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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 MOTION FOR ORDER (1)
APPROVING COMPROMISES OF
CLAIMS, (2) AUTHORIZING
PERFORMANCE OF SETTLEMENT
AGREEMENTS, AND (3) AUTHORIZING
DISBURSEMENT OF FUNDS HELD IN A
SEGREGATED ACCOUNT



Local Rule 7-1 Certificate

On May 19, 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 May 26, 2022, 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 three consents and zero objections.

Additionally, counsel for the Receiver certify that they conferred with counsel for the Liquidating Trustee (defined below) and provided service copies of the filed versions of this motion, the supporting declaration and proposed form of order. Finally, counsel for the Receiver certify that they advised counsel for TRD Consulting, LLC of the relevant circumstances underlying this motion and provided service copies of the filed versions of this motion, the supporting declaration and proposed form of order.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for the Receivership Entity,¹ hereby moves this Court for the entry of an order (1) approving compromises of claims, (2) authorizing performance of settlement agreements, and (3) authorizing disbursement of funds held in a segregated account, for the benefit of defrauded investors (“Motion”).

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”).

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 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 Article IX of the Final Receivership Order, *all* Ancillary Proceedings, which include “[a]ll civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings...or other actions of any nature” that involve the Receiver, any Receivership Property,² and any of the entities comprising the Receivership Entity are stayed. (Final Receivership Order, ¶ 20). The Court also enjoined parties to such proceedings “from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.” (*Id.* at ¶ 21). Moreover, “all Courts having any jurisdiction thereof are enjoined from taking or permitting any

² The Final Receivership Order defines Receivership Property broadly to include “all property interests of the Receivership entity, including, but not limited to monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets...which the Receivership Entity own, possess, have a beneficial interest in, or control directly or indirectly...” (Final Receivership Order, ¶ 6.A.)

actions until further Order of this Court.” (*Id.* at ¶ 22). The Final Receivership Order also provides the Receiver with the power and duty to “pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates....” (Final Receivership Order, ¶ 6.J).

B. The Settlement Agreements

Since the Receiver filed the latest motion to approve settlements (Dkt. No. 961), resulting in entry of this Court’s Order of April 12, 2022 (Dkt. No. 974) approving sixteen settlement agreements, the Receiver has entered nine 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 Settlement Agreements provide for the following benefits to the Receivership Estate and ultimately the Defrauded Investors:

- Payments totaling \$128,510.00;
- Release of counterparties’ claims against the Receivership Estate in excess of \$29,000,000; and
- Release of \$1,683,403.38 plus accrued interest from a segregated account.

1. Gillis Settlement Agreement

On April 18, 2022, the Receivership Entity entered a Settlement Agreement with Gillis Management Solutions, Inc. (“Gillis”). (Greenspan Decl., ¶ 4, Ex. 1). Under the terms of the Settlement Agreement, Gillis is obligated to pay the Receivership Entity \$31,000.00 and release all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims.

Gillis was a member of the Aequitas Advisory Board and, during the Ponzi period, received

transfers from Aequitas, referred to as advisory fees, totaling \$34,675. (Greenspan Decl., ¶ 5).

On October 1, 2020, the Receiver issued a demand letter to Gillis, outlining the grounds upon which the Receivership Entity is entitled to recover certain transfers received during the Ponzi period, and demanding repayment of \$31,207.50. (Greenspan Decl., ¶ 6).

Gillis 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., ¶ 7).

Shortly after suit was filed, through its counsel, Gillis engaged in good faith settlement negotiations with the Receiver. The entity made disclosures and provided information 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., ¶ 8).

2. Ocean Settlement Agreement

On March 28, 2022, the Receivership Entity entered a Settlement Agreement with Ocean Avenue Financial Services, LLC (“Ocean”). (Greenspan Decl., ¶ 9, Ex. 2). Under the Settlement Agreement, Ocean paid the Receivership Entity \$7,000.00 and released all claims against the Receivership Entity, in exchange for a release of the Receivership Entity’s claims. *Id.*

During the Ponzi period, Ocean received transfers from Aequitas totaling \$9,750, referred to as consulting fees. (Greenspan Decl., ¶ 10).

On February 5, 2021, the Receiver issued a demand letter to Ocean, 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 \$8,775. (Greenspan Decl., ¶ 11).

Ocean 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., ¶ 12).

