

Troy D. Greenfield, OSB #892534

Email: tgreenfield@schwabe.com

Joel A. Parker, OSB #001633

Email: jparker@schwabe.com

Jeffrey S. Eden, OSB #851903

Email: jeden@schwabe.com

Alex I. Poust, OSB #925155

Email: apoust@schwabe.com

Lawrence R. Ream (Admitted *Pro Hac Vice*)

Email: lream@schwabe.com

Schwabe, Williamson & Wyatt, P.C.

Pacwest Center

1211 SW 5th Ave., Suite 1900

Portland, OR 97204

Telephone: 503.222.9981

Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice*)

Email: knaueri@pepperlaw.com

Brian M. Nichilo (Admitted *Pro Hac Vice*)

Email: nichilob@pepperlaw.com

Pepper Hamilton, LLP

600 14th Street, NW, Suite 500

Washington, DC 20005

Telephone: 202.220.1219

Facsimile: 202.220.1665

Attorneys for the Receiver for Defendants

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. JESENIK, BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-PK

DECLARATION OF BRAD FOSTER IN
SUPPORT OF RECEIVER'S RESPONSE
TO OBJECTIONS TO RECEIVER'S
MOTION FOR ORDERS: (1) SCHEDULING
HEARING TO APPROVE SALE OF
ASSETS; (2) APPROVING CEDAR
SPRINGS CAPITAL AS STALKING
HORSE BIDDER; (3) APPROVING
BREAK-UP FEE; (4) APPROVING
BIDDING PROCEDURES; and (5)
APPROVING THE SALE OF ASSETS
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS
(CCM Capital Opportunities Fund, LP)

I, Brad Foster, declare under penalty of perjury as follows:

1. I am the Managing Director, Corporate Finance, at FTI Consulting, Inc. ("FTI").

FTI was retained by Ronald Greenspan, the duly appointed receiver ("Receiver") for the Receivership Entity.¹

2. Pursuant to the Order Authorizing Brad Foster and Larissa Gotguelf to Act on Behalf of the Receiver [Dkt. #245], I make this declaration on behalf of the Receiver, Ronald F. Greenspan, and in support of the Receiver's Response to Objection to Receiver's Motion for Orders: (1) Scheduling Hearing to Approve Sale of Assets; (2) Approving Cedar Springs Capital As Stalking Horse Bidder; (3) Approving Break-Up Fee; (4) Approving Bidding Procedures; and (5) Approving the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests (CCM Capital Opportunities Fund, LP).

3. In the course of my work for the Receiver, FTI has assisted the Receiver to,

¹ Capitalized terms not otherwise defined in this declaration shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 [Dkt. #156] (the "Final Receivership Order").

among other things, determine the nature, location, and value of all Receivership Property. I have become familiar with the proposed sale of the Receivership's ownership interest in CCM Capital Opportunities Fund, LP ("CCM"), f/k/a Aequis Capital Opportunities Fund, LP ("Proposed Sale").

4. By extension, the Proposed Sale severs the Receivership's indirect interest in CarePayment Technologies, Inc. ("CPYT"). CPYT is currently the servicer of certain healthcare receivables portfolios ("Receivables Assets"). The Receivables Assets are not owned by CarePayment Holdings, LLC ("CP Holdings"). Instead, the Receivables Assets are owned by two other entities, CarePayment, LLC and CP Funding I Trust.

5. The Proposed Sale will give CPYT or its affiliate a six-month exclusive period ("Option") to purchase the Receivables Assets. The Proposed Sale includes this Option (as opposed to outright sale) because the acquisition of the Receivables Assets requires a funding facility. CPYT and a potential funding source continue to make progress negotiating the terms of that credit facility, which would facilitate CPYT's acquisition of the Receivables Assets.

6. As of December 20, 2016, the cost basis, face value, and amount of the first lien debt of the Receivables Assets is summarized as follows:

	Face	Cost	Loan Balance
CarePayment, LLC	60,705,490.69	51,794,540.46	38,497,012.92
CP Funding 1 Trust	16,725,537.61	14,103,089.83	8,602,998.86
	<i>less CPFIT Reserve Account</i>		<i>(500,481.24)</i>
	<i>less CPFIT Acquisition Account</i>		<i>(918,946.26)</i>
	Net Amount		45,680,584.28

7. The Receiver is still in the first stage of monetizing assets in advance of initiating a formal investigation into claims and causes of action.

8. I have been informed that Weider Health & Fitness and Bruce Forman ("Weider," "Forman," and collectively "Weider/Forman") have objected to the Proposed Sale because they claim to have a security interest in the Receivables Assets.

9. In the course of my work for the Receiver, I have elicited information about and

become familiar with aspects of some of the financial transactions between Weider/Forman and various Defendants and Receivership Entities. Because other matters relating to the Receivership have had a higher priority, the Receiver has not undertaken a full investigation of transactions with Weider/Forman or what they knew or should have known regarding the financial condition and operating methods of Defendants, Receivership Entities, and Related Entities, including the fraud the SEC alleges occurred in 2014 and 2015. Even without a full investigation of claims and causes of actions available to the Receivership, the Receiver has discovered information about Weider/Forman amongst other insiders and creditors, and their dealings with management, that raise significant concerns not necessarily apparent from the face of the transactional documents.

10. Based on information supplied to me in the course of my work for the Receiver, I summarize several material aspects presently known to me about the transactions between Weider/Forman and various Defendants and Receivership Entities as follows:

(a) Starting in May 2011, Weider/Forman loaned money to Aequitas affiliated entities, and then participated with management in purporting to shuffle that debt from Aequitas Commercial Finance (“ACF”) to CSF Leverage I, LLC (“CSF Leverage I”), and then to CP Holdings.

(b) On October 3, 2014, Weider/Forman purport to have “converted” \$6,000,000 of pre-existing debt previously owed by ACF and CSF Leverage I into \$6,000,000 of alleged debt owed by CP Holdings. It appears that Weider/Forman never provided the \$6,000,000 necessary to create the debt that CP Holdings was burdened to repay to the detriment of its other investors and creditors. It appears that CP Holdings may not have received any consideration from Weider/Forman or, at best, partial consideration for the debt heaped onto CP Holdings.

(c) In June 2015, Weider/Forman agreed to provide \$4,500,000 of cash to

CP Holdings, but only if CP Holdings would agree to pay 17% interest (25% default interest). Management questioned Weider/Forman's high interest rate demand because Management considered "CarePayment our lowest risk assets" and sought a reduction in the interest rate demand. Weider/Forman refused to reduce the rate below 17% even after being informed by Management that Aequitas' current "highest cost of capital" was at about 13% or 14%.

(d) It appears from the CP Holdings books and records that, in conjunction with the execution of the Weider/Forman loan agreements in June 2015, \$4,500,000 was provided to CP Holdings. It appears that some of those funds were immediately diverted to other entities, without benefit to CP Holdings.

11. After the Receiver undertakes further investigation, the Receiver anticipates making a comprehensive assessment and recommendation to the Court regarding the extent, validity and priority of Weider/Forman's loan and relationship with Aequitas entities.

I declare under penalty of perjury under the laws of the state of Oregon that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated this 19th day of January, 2017.

s/ Brad Foster

Brad Foster, Managing Director, Corporate Finance
FTI Consulting, Inc.

On behalf of the Receiver, Ronald F. Greenspan