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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.  
JESENK; 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 March 17, 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 March 24, 2022, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received three consents and zero objections.

**MOTION**

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for the Receivership Entity,<sup>1</sup> hereby moves this Court for the entry of an order (1) approving compromises of claims, and (2) approving and authorizing performance of settlement agreements (the “Motion”).

On behalf of the Receivership Entity, the Receiver has entered numerous settlement agreements with counterparties all of which are expressly subject to approval of this Court.

This Motion is supported by the Declaration of Ronald F. Greenspan (“Greenspan Decl.”) submitted herewith, and the following memorandum.

**I. Procedural and Factual Background**

A. Appointment of the Receiver

1. 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 (“Individual Defendants”).

2. 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 (Dkt. 30) (“Interim Receivership Order”). On April 14, 2016, pursuant to the Final Receivership Order,

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<sup>1</sup> 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. No. 156) (“Final Receivership Order”).

Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (Greenspan Decl., ¶ 2).

3. 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.<sup>2</sup>

4. In addition, Article IX of the Final Receivership Order stays all Ancillary Proceedings, which include “[a]ll civil proceedings of any nature” that involve the Receiver, any Receivership Property, and any of the entities comprising the Receivership Entity.<sup>3</sup> Subsequently, the Court entered orders partially lifting the stay, allowing the Receiver to prosecute certain claims on behalf of the Receivership Entity.

B. The Settlement Agreements

5. Since the Receiver filed the last motion to approve settlements (Dkt. No. 912), resulting in entry of this Court’s Order of November 23, 2021 (Dkt. No. 916) approving twenty-five settlement agreements, the Receiver has entered sixteen 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 total value of the fifteen additional settlements to the Receivership Estate and ultimately the Defrauded Investors is \$1,111,789. *Id.*

(i) Newman Settlement Agreement

6. On February 7, 2022, the Receivership Entity entered a Settlement Agreement with Michael J. Newman and Susan L. Newman. In accordance with the terms of the Settlement Agreement, Mr. and Mrs. Newman paid the Receivership Entity \$334,000 and

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<sup>2</sup> Final Receivership Order, ¶¶ 6 and 26.

<sup>3</sup> *Id.*, ¶ 20.

released any claims against the Receivership Entity, in exchange for a release of the Receivership Entity's claims that resulted in the Judgment and Money Award entered on or about April 14, 2020 in the matter titled *Greenspan v. Newman*, Case No. 3:19-cv-375-JR, before the U.S. District Court for the District of Oregon and, upon Court approval, entry of a satisfaction of judgment. (Greenspan Decl., ¶ 4, Ex. 1).

7. As background, Mr. and Mrs. Newman borrowed \$325,000 from Aequitas Commercial Finance, LLC, executing a promissory note and loan agreement. (Greenspan Decl., ¶ 5). They ultimately defaulted on the loan and the Receiver secured a judgment for the principal amount owing, accrued interest, as well as attorney fees and costs. *Id.*

8. Through counsel, Mr. and Mrs. Newman engaged in good faith settlement negotiations with the Receiver. They made detailed financial disclosures and provided information relating to other personal circumstances supporting the compromise resolution outlined above. The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 6).

(ii) Noack Settlement Agreement

9. On March 16, 2022, the Receivership Entity entered a Settlement Agreement with Robert W. Noack. (Greenspan Decl., ¶ 7, Ex. 2). Under the Settlement Agreement, Mr. Noack is obligated to pay the Receivership Entity \$300,000 and release all claims against the Receivership Entity, in exchange for a release of the Receivership Entity's claims. *Id.*

10. As background, Mr. Noack was party to certain contracts with the Receivership Entity, including contracts governing his employment, the issuance or sale of Aequitas securities and loans from the Receivership Entity. (Greenspan Decl., ¶ 8).

11. On March 25, 2021, the Receiver issued a demand letter to Mr. Noack, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received prior to and during the Ponzi period, and demanding repayment of \$500,979.60. (Greenspan

Decl., ¶ 9).

12. Through counsel, Mr. Noack readily engaged in good faith settlement negotiations with the Receiver. Given \$482,232.93 of the transfers made to Mr. Noack during the Ponzi period were purportedly in accordance with the terms of an employment agreement entered prior to the Ponzi period, the Receiver believes the compromise resolution is equitable and in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 10).

(iii) MBO Settlement Agreement

13. On March 3, 2022, the Receivership Entity entered a Settlement Agreement with MBO Partners, Inc. (“MBO”). (Greenspan Decl., ¶ 11, Ex. 3). Under the Settlement Agreement, MBO paid the Receivership Entity \$100,000 and released all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. *Id.*

14. As background, during the Ponzi period, MBO received transfers from Aequitas Capital Management, Inc. totaling \$380,700.85. (Greenspan Decl., ¶ 12).

15. On February 5, 2021, the Receiver issued a demand letter to MBO, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received prior to and during the Ponzi period, and demanding repayment of \$343,598.30. (Greenspan Decl., ¶ 13).

16. Initial efforts to resolve the claims failed and the Receiver necessarily filed suit against MBO on behalf of the Receivership Entity. (Greenspan Decl., ¶ 14). MBO answered the complaint, alleging that it simply provided technology and business services to James Alexander, who maintained a consulting services agreement with one or more of the entities included within the Receivership Entity. MBO further alleged that, although it received the subject transfers, it did not have the right to put the funds to its own purposes. Rather, all but \$10,575 was immediately deposited in accounts maintained by James Alexander. *Id.*

17. Shortly after the initial pleadings were filed, through its counsel, MBO readily

engaged in good faith settlement negotiations with the Receiver. Given MBO only retained \$10,575 of the subject transfers, the Receiver believes the compromise resolution is equitable and in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 15).