Shortly after suit was filed, through its counsel, Ocean engaged in settlement negotiations and ultimately agreed to return \$7,000.00. The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 13).

3. Tango Delta Liquidating Trust Settlement Agreement

On April 28, 2022, the Receivership Entity entered a settlement agreement with the Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc., as established in the United States Bankruptcy Court for the Middle District of Florida, captioned *In re Tango Delta Financial, Inc.*, Case No. 8:20-bk-3672-CPM (“Liquidating Trust”). (Greenspan Decl., ¶ 14, Ex. 3). The Receiver and the Liquidating Trustee agreed to the release of various claims and to the release of the Deposited Receivership Property (defined below) to the Receiver to be utilized in accordance with the terms of the Receivership Order, the Court-approved Distribution Plan, and the Liquidating Trust Settlement Agreement. *Id.*

i. California Federal Court Litigation

Prior to the SEC’s 2016 filing of the Aequitas receivership complaint, American Student Financial Group, Inc. (“ASFG”),³ TRD Consulting, LLC (“TRD”) Aequitas Capital Management, Inc. (“ACM”), and others, were parties to a lawsuit before the United States District Court for the Southern District of California (“California District Court”), captioned *American Student*

³ American Student Financial Group, Inc. changed its name to Tango Delta Financial, Inc. prior to filing bankruptcy in May of 2020. Notwithstanding the name change, this Motion will continue to refer to American Student Financial Group, Inc. as “ASFG.”

Financial Group, Inc. et. al. v. Aequitas Capital Management, Inc., et. al., Case No.: 12-cv-02446-CAB-JMA. (Greenspan Decl., Ex. 3, Recital C). ACM is a Receivership Defendant and one of the companies included within the Receivership Entity. (Greenspan Decl., ¶ 15).

On June 17, 2014, the California District Court entered an order granting ASFG's and TRD's application for Writ of Attachment. (Greenspan Decl., Ex. 3, Recital G). On July 23, 2014, the parties filed a Stipulation For Order To Deposit Funds in the Court's Investment Registry System, which was granted by the California District Court on July 25, 2014 (Greenspan Decl., Ex. 3, Recital H). On July 28, 2014, during the period this Court concluded ACM and the other entities comprising the Receivership Entity were collectively operated as a Ponzi scheme ("Ponzi Period"), ACM deposited \$2,483,403.38 into the California District Court registry ("Deposited Receivership Property"). (Greenspan Decl., Ex. 3, Recital I). On January 16, 2015, ACM and other defendants filed their Fourth Amended Answer, Affirmative Defenses, and Counterclaims to the ASFG/TRD Third Amended Complaint in the California District Court case, asserting four counterclaims, including fraud against ASFG, TRD, and others, as well as numerous affirmative defenses, including offset. (Greenspan Decl., ¶ 16). The matter initially was set for trial on March 14, 2016, but then stayed due to the injunction provisions set forth in the Interim and Final Receivership Orders entered in the Receivership Case. (Greenspan Decl., Ex. 3, Recital L).

On April 25, 2016, the Receiver filed a Motion for Disbursement of Funds ("Disbursement Motion"), seeking disbursement of the \$2,483,403.38 Deposited Receivership Property held in the California District Court's Investment Registry System. (Greenspan Decl., ¶ 17 and Ex. 3, Recital, O). On June 6, 2016, the California District Court entered an order granting the Receiver's Disbursement Motion, over the objections of ASFG and TRD. (Greenspan Decl., ¶ 17 and Ex. 3,

Recital P). In ordering release of the funds, the California District Court determined that the funds were Receivership property, with the Receiver having a vested right to possession. *Id.*

The Receiver, ASFG, and TRD subsequently entered into a “Stipulation to Transfer Venue and for Release of Funds Held in the Court Registry,” pursuant to which ASFG, TRD, and the Receiver agreed to transfer venue of the California District Court case to the Oregon District Court presiding over the Receivership and further agreed to release the \$2,483,403.38 to the control of the Receiver. (Greenspan Decl., Ex. 3, Recitals S, T, and U). Pursuant to that stipulation, the California District Court entered an order on August 22, 2016, transferring the entire case to the Oregon District Court and releasing the \$2,483,403.38 to the custody and control of the Receiver. The Deposited Receivership Property (\$2,483,403.38) was placed in a segregated Receivership bank account, where it remains. (Greenspan Decl., ¶ 18 and Ex. 3, Recitals U and V).

