance of the duties imposed by the court upon the
15 receiver, the fair value of such time, labor and skill measured by conservative business standards,
16 the degree of activity, integrity and dispatch with which the work is conducted and the result
17 obtained.” *United States v. Code Prod. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (citation
18 omitted). The court may also consider the complexity and difficulty of the receivership, the quality of
19 work performed, and the benefit provided to the estate. *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F.
20 Supp. 1220, 1222 (S.D.N.Y. 1973).

21 The court should evaluate the reasonableness of the professionals’ hourly rate in the context of
22 the customary fees for similar services in the geographic location. *SEC v. Fifth Ave. Coach Lines, Inc.*,

23

1 364 F. Supp. at 1222 (citation omitted). “Opposition or acquiescence by the S.E.C. to the fee
2 application will be given great weight.” *Id.*

3 “An award of interim fees is appropriate ‘where both the magnitude and the protracted nature
4 of a case impose economic hardships on professionals rendering services to the estate.’” *SEC v. BIC*
5 *Real Est. Dev. Corp.*, No. 116CV00344LJOJLT, 2018 WL 3701964, at *1 (E.D. Cal. Aug. 2, 2018)
6 quoting *SEC v. Small Bus. Capital Corp.*, No. 5:12-CV-03237 EJD, 2013 WL 2146605, at *2 (N.D.
7 Cal. May 15, 2013). Courts may withhold a portion of interim fees until the conclusion of the case
8 because it may not be able to determine the reasonableness of the fees in light of the services rendered
9 until the conclusion of the case. *Id.*

10 Here, the QSF Trustee and Bush Kornfeld provided valuable work for the benefit of the QSF
11 with the goal of returning as much as possible to investors and creditors. The QSF Trustee’s and Bush
12 Kornfeld’s billing rates are comparable to those of the Receiver and its professionals in this matter.²
13 Furthermore, the billing statements and this Application were submitted to the Commission prior to
14 filing, and the Commission indicated its consent to the Application. The QSF Trustee and Bush
15 Kornfeld respectfully submit that their respective fees and expenses requests are fair and reasonable,
16 that the requested fees and expenses incurred were necessary, and significantly benefitted the QSF,
17 and accordingly that the requested fees and expenses should be approved and interim payments
18 authorized.

19 **IV. CONCLUSION**

20 The QSF Trustee respectfully request that this Court enter an Order:

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² The Receiver and its professionals’ rates ranged from \$330 to \$825 per hour. *See* Declaration of
23 Ronald F. Greenspan in Support of Receiver’s Request for Approval of Twenty-Ninth Interim Fee Application [Dkt. 1040].

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1. Approving fees and expenses of the QSF Trustee for the Application Period totaling \$203,757.50 and \$2,013.76, respectively, and awarding payment to the QSF Trustee, on an interim basis, of 80% of his fees, or \$163,006.00, and reimbursement of 100% of his expenses, or \$2,013.76;

2. Approving fees and expenses of Bush Kornfeld for the Application Period totaling \$11,022.00 and \$300, respectively, and awarding payment to Bush Kornfeld, on an interim basis, of 80% of its fees, or \$8,817.60, and reimbursement of 100% of its expenses, or \$300;

3. Authorizing the QSF Trustee to pay such sums out of assets of the QSF; and
4. For such other and further relief as is appropriate.

DATED this 5th day of December, 2024.

BUSH KORNFELD LLP

By /s/Lesley Bohleber
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(admitted *pro hac vice*)
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