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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;

No. 3:16-cv-00438-PK

[PROPOSED] ORDER GRANTING  
RECEIVER'S MOTION TO SELL  
PERSONAL PROPERTY TO CEDAR  
SPRINGS CAPITAL FREE AND CLEAR  
OF LIENS, INTERESTS, CLAIMS AND  
ENCUMBRANCES  
(CCM Capital Opportunities Fund, LP)



AEQUITAS COMMERCIAL FINANCE,  
 LLC; AEQUITAS CAPITAL  
 MANAGEMENT, INC.; AEQUITAS  
 INVESTMENT MANAGEMENT, LLC;  
 ROBERT J. JESENIK, BRIAN A. OLIVER;  
 and N. SCOTT GILLIS,

Defendants.

This matter having come before the Honorable Paul Papak on 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) (the "Motion")<sup>1</sup> [Dkt. 323], and the Court, having given all counsel an opportunity to oppose the Motion, having held a hearing on January 20, 2017 (the "Final Hearing"), and having considered the Declaration of Ronald F. Greenspan in Support of the Motion [Dkt. 324], and further having considered the limited objections filed by (a) Weider Health & Fitness ("Weider") and Bruce Forman ("Forman") [Dkts. 344-347, 355, and 356], (b) Compass Partners International II LLP [Dkt. 350], and (c) Terrell Group Management, LLC ("TGM") [Dkt. 349], and further having considered the Receiver's Response to Limited Objections Re: Asset Sale [Dkt. 353] and the Declaration of Brad Foster [Dkt. 354], and further having considered the other records and files herein, and the Court being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the five entity defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed as receiver for the entity defendants and 43 related entities on an interim basis (the “Interim Receivership Order”). On April 14, 2016, pursuant to the Order Appointing Receiver, the Receiver was appointed as receiver of the entity defendants and 43 related entities on a final basis (the “Final Receivership Order”).

C. Due, timely, and adequate notice of the Motion and Final Hearing was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion and Final Hearing is or shall be required.

D. On October 27, 2016, an auction for the sale of the CCM Interests (except for CCM’s interests in CarePayment Technologies, Inc. (“CarePayment”)) was held in this Court. Buyer (defined below) was the prevailing bidder at the auction. Following the auction, this Court entered an Order Granting Receiver’s Motion to Sell Personal Property Free and Clear of Liens, Interests, Claims and Encumbrances (the “Stub Portfolio Sale Order”) to Buyer. [Dkt. 283].

E. Pursuant to the Agreement of Purchase and Sale approved by the Stub Portfolio Sale Order, the initial closing deadline was November 30, 2016, unless extended by the parties. That deadline was extended by mutual agreement to midnight Pacific time, on December 7, 2016. The closing deadline was made subject to further extension if the Receiver and Cedar Springs agreed to include CarePayment in the transaction. The Receiver and Buyer agreed to include CarePayment in the transaction, as memorialized in the December 7, 2016, Amended and Restated Agreement of Purchase and Sale.

F. On December 7, 2016, counsel for the Receiver, pursuant to Local Rule 7-1, delivered electronically to counsel of record copies of the (i) Motion, (ii) Declaration of Ronald F. Greenspan, (iii) December 7, 2016, Amended and Restated Agreement of Purchase and Sale, and (iv) a proposed form of the Bid Procedures Order.

G. On December 16, 2016, the Receiver filed the Motion, Declaration of Ronald F. Greenspan [Dkt. 324 and 324-1], and the [Proposed] Order Granting Receiver's Motion (1) For Approval of Bidding Procedures, Break-Up Fee, and Cedar Springs as Stalking Horse Bidder, and (2) To Schedule Final Sale Hearing [Dkt. 325].

H. On December 28, 2016, the Court entered the Order Granting Receiver's Motion (1) For Approval of Bidding Procedures, Break-Up Fee, and Cedar Springs Capital as Stalking Horse Bidder, and (2) to Schedule Final Sale Hearing (the "Bid Procedures Order") [Dkt. 333].