The gravamen of the ASFG/TRD claims presented in the California District Court case, as well as a related case filed in California state court,⁴ is a claim for money allegedly owed on account of a fraudulent scheme by which Aequitas purchased Corinthian College related student loans. At the risk of oversimplifying a complex situation, the student loans upon which ASFG/TRD are claiming a “profits participation” were the subject of a massive settlement between the Receiver and the federal Consumer Financial Protection Bureau and 14 States Attorneys General, which settlement cost the Receivership over \$183 million⁵ in principal and accrued and

⁴ ASFG/TRD filed an additional lawsuit against Campus Student Funding, LLC (a Receivership Entity that was formerly known as ASFG, LLC) in the Superior Court for the County of San Diego (“San Diego Superior Court Case”). (Greenspan Decl., ¶ 19). The San Diego Superior Court Case also was stayed pursuant to the Interim and Final Receivership Orders. (Greenspan Decl., ¶ 20).

⁵ These amounts do not include future interest that would have been earned on the cancelled principal amount.

unpaid interest and fees. Moreover, as detailed in the Receiver's Forensic Report, these loans and the ASFG/TRD scheme were a significant factor in the financial failure of Aequitas and the need for the appointment of the Receiver. The fraudulent ASFG/TRD conduct eventually caught up with them too, when after a name change, ASFG filed bankruptcy with few remaining material assets, other than avoidance claims against ASFG's insiders and affiliates, including TRD.

(Greenspan Decl., ¶ 21). The Receiver's Forensic Report was filed in the Receivership Case on November 21, 2018, wherein the Receiver concluded that the Receivership Entity was insolvent from at least as early as July 3, 2014. (Dkt. No. 663).

ii. The ASFG/TRD Proof of Claim

On July 30, 2019, ASFG and TRD ("Joint Claimants") filed a proof of claim ("Proof of Claim") in the Receivership Case noting that the basis of such claim was for "Services Performed" and "Contractual obligations, including any current, future, or contingent contractual or indemnity obligations arising from any contracts entered into by or on behalf of the Receivership Estate[.]" (Greenspan Decl., ¶ 22). The "Total Claim Amount" is listed as \$27,381,251, estimated as of June 2019. The Proof of Claim includes a check mark asserting the claim is secured but did not include a check mark asserting that it is an administrative claim. Although the Joint Claimants' Proof of Claim is largely illegible, it appears to include the following language on the "Additional Information" sheet:

See Attachment to Claim Form. Note that ASFG, Inc.'s claim is for \$16,655,136 pre-receiver[ship] (prior to 3/16/2016) and as administrative claim post-receivership of \$4,496,850 (up to 6/19) for money that belonged to ASFG, Inc. but received by the Receiver as a constructive trustee for ASFG, Inc. plus attorney fees....

(Greenspan Decl., ¶ 22).

An attachment to the Proof of Claim further referred to both the California District Court and San Diego Superior Court cases. In the Proof of Claim, the Joint Claimants wrongly asserted that “ASFG, Inc. is entitled to an immediate release of [the \$2,483,403.38] plus the accrued interest as part of its \$27,281.251.00 claim which, if paid, would be a credit against that amount.” William Rathbone is the attorney who filed the ASFG/TRD Proof of Claim. He is designated as the Claimant contact on the Proof of Claim, providing both his firm’s physical mailing address, together with his personal email address. Mr. Rathbone is the same attorney who is of record for ASFG/TRD in the California District Court and San Diego Superior Court cases. Additionally, pursuant to the Order approving his Application For Special Admission *Pro Hac Vice*, Mr. Rathbone was and still is attorney of record in the Receivership Case. (Greenspan Decl., ¶ 23).

iii. ASFG’s Bankruptcy Proceeding⁶

Without notice to the Receiver, on May 11, 2020, Tango Delta Financial, Inc. fdba ASFG filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Middle District of Florida. *In re Tango Delta Financial, Inc.*, Bankr. M.D. Fl. Case No. 8:20-bk-03672 (the “Florida Bankruptcy”). (Greenspan Decl., Ex. 3, Recital DD).