(iv) Infrastructure Settlement Agreement

18. On December 10, 2021, the Receivership Entity entered a Settlement Agreement with the Infrastructure Group, Inc. (“Infrastructure”). (Greenspan Decl., ¶ 16, Ex. 4). Under the Settlement Agreement, Infrastructure paid the Receivership Entity \$35,000 and released all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. *Id.*

19. During the Ponzi period, Infrastructure received transfers from Aequitas Capital Management, Inc. totaling \$35,000, referred to as consulting fees. (Greenspan Decl., ¶ 17).

20. On February 5, 2021, the Receiver issued a demand letter to Infrastructure, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received prior to and during the Ponzi period, and demanding repayment of \$31,500. (Greenspan Decl., ¶ 18).

21. Infrastructure did not respond to the demand letter or otherwise engage with the Receiver and, therefore, the Receiver necessarily filed suit on behalf of the Receivership Entity. (Greenspan Decl., ¶ 19).

22. Shortly after suit was filed, through its counsel, Infrastructure agreed to repay the transfers received during the Ponzi period. The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 20).

(v.) Allen Settlement Agreement

23. On November 12, 2021, the Receivership Entity entered a Settlement Agreement with Allen & Associates (WY), LLC (“Allen”). (Greenspan Decl., ¶ 21, Ex. 5). Under the Settlement Agreement, Allen paid the Receivership Entity \$31,500 and released all claims

against the Receivership Entity, in exchange for a release of the Receivership Entity's claims.  
*Id.*

24. During the Ponzi period, Allen received transfers from Aequitas Capital Management, Inc. totaling \$35,000, referred to as consulting fees. (Greenspan Decl., ¶ 22).

25. On February 5, 2021, the Receiver issued a demand letter to Allen, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received prior to and during the Ponzi period, and demanding repayment of \$31,500. (Greenspan Decl., ¶ 23).

26. Allen did not respond to the demand letter or otherwise engage with the Receiver and, therefore, the Receiver necessarily filed suit on behalf of the Receivership Entity. (Greenspan Decl., ¶ 24).

27. Shortly after suit was filed, through its counsel, Allen engaged in settlement negotiations and advised that it had not received the demand letter that was mailed to a related but separate entity during the pandemic. Ultimately, Allen agreed to return \$31,500. The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 25).

(vi) Additional Net Winner Settlement Agreements

28. 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 (9<sup>th</sup> Cir. 2008). Accordingly, the Receiver is pursuing recovery of the net winnings received by Aequitas investors. (Greenspan Decl., ¶ 26).

29. 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., ¶ 27).

30. Prior to the Receiver necessarily filing suit, 64 of the net winners accepted the Receiver's pre-litigation offer and made the required repayment. (Greenspan Decl., ¶ 28). Those pre-litigation settlements resulted in a combined recovery totaling \$2,921,309.70. (Dkt. No. 889, p. 5, ¶¶ 24 and 25).<sup>4</sup>

31. On June 28, 2021, the Receiver filed suit against 52 net winners – *Greenspan v. Kingstrom, et. al.*, U.S. District Court for the District of Oregon, Case No. 3:21-cv-00954-JR (“Net Winner Lawsuit”). (Greenspan Decl., ¶ 29).

32. Many of the defendants in the Net Winner Lawsuit readily engaged with the Receiver, seeking to resolve the Receivership Entity's claims. (Greenspan Decl., ¶ 30). Given that the majority of the net winners settled prior to the Receiver filing suit, it is not surprising that many of the remaining net winners who were named in the Net Winner Lawsuit did not receive the pre-litigation demand letters, as a result of having moved or an inaccurate address contained in the Aequitas books and records. In those circumstances, the Receiver reverted to the pre-litigation offer to release the Receivership Entity's claims in exchange for repayment of 90% of the net winnings. (Greenspan Decl., ¶ 31).

33. As of October 27, 2021 when the Receiver last sought an order approving compromises of claims against net winners (Dkt. No. 912), the Receiver had reached settlements with 23 of the net winners named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 32). The majority of those settlements were with parties who did not receive the pre-litigation demand letters, at the 90% figure. *Id.* The parties who received but ignored the pre-litigation

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<sup>4</sup> Four 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.

demand letters agreed to return 100% of their net winnings. *Id.*

34. Since the filing of the last Motion (Dkt. No. 912), the Receiver reached settlements with eleven additional net winners named in the Net Winner Lawsuit, on the same terms addressed in the immediately preceding paragraph. (Greenspan Decl., ¶ 33, Exs. 6 - 16).

(iv) Reasonableness and Best Interests

35. 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., ¶ 34).

**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 ...." (Receivership Order, ¶ 26). Here, the compromises of the claims 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, the Settlement Agreements.

The Receiver's compromises under the Settlement Agreements are comparable to a bankruptcy trustee's compromise 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 (1<sup>st</sup> Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, the Receiver has

investigated the claims asserted against 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 each of the subject settlement agreements represent fair compromises that are in the best interests of the Receivership Entity, and its creditors and investors.

**III. Conclusion**

For the foregoing reasons, the Receiver respectfully requests that the Court enter an order (1) approving the compromises of claims set forth in the Settlement Agreements, and (2) approving and authorizing performance of the Settlement Agreements.

Dated this 17th day of March, 2022.

Respectfully submitted,

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