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 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

**REPLY IN SUPPORT OF MOTION TO
 APPROVE THE RECEIVER'S
 DISTRIBUTION PLAN AND
 DETERMINATION OF A PONZI SCHEME**



On December 31, 2019, the Receivership Entity¹ filed its Motion to Approve Receiver's Distribution Plan and Determination of a Ponzi Scheme (the "Distribution/Ponzi Determination Motion") [Dkt. No. 787]. In further support of that motion, the Receiver relies upon this reply brief and the contemporaneously filed declaration of Ronald F. Greenspan.

The Distribution/Ponzi Determination Motion identified a predicate determination for the Court—namely, that the Aequitas enterprise operated as a Ponzi scheme for a period of time—and proposed distributions of the assets of the Receivership estate to investors and other claimants subject to the methods and limitations the Receiver set forth therein.

On the Receiver's separate motion to establish a notice procedure, briefing schedule, and hearing date,² this Court set February 20, 2020, as the deadline for interested parties to file objections.³ On the request of certain interested parties, the Receiver stipulated to twice extending the objection deadline, which was allowed by the Court.⁴

The SEC and another interested party filed statements in support of the Receiver's proposed distribution plan.⁵ Ultimately, only one party filed any objection. As described below, the Receiver has resolved that objection and identified related limited clarifications to the proposed distribution plan.

On February 20, 2020, former Aequitas employee Brett M. Brown submitted a letter to

¹ Capitalized terms not otherwise defined in this reply shall have the meanings ascribed to them in the Distribution/Ponzi Determination Motion [Dkt. No. 787].

² Receiver's Motion for Order (1) Approving Form and Manner of Notice Regarding Approval of Proposed Distribution Plan and Ponzi Determination, (2) Approving Procedures and Deadlines, (3) Setting a Hearing, and for Related Relief [Dkt. No. 785].

³ Order Approving the Procedures for Consideration of the Proposed Distribution Plan and Request for a Finding of a Ponzi Scheme [Dkt. No. 790].

⁴ [Dkt Nos. 797 and 802].

⁵ See SEC's Response to Motion to Approve the Receiver's Distribution Plan and Determination of a Ponzi Scheme [Dkt. No. 794]; Wiltjer Letter Response [Dkt. No. 798].

the Court [Dkt. No. 799] objecting that the Distribution/Ponzi Determination Motion misclassified him—specifically, he was identified by name in the Distribution/Ponzi Determination Motion among past and present officers and directors of the Aequitas-affiliated companies.⁶ In support of his objection, Mr. Brown submitted an undated version of an executive management organizational chart that omitted his name as a member of the management team.⁷ Following further investigation, the Receiver concluded that, while Mr. Brown was listed as a member of the executive leadership team on a similar executive management organizational chart immediately after he joined the Aequitas enterprise (published on December 23, 2013) and continuing through the version dated June 2, 2014, Mr. Brown’s name was excluded on the next version of the organization chart published on July 18, 2014. Moreover, based on the Receiver’s further review, it appears that, over the course of Mr. Brown’s tenure, his role was repeatedly diminished and, by the end of 2015 his role is not perceived as being at a level of an executive of the firm.

In light of Mr. Brown’s objection, the Receiver reviewed other Senior Vice President positions within the Aequitas hierarchy and determined that individuals holding that title likely should not be considered executive level. As such, the Receiver has concluded that individuals holding the title of Senior Vice President should be included within the class of and be treated, where applicable, as holding Non-Officer Former Employee Claims.

Consequently, the Receiver proposes to interlineate the Distribution/Ponzi Determination Motion (blue bold underlining denotes additions;⁸ ~~red bold strike-through~~ denotes deletions) as follows:

⁶ Distribution/Ponzi Determination Motion [Dkt. No. 787] at 57-58 n. 174 & App. A, 8-9.

⁷ See Brown Letter Obj. [Dkt. No. 799] at 2.

⁸ Underlining *without* bold emphasis or bolding *without* underlining is the typography that appeared in Distribution/Ponzi Determination Motion.

Location

- Pages 57-58, Note 174

Interlineation

¹⁷⁴ The definition of “Non-Officer Former Employee Claims” excludes the past officers and directors of the Aequitas-affiliated companies, including without limitation, Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, ~~Brett Brown, and~~ Tom Goila ~~Patricia Brown, Bill Malloy, and Thomas Szabo.~~

- Appendix A, Pages 8-9.

Non-Officer Former Employee Claims. The claims of individuals employed by an Aequitas Entity during the twelve-month period prior to March 16, 2016, for services provided in accordance with the terms of employment, including for the amount of paid time off that accrued and was unused as of the separation date (“Accrued PTO”); amounts owing under the provisions of the Worker Adjustment and Retraining Notification Act (“Warn Act”); and amounts owing pursuant to contract, including but not limited to severance pay, retirement pay, expense reimbursement, and relocation or other bonus as of the separation date in an amount up to \$12,850 for each employee. The definition of “Non-Officer Former Employee Claims” excludes the past and present officers and directors of the Aequitas-affiliated companies, including without limitation, Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, ~~Brett Brown, and~~ Tom Goila ~~Patricia Brown, Bill Malloy, and Thomas Szabo.~~

In sum, the Receiver has resolved the only objection that was timely filed with the Court. Consequently, the Receiver is very pleased to present what is now a consensual, proposed distribution plan and respectfully suggests there is no cause for this Court to delay in entering findings and recommendations to effectuate that distribution plan as soon as possible following the telephonic hearing on March 31, 2020. Indeed, given the rapidly evolving economic conditions and additional resulting negative financial impacts upon many of the Defrauded Investors and other Claimants, the Receiver and his counsel respectfully suggest that a prompt decision granting the Distribution/Ponzi Determination Motion would be in the best interests of Defrauded Investors and other Claimants.

Dated this 20th day of March, 2020.

Respectfully submitted,

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