ASFG’s bankruptcy petition was filed shortly after Chief Bankruptcy Judge Ronald B. King for the U.S. Bankruptcy Court for the Western District of Texas (“Texas Bankruptcy Court”), orally issued findings of fact and conclusions of law, finding that ASFG was the recipient of fraudulent transfers and that its entire financing program (which appears to be similar to the one it utilized with respect to Aequitas) was designed to defraud the U.S. Department of Education by

⁶ The facts set forth in this section were obtained from a recent review of ASFG’s bankruptcy docket as well as communication with counsel for the Liquidating Trustee and were not otherwise known to the Receiver.

evading the 90/10 financing rule contained in the Code of Federal Regulations. (Greenspan Decl., Ex. 3, Recital EE). The findings of fact and conclusions of law were in relation to the twenty-nine causes of action brought against ASFG and certain related entities in October, 2018 by John Patrick Lowe as the Chapter 7 Trustee of Dickenson of San Antonio, Inc. d/b/a Career Point College (the “Texas Trustee”). (Greenspan Decl., Ex. 3, Recital FF).

ASFG’s bankruptcy schedules were executed on June 3, 2020, by the entity’s President, Timothy Duoos, under penalty of perjury. (Greenspan Decl., Ex. 3, Recital JJ). Those schedules do not list Aequitas as a creditor and do not include the Receiver on the Master Mailing list, precluding the Receiver from receipt of any notices related to the ASFG bankruptcy proceeding. (Greenspan Decl., ¶ 25 and Ex. 3, Recital GG).

The schedules and statement of financial affairs, however, are replete with references to the Receivership Case. (Greenspan Decl. ¶ 24). In the asset section of the schedules, ASFG lists two causes of action against “Aequitas Management, LLC.” The first is in the amount of \$2,483,403.38, for “Writ of Attachment” (matching the Deposited Receivership Property now held in a segregated account by the Receiver), and includes a citation to the Receivership Case number, albeit with a typo. The ASFG bankruptcy schedules include, as another of its assets, a separate “Cause of Action” against Aequitas Management, LLC, for “Money Owed” in an “Unknown” amount. (Greenspan Decl., Ex. 3, Recital HH and II). In the “Legal Actions or Assignments” section of the statement of financial affairs, ASFG references the Receivership Case as “Pending” in the United States District Court for the District of Oregon and further discloses that ASFG is an “Intervenor” in the Receivership Case. (Greenspan Decl., ¶ 24).

On July 15, 2020, Jeffrey W. Warren, was appointed as the Chapter 11 Trustee to oversee ASFG's bankruptcy and business operations (the "Florida Trustee"). (Greenspan Decl., Ex. 3, Recital KK). A review of the ASFG docket reveals that the Texas Trustee and the Florida Trustee had a contentious relationship, including, for example, fee application objections, a motion to transfer venue from Florida to Texas, multiple discovery disputes, and the filing of competing liquidation plans. (Greenspan Decl. ¶ 26).

On March 19, 2021, the Texas Trustee filed a Disclosure Statement and proposed Plan of Liquidation for ASFG. On April 21, 2021, the Florida Trustee filed a competing Disclosure Statement and Plan of Liquidation. (Greenspan Decl., Ex. 3, Recital LL). The competing Disclosure Statements both identify and describe, including the Texas Trustee's reference to the Debtor's Schedules, as property of the Tango Delta bankruptcy estate, a Cause of Action against Aequitas in the amount of \$2,483,403.38, the Deposited Receivership Property. (Greenspan Decl., Ex. 3, Recital OO).

Pursuant to its own motion, on July 1, 2021, the Bankruptcy Court entered an amended order directing the Florida Trustee, the Texas Trustee, TRD, and the Duoos Parties, including Timothy Duoos, to mediation. (Greenspan Decl., ¶ 27). The Liquidating Plan defines "Duoos Parties" as The Duoos 2004 Trust, a Revocable Inter-Vivos Trust, Christine Duoos, Deborah Duoos, Timothy Duoos, Tyler Duoos, Lynn Duoos, Garden Ad Agency, Inc., the Largo Garden Group, LLC, and the Duoos Affiliated Entities. (Greenspan Decl., Ex. 3, Recital RR).

The Mediated Joint Amended Plan of Liquidation was filed on September 22, 2021. (Greenspan Decl., ¶ 28). On September 23, 2021, the Notice of Filing Mediation Results Report was filed by the Florida Trustee advising the Court that a majority of the disputes among the

parties had been resolved and incorporated into the “Mediated Joint Amended Plan of Liquidation.” (Greenspan Decl., ¶ 29).

