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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 PROOF OF
CLAIM FILED BY JAMES ARTHUR
CRONIN

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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 James Arthur Cronin (“Mr. Cronin”), to resolve the dispute at issue in this Objection to Proof of Claim. Counsel for the Receiver made numerous unsuccessful attempts to reach Mr. Cronin. No response was received from Mr. Cronin. 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. Cronin 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 Claim. The Receiver shall have thirty (30) calendar days to file and serve his reply.¹

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, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC, Robert J.

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

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”). 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.²

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 Claim in a Court approved distribution plan.³

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

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

Mr. Cronin's proof of claim was received on August 2, 2019, but deemed timely as it was post-marked July 31, 2019. The proof of claim is asserted as both a Creditor Claim and an Administrative Claim, each in the same amount of \$174,335.10 (jointly referred to as the "Disputed Cronin Claims"). The proof of claim further asserts that it is a secured 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 an Aequitas Related claim, Creditor Claim and an Administrative 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. Aequitas Related Claim means a Claim against any Aequitas Entity based on conduct by: (i) any individual employed by an Aequitas Entity arising from any action of the employee undertaken in the course and scope of that employment, or (ii) members of the Aequitas Advisory Committee and any officer or director of an Aequitas Entity (including without limitation, the Individual Defendants) arising from any actions undertaken by that person prior to March 16, 2016, in relation to that role. Without limiting the generality of the foregoing,

an Aequitas-Related Claim also includes, but is not limited to a Claim based on an investment transaction in, with, or through an Aequitas Entity, including but not limited to transactions based on or related to: (i) promissory notes or other money loaned to an Aequitas Entity, and (ii) investments (by subscription or otherwise) in an Aequitas Entity.

c. Allowed Claim means a Claim or a portion thereof based on a Proof of Claim, Notice of Receiver's Initial Determination, or agreement by the Receiver (or Trustee), which by a Final Order of the Court approves (i) the amount, (ii) Classification, and (iii) treatment of such Claim consistent with the Court-approved Distribution Plan, unless such Claim has been paid in full, withdrawn, or otherwise satisfied in full.

d. 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 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.

e. 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.

f. 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.

g. 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.

h. Fund Investor means an investor who received promissory notes or other securities issued by fund raising vehicles, including investors who received promissory notes issued by Aequitas Commercial Financial, LLC (also referred to as a "Private Note").

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

j. 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.

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

OBJECTION TO THE DISPUTED CRONIN CLAIM

For the reasons set forth herein, Ronald F. Greenspan, the duly appointed Receiver, objects to the Claim filed by Mr. Cronin, asserted in the amount of \$174,335.10.

1. Mr. Cronin was a Fund Investor, who was issued a Private Note, which was redeemed in its entirety, by Aequitas, in 2014. Greenspan Decl. ¶ 8.

2. On its face, the proof of claim fails to identify any Receivership Entity as being obligated for the claim and such failure is grounds to invalidate the purported claim. Instead, the proof of claim specifically identifies Strategic Capital Group as the entity obligated for the claim. Greenspan Decl. ¶ 9.

3. The documents attached to Mr. Cronin's proof of claim do not support the alleged claim. The documents attached include a Strategic Capital Group statement of account as of March 27, 2015 showing an Aequitas Private Note in the amount of \$125,000 and a W.P. Carey Quarterly Statement for the period October 2014 to January 15, 2015, with no apparent connection to Aequitas. There are no documents attached to the proof of claim evidencing that the claim is secured. Greenspan Decl. ¶ 10, Ex. 1.

4. The Disputed Cronin Claim does not comply with the definition of an Allowed Aequitas Related Claim, Creditor Claim or Administrative Claim and does not otherwise state

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 Cronin Claims in their entirety.

Dated this 10th day of March, 2022.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Troy Greenfield

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