I. The Receiver, on behalf of Seller, and each of Cedar Springs Special Opportunities IV, LP, and CSC Spec Opps IV GP, LLC (together, with its permitted successors and assigns, "Buyer"), executed an Amended and Restated Agreement of Purchase and Sale for the Property, a redacted copy of which was filed with this Court on December 16, 2016 [Dkt. 324-1]. The Amended and Restated Agreement of Purchase and Sale, as further amended to extend the Closing Deadline to February 1, 2017, is referred to as the "Purchase and Sale Agreement."

J. Pursuant to the Bid Procedures Order, the Court authorized the Receiver to consider Alternative Bids and, if necessary, hold an auction for the sale of the Property, all on the terms described therein. Pursuant to the Bidding Procedures, Alternative Bids were due by the Bid Deadline of January 11, 2017.

K. No Qualified Alternative Bids were submitted to the Receiver prior to expiration of the Bid Deadline or otherwise.

L. Approval of the Sale (as defined below) and the Purchase and Sale Agreement is in the best interests of the Receivership Entity and its estate.

M. The sale of the Property on the terms contemplated by the Purchase and Sale Agreement (the "Sale"), including but not limited to the conduct of the sales process by the Receiver pursuant to the Bidding Procedures, was conducted in a fair and commercially

reasonable manner under the circumstances. There is no evidence that the Receivership Entity, Receiver or Buyer engaged in any conduct (including but not limited to collusion or fraud of any kind) that would cause or permit the Sale transaction to be avoided.

N. The Sale is an arm's-length transaction, proposed in the sound exercise of the Receiver's business judgment, in good faith and for fair value. The Sale is in the best interests of the Receivership Entity, and its creditors and investors. Buyer has at all times acted in good faith in connection with the sales process conducted by the Receiver and therefore is entitled to all the protections afforded good faith Buyers under applicable law.

O. Buyer, on the one hand, and the Receivership Entity, on the other hand, are not insiders or affiliates of each other. The transactions contemplated under this Order and the Purchase and Sale Agreement do not amount to a consolidation, merger, or *de facto* merger of Buyer and any Receivership Entity. There is no substantial continuity between Buyer and the Receivership Entity, and Buyer is not a successor to the Receivership Entity or its estate.

P. At all times prior to the entry of this Order, the Property has been the property of Receivership Entity's estate, title thereto is vested in the Receivership Entity, and the Receivership Entity is the sole and lawful owner thereof. Pursuant to the Final Receivership Order, the Receiver has full power and authority to convey and deliver the Property to Buyer.

Q. The Court having reviewed the Motion, and having considered the presentations of counsel, and having considered any objections filed to the Motion, and it appearing that the Sale is in the best interest of the Receivership Entity and its estate, and for good cause shown, and for the reasons stated by the Court on the record at the Final Hearing, which are incorporated herein by reference,

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Motion is granted and the Purchase and Sale Agreement is approved in its entirety.

2. All objections to the Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are overruled.

3. The Sale of the Property to Buyer on the terms set forth in the Purchase and Sale Agreement, and as reasonably amended by agreement of the parties, is approved. Pursuant to the Motion and the Final Receivership Order, the transfer of the Property to Buyer shall be free and clear of any and all liens, claims, interests, and encumbrances (“Liens”), including but not limited to those that are or may be alleged by Lease Dimensions, Inc., (as Collateral Agent for Aequitas Commercial Finance Private Note Investors and Aequitas Private Client Fund Investors), Aequitas Commercial Finance, LLC, TGM, Weider, Forman, William Ruh, Craig Froude, MotoLease, LLC, Maurice Salter and Emre Ucer (together, the “Lien Claimants”). Notwithstanding the foregoing, following the transfer of the Property to the Buyer Maurice Salter and Emre Ucer will continue to maintain their ownership of membership units in MotoLease, LLC and the Limited Liability Company Agreement of MotoLease, LLC dated as of June 26, 2012 (the “LLC Agreement”) will continue to govern the rights of the members after transfer of the Property to the Buyer. None of the actions by the Buyer, Seller, the Receivership Entity or the Receiver taken prior to or in completion of the transfer of the Property to the Buyer can serve as a basis for a claim or the assertion of a right against any of those parties by MotoLease, LLC, Maurice Salter, Emre Ucer or any other person. All Liens recorded or not as of the date of the closing of the Sale, if any, shall be released as against the Property, and shall attach to the proceeds of Sale to the same extent, validity, and priority as they attached to the Property, subject to use of such proceeds by the Receivership Entity pursuant to the terms of the Final Receivership Order or upon further order of this Court.