On September 23, 2021, the Florida Trustee also filed a “Motion for Entry of Order Conditionally Approving the Settlement Among Warren-Trustee, on Behalf of the Debtor, TRD, the Duoos Parties, and Lowe-Trustee” (the “Mediated Settlement Motion”). (Greenspan Decl. ¶ 30).

On October 28, 2021, the Bankruptcy Court entered its Hearing Proceeding Memo granting the Mediated Settlement Motion. Three (3) court days later, on November 2, 2021, the Bankruptcy Court entered its “Order Approving Disclosure Statement for Plan of Liquidation for . . . , Debtor . . . [and] Confirming Mediated Joint Amended Plan of Liquidation for . . . Debtor” (Greenspan Decl., ¶ 31).

Pursuant to the Mediated Joint Amended Plan of Liquidation (the “Liquidating Plan”), ASFG’s estate is to be liquidated through the creation of a “Liquidating Trust,” as defined in the Liquidating Plan. The Liquidating Plan designated John Patrick Lowe as the liquidating trustee, but he subsequently was replaced by Larry S. Hyman (the “Liquidating Trustee”). (Greenspan Decl., ¶ 32, Ex. 4).

iv. ASFG Estate Property Was Transferred to the Liquidating Trust, Including All Claims/Causes of Action Against Aequitas

Pursuant to the Liquidating Plan, on the Effective Date, Liquidating Trust Assets transfer to the Liquidating Trust.⁷ “Liquidating Trust Assets means collectively (i) all Assets of the Debtor

⁷ Liquidating Plan, at p. 26, ¶ 12.2.

not distributed under the Plan and (ii) Liquidating Trust Claims.”⁸ Liquidating Trust Claims include “[a]ny and all claims or Causes of Action involving the receivership of Aequitas.”⁹ The Liquidating Plan defines Causes of Action as:

[A]ny and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether know[n], unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertible directly or derivatively, in law, equity or otherwise, including Avoidance Actions, and any and all other claims or rights of the Debtor or the Estate of any value whatsoever, at law or in equity, against any Creditor or third party.

* * *

(Liquidating Plan at p. 5, ¶ 1.19.)

As set forth above, ASFG’s bankruptcy schedules list two causes of action against “Aequitas Management, LLC,” one in the amount of \$2,483,403.38 for “Writ of Attachment”, which also includes a citation to the Receivership Case number and a second cause of action based on “Money Owed” (unknown value). (Greenspan Decl., Ex. 3, Recitals HH and II). These causes of action were transferred to the Liquidating Trust on the Effective Date of the Liquidating Plan. Pursuant to notice filed in the Florida Bankruptcy, the Effective Date of the Liquidating Plan is November 22, 2021, when all conditions to the Effective Date were satisfied or waived. (Greenspan Decl., ¶ 33.) The purported claim/cause of action for “Writ of Attachment” in the amount of \$2,483,403.38 relates specifically to the Deposited Receivership Property transferred from the California District Court to the control of the Receiver.

⁸ Liquidating Plan at p. 8, ¶ 1.50.

⁹ Liquidating Plan at p. 9, ¶ 1.51(d). Aequitas is defined as “Aequitas Capital Management, Inc” Liquidating Plan at ¶ 1.4. Aequitas Capital Management, Inc. is a named defendant in the SEC’s complaint against the Aequitas entities and the Individual Defendants in the Receivership Case).

Pursuant to the terms of the Liquidating Plan, the Liquidating Trustee has the power, among others to (i) settle, compromise, or adjust by arbitration, or otherwise, any disputes or controversies in favor or against the Liquidating Trust, (ii) release, convey, subordinate, or assign any right, title, or interest in or to the Liquidating Trust Assets, (iii) waive or release rights of any kind, and (iv) in general, without in any manner limiting any of the foregoing, deal with the Liquidating Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owing the same to deal therewith, whether similar to or different from the ways above specified, at any time or times hereafter.¹⁰

v. Receiver's Motion and Subsequent Settlement

On February 23, 2022, the Receiver filed a Motion to Enforce Receivership Injunction and Receivership's Classification of the American Student Financial Group, Inc. Claim ("Motion to Enforce"). (Dkt. No. 923). Shortly thereafter, through counsel, the Liquidating Trustee engaged in good faith settlement negotiations with the Receiver. After weeks of negotiations, the parties agreed to resolve all claims, as follows:

- Payment of \$800,000 by the Receivership Entity to the Liquidating Trust;
- Release of the balance of the Deposited Receivership Property (\$1,683,403.38 plus accrued interest) from the segregated account, to be utilized in accordance with the terms of the Receivership Order and Court-approved Distribution Plan, for the benefit of Defrauded Investors; and

¹⁰ Liquidating Plan, at p. 27-28, ¶¶ 12.4 (f), (o), (p), and (s).

