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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  
APPROVING REIMBURSEMENT OF  
RECEIVERSHIP EMPLOYEES’  
ATTORNEY FEES



**Local Rule 7-1 Certificate**

On December 13, 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 December 20, 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 one consent and no 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 approving reimbursement of attorney fees incurred by current and former Receivership employees in relation to providing testimony in the Aequitas Criminal Matter.<sup>2</sup> (“Motion”).

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

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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. 156) (the “Final Receivership Order”).

<sup>2</sup> *United States of America v. Jesenik et. al.*, U.S. District Court for the District of Oregon, Case No.3:20-cr-00228-SI.

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 the Final Receivership Order, the Receiver is authorized to use Receivership Property for the benefit of the Receivership Entity. Further, the Receiver is authorized to exercise the powers previously possessed by the officers of the Receivership Entity.<sup>3</sup>

**B. The Aequitas Criminal Matter**

On or about July 16, 2020, former Aequitas corporate officers Robert J. Jesenik, N. Scott Gillis, Andrew N. MacRitchie and Brian K. Rice were indicted on criminal charges. (*USA v. Jesenik et. al.*, Dkt. No. 1). Trial of the Aequitas Criminal Matter is presently scheduled to begin on April 3, 2023. (*USA v. Jesenik et. al.*, Dkt. No. 73).

**C. Subpoenas Issued to Current and Former Employees of the Receivership Entity**

At the outset of the Receivership, the Receiver identified Michelle Papenfuss (formerly Hulquist), Pamela Comery (formerly Hatfield) and Blake Bowman as former Aequitas employees who should be retained as employees of the Receivership Entity. (Greenspan Decl., ¶ 3).

Ms. Papenfuss remains a key employee of the Receivership Entity. She is presently engaged in challenging tasks relating to the wind-down of the corporate entities comprising the Receivership Entity and, thereby, the wind-down of the Receivership. (Greenspan Decl., ¶ 4). Until January 1, 2022, Ms. Comery was a key employee of the Receivership Entity. Presently, she

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<sup>3</sup> Final Receivership Order, ¶¶ 3 and 6.

is a contractor serving the Receivership Entity in an important capacity. Ms. Comery is a primary contact for investors and investment advisors, many of whom reach out to her with questions relating to the receivership and distributions. (Greenspan Decl., ¶ 5). Mr. Bowman diligently served the Receivership Entity for months before receiving and accepting an offer to join a private law firm.<sup>4</sup> (Greenspan Decl., ¶ 6). Since he joined the private firm, Mr. Bowman has continued to provide invaluable assistance to the Receiver and Receivership Entity. (Greenspan Decl., ¶ 7).

All three recently received subpoenas from the U.S. Attorney's Office to testify at the trial of the Aequitas Criminal Matter. (Greenspan Decl., ¶ 8). None has ever testified in a criminal matter and all are entirely unfamiliar with criminal procedure. (Greenspan Decl., ¶ 9). Shortly after receiving the subpoenas to testify at the trial, each received subpoenas issued by counsel for one of the criminal defendants calling for the production of a broad scope of documents and possibly requiring very time-consuming reviews of electronically-stored data. (Greenspan Decl., ¶ 10).

The Receivership Entity was previously served by law firms with white collar criminal practices, namely Troutman Pepper Hamilton Sanders LLP and Snell & Wilmer L.L.P. (Greenspan Decl., ¶ 11). However, those engagements were concluded, first when one of the involved attorneys moved firms and then shortly after the Receivership Entity reached a stipulated judgment with the Consumer Financial Protection Bureau. (Greenspan Decl., ¶ 12).

While representatives of the U.S. Attorney's Office have been helpful and very professional, Ms. Papenfuss, Ms. Comery and Mr. Bowman would like to engage counsel familiar with criminal procedure to advise them regarding the scope of their obligations in light of the

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<sup>4</sup> Schwabe Williamson & Wyatt, P.C.

various subpoenas and requests for “informal” interviews. (Greenspan Decl., ¶ 13). For example, Ms. Papenfuss was recently advised that she may be asked by counsel for the criminal defendants to sit for an interview and she does not know her rights and any obligations in such a circumstance. (Greenspan Decl., ¶ 14).

Understandably, receipt of the subpoenas and contemplation of the upcoming process causes a measure of stress and distraction, drawing time and attention from service to the Receivership Entity. Legal counsel will help minimize the stress and distraction, thereby leaving Ms. Papenfuss, Ms. Comery and Mr. Bowman in positions to better serve the Receivership Entity during this important wind-down period. Particularly in light of their past and continuing exemplary service to the Receiver and Receivership Entity, with each materially contributing to the very significant recoveries by the Defrauded Investors, at a minimum, the Receiver believes the Receivership Entity should subsidize their legal expenses related to testifying in the Aequitas Criminal Matter. (Greenspan Decl., ¶ 15). Specifically, at this time, the Receiver seeks the Court’s authority for the Receivership Entity to reimburse up to \$10,000 of the legal expenses incurred by each of Ms. Papenfuss, Ms. Comery and Mr. Bowman, as well as any other current or former employee of the Receivership Entity who continues to serve the Receivership Entity in a material capacity and is subpoenaed to testify in the Aequitas Criminal Matter. (Greenspan Decl., ¶ 16).

Counsel for the Receiver advised the SEC Staff Counsel of the circumstances and the Receiver’s intent to seek authority for the Receivership Entity to reimburse the legal expenses of these individuals, and the SEC Staff Counsel does not object. (Greenspan Decl., ¶ 17).

**II. Points and Authorities**

The Receiver may “take any action which, prior to the entry of [the Final Receivership Order], could have been taken by officers, directors, partners, managers, trustees and agents of the Receivership Entity.” (Dkt. No. 156, ¶ 6). The Final Receivership Order further provides that “the Receiver need not obtain Court approval prior to disbursement of Receivership funds for expenses [incurred] in the ordinary course of administration and operation of the Receivership.” (Dkt. No. 156, ¶ 43). While many corporations would readily provide counsel for employees in circumstances such as this, the Receiver is uncertain whether doing so could be deemed outside of the ordinary course of business and, therefore, seeks the Court’s authorization.

**III. Conclusion**

For the foregoing reasons, the Receiver respectfully requests this Court enter an order authorizing the Receivership Entity to reimburse up to \$10,000 of the legal expenses incurred by each of Ms. Papenfuss, Ms. Comery and Mr. Bowman in relation to testifying in the Aequitas Criminal Matter. Further, the Receiver requests authority to, at his discretion, reimburse up to \$10,000 of the legal expenses incurred by any other current or former employee of the Receivership Entity who continues to serve the Receivership Entity in a material capacity and receives a subpoena to testify in the Aequitas Criminal Matter. The Receiver hopes that the litigants in the Aequitas Criminal Matter seek to limit imposition upon percipient witnesses who continue to serve the Receivership Entity and, thereby, the interests of the Defrauded Investors. In

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the event the demands upon their time and attention exceed what is presently anticipated, the Receiver may seek additional relief.

Dated this 20th day of December, 2022.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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