4. Without limiting the foregoing paragraph number three, no proceeds of Sale shall be owing to William Ruh or Craig Froude by reason of any alleged claim to a share of the carried interest of CCM Capital Opportunities Fund, GP, LLC (or any other Receivership Entity), in

CCM Capital Opportunities Fund, LP (“CCM”). To the extent either asserts they have such a claim, such claim shall be considered and adjudicated through the Receivership claim process to be administered by the Receiver pursuant to the Final Receivership Order.

5. Without limiting the foregoing paragraph number three, (1) TGM shall hold a replacement security interest in the proceeds of the Notes in the principal amount of \$4,383,723.00, plus accrued interest as of January 31, 2017, in the amount of \$413,334.87, plus interest accruing thereafter at the rate of \$1,049.89 per diem (the “Note Proceeds”) of the same extent, validity, perfection and priority that it holds a security interest in the Notes, (2) the Receiver shall deposit Note Proceeds in a segregated, non-interest bearing bank deposit account, and (3) the Receiver shall not withdraw or use the Note Proceeds for any purpose other than payment of TGM’s claims without either TGM’s consent or further order of this Court.

6. The provisions of this Order declaring the sale of the Property free and clear of Liens shall be self-executing, and neither the Receiver, Buyer, nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents, or other instruments to effectuate, consummate, and/or implement the provisions hereof with respect to the Sale.

7. The Receiver and Buyer are authorized to execute, deliver, and perform all obligations and related documents as deemed necessary or appropriate by the Receiver to close the transactions contemplated by this Order and the Purchase and Sale Agreement, including the Sale and any other transactions required by the Sale.

8. Each of the Receivership Entity’s creditors is directed to execute such documents and take all other actions as may be necessary to release its Liens in and to the Property, if any, as such may have been recorded, filed, or otherwise exist. The Buyer is hereby authorized to execute and file such documents solely with respect to the Property and related Liens should the Receivership Entity’s creditors fail to do so. No person or entity shall interfere with the Sale and

the transactions contemplated by the Purchase and Sale Agreement or take any other actions that would diminish the value to be received or retained by the Receivership Entity.

9. Each of Buyer and CCM following the Sale is not a successor to the Receivership Entity or its estate by reason of any theory of law or equity, and Buyer, and its respective affiliates and subsidiaries, and CCM following the Sale, shall not assume, nor be deemed to assume, nor in any way be responsible for, any liability or obligation of the Receivership Entity and/or its estate, including, but not limited to, any successor liability or similar liability.

10. Neither Buyer, Receiver, nor the Receivership Entity shall have any liability with respect to brokers' fees, if any, incurred in connection with the Sale and the Purchase and Sale Agreement.

11. This Court shall retain exclusive jurisdiction over any issues relating to the Sale of the Property to Buyer, to enforce this Order, and over any action arising from or in any way related to the Sale, including but not limited to any actions asserted against the Buyer.

12. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity, Buyer, Lien Claimants, and their successors and assigns.

Dated this \_\_\_\_\_ day of January, 2017.

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United States Magistrate Judge Paul Papak

SUBMITTED BY:

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