- Mutual release of all claims and causes of action by and between the Receivership Entity and the Liquidating Trust, with the exception of the Liquidating Trustee’s agreement not to object to any proof of claim filed by the Receivership Entity in the Florida Bankruptcy, provided the claim does not exceed \$5,000,000 and is treated as a late-filed claim that is subordinated to the claims of other allowed, non-subordinated, unsecured creditors.

(Greenspan Decl., Ex. 3).

The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 34).

4. Pirello Settlement Agreement

On May 4, 2022, the Receivership Entity entered a Settlement Agreement with Michael Pirello (“Pirello”). (Greenspan Decl., ¶ 35, Ex. 5). Under the terms of the Settlement Agreement, the parties released all claims against the other, including two claims submitted by Pirello during the claims process totaling \$2,825,727.14. *Id.*

The Receivership Entity’s claims against Pirello were based on indemnity obligations arising under a Purchase Agreement governing the Receivership Entity’s sale of certain assets to Silvermine Media Holdings, LLC. (Greenspan Decl., ¶ 36). Pirello agreed to indemnify the Receivership Entity up to the amount of \$75,000, in the event specified representations and warranties were breached. *Id.*

Prior to filing suit, the Receiver demanded payment of the \$75,000. (Greenspan Decl., ¶ 37). When Pirello refused to perform on the indemnification obligation, the Receiver necessarily directed counsel to file suit. *Id.*

Following the discovery stage of the litigation, the parties participated in a mediation, during which they mutually agreed to release all claims with neither party making a monetary payment to the other. (Greenspan Decl., ¶ 38). The Receiver believes the terms of the compromise resolution are in the best interests of the Receivership Entity. *Id.*

5. Additional Net Winner Settlement Agreements

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 (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., ¶ 39). 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).¹¹ (Greenspan Decl., ¶ 40).

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., ¶ 41). Many of the defendants in the Net Winner Lawsuit readily engaged with the Receiver, seeking to resolve the Receivership Entity’s claims. (Greenspan Decl.,

¹¹ 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.

¶ 42). 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., ¶ 43).

As of March 24, 2022, when the Receiver last sought an order approving compromises of claims against net winners (Dkt. No. 961), the Receiver had reached settlements with 34 of the net winners named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 44). 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 demand letters agreed to return 100% of their net winnings. *Id.*

Since the filing of the latest Motion (Dkt. No. 961), the Receiver reached settlements with four additional net winners named in the Net Winner Lawsuit. (Greenspan Decl., ¶ 45, Exs. 6-9). Additionally, a net winner who agreed to settlement terms prior to the Receiver filing suit, made the necessary payment but had failed to countersign and return the Settlement Agreement just completed the settlement by countersigning and returning the Settlement Agreement. (Greenspan Decl., ¶ 46, Ex. 10).

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., ¶ 47).

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 compromise of claim and causes of action are outside of the ordinary course of business, and the Settlement Agreement is conditioned on Court approval. Accordingly, the Receiver seeks this Court’s approval of, and authority to perform, the Settlement Agreement.

The Receiver’s compromises under the Settlement Agreement 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 (1st Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, the Receiver has investigated the claims asserted by each of the counterparties to the Settlement Agreement and believes, in the exercise of his discretion and business judgment that the various recoveries, releases, and other consideration provided in the subject Settlement Agreement represents fair compromises that are in the best interests of the Receivership Entity, the Defrauded Investors, and creditors.

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III. Conclusion

For the foregoing reasons, the Receiver respectfully requests this Court enter an order (1) approving the compromise of claims set forth in the Settlement Agreement, (2) authorizing performance of the Settlement Agreement, and (3) releasing the balance of the funds from the segregated account for the benefit of the Defrauded Investors

Dated this 26th day of May, 2022.

Respectfully submitted,

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