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Attorneys for Secured Creditors WEIDER HEALTH & FITNESS and BRUCE FORMAN

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 3:16-CV-00438-PK

**DECLARATION OF MATTHEW  
DONALD UMHOFFER IN SUPPORT  
OF SECURED CREDITORS WEIDER  
HEALTH & FITNESS'S AND BRUCE  
FORMAN'S STATEMENT ON  
PROPOSED PROCEDURE FOR  
ADEQUATE PROTECTION  
HEARING**

DECLARATION OF M



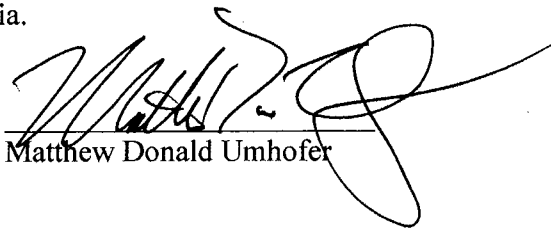
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**DECLARATION OF MATTHEW DONALD UMHOFFER**

I, Matthew Donald Umhofer, declare as follows:

1. I am an attorney admitted to practice in the State of California and have been admitted pro hac vice to this Court. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would testify competently to the matters stated herein under oath.
2. Attached hereto as Exhibit 1 is a true and correct copy of an email and letter I sent to the Receiver's counsel on February 2, 2017.
3. Attached hereto as Exhibit 2 is a true and correct copy of an email I received from the Receiver's counsel on February 3, 2017.
4. Attached hereto as Exhibit 3 is a true and correct copy of an email I received from the Receiver's counsel on February 8, 2017.
5. Attached hereto as Exhibit 4 is a true and correct copy of an email and letter, without draft objection, I sent to the Receiver's counsel on January 12, 2017.
6. Attached hereto as Exhibit 5 is a true and correct copy of an email I received from the Receiver's counsel on February 10, 2017.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 23, 2017, in Los Angeles, California.

  
Matthew Donald Umhofer

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 2-23-2017 before me, Suzanne Obeda,  
(Here insert name and title of the officer)

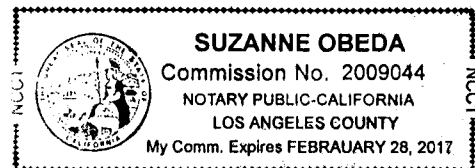
personally appeared Matthew D. Umhofer,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Suzanne Obeda*  
Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Declaration ISO Statement of Hearing

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date 2-23-2017

### CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)  
☐ Corporate Officer

\_\_\_\_\_  
(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/~~they~~, is /~~are~~ ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

# EXHIBIT 1

**EXHIBIT 1**

## Jennifer LaGrange

---

**From:** Matthew Umhofer  
**Sent:** Thursday, February 02, 2017 3:32 PM  
**To:** Ream, Larry  
**Cc:** Jennifer LaGrange; Greenfield, Troy D.  
**Subject:** RE: Weider/Forman  
**Attachments:** 2017-02-01 Letter to L Ream re Adequate Protection Hearing.pdf

Larry:

Please see the attached letter.

Regards,  
Matthew

Matthew Donald Umhofer  
310.826.4700  
[matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)

**S P E R T U S**  
**LANDES &**  
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VIA E-MAIL ONLY

February 2, 2017

Lawrence R. Ream  
Schwabe, Williamson & Wyatt, P.C.  
Pacwest Center  
1211 SW 5th Ave., Suite 1900  
Portland, OR 97204

Re: In re: Aequitas Management, LLC  
Case No. 16-438-PK (D. Or.)

Dear Mr. Ream:

I write to follow up about the proposed scope and timing of a hearing to determine the amount of reserve the Receiver must segregate from the section 363 sale proceeds to adequately protect the first-priority, secured interests of Weider Health & Fitness and Bruce Forman. At this point—the Court having already approved the sale on the basis of a “bona fide dispute” under section 363(f)(4)—there are only three issues for the Court to determine: (1) whether collateral for the Weider and Forman loans includes the CarePayment® healthcare receivables that are part of the sale option; (2) whether Weider and Forman perfected their security interests; and (3) the amount of Weider’s and Forman’s security interests.

These questions require only limited document discovery and no depositions or live testimony. The first issue turns on the definition of “collateral” in the loan documents and whether it includes the receivables; the only discovery required is the parties’ exchange of loan documents and correspondence regarding collateral. The second issue turns on the requirements for perfecting a security interest, and whether Weider and Forman satisfied them; the only discovery required is Weider’s and Forman’s production of documents evidencing as much. The third issue turns on the exchange of monies between the parties and a straightforward calculation of interest; the only discovery required is Weider’s and Forman’s production of documents evidencing disbursement of the \$10.5 in loan principal, and the parties’ exchange of documents showing CarePayment Holdings’ repayment (if any) of principal and interest to date. These issues can be briefed and argued.

James W. Spertus | [jim@spertuslaw.com](mailto:jim@spertuslaw.com)  
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Julia Tuverson | [julia@spertuslaw.com](mailto:julia@spertuslaw.com)

Matthew Umhofer | [matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)  
Jennifer E. LaGrange | [jennifer@spertuslaw.com](mailto:jennifer@spertuslaw.com)  
Diane Bang | [diane@spertuslaw.com](mailto:diane@spertuslaw.com)

Ezra D. Landes | [ezra@spertuslaw.com](mailto:ezra@spertuslaw.com)  
Dolly K. Hansen | [dolly@spertuslaw.com](mailto:dolly@spertuslaw.com)  
Suzanne S. Obeda | [suzie@spertuslaw.com](mailto:suzie@spertuslaw.com)



February 2, 2017  
Page 2 of 3

Nothing more is necessary to determine the amount of reserve. The law is clear that when a sale proceeds over the interest-holder's objection under section 363(f)(4), "the proceeds of sale are held subject to the disputed interest and then distributed as dictated by the resolution of the dispute; such procedure preserves all parties' rights by simply transferring interests from property to dollars that represent its value." In re Clark, 266 B.R. 163, 171 (Bankr. 9th Cir. 2001). Resolution of the dispute, as the Receiver itself stressed throughout its briefing and argument, requires a fully noticed adversary proceeding to determine the extent, validity, and priority of the interests, which will not occur for at least a couple of years. Cf. Fed. R. Bankr. P. 7001(1)-(2) & advisory committee note (requiring adversary proceeding to avoid transfer under 11 U.S.C. § 548, governing fraudulent conveyance). In other words, allegations of fraudulent conveyance have nothing to do with the amount of reserve that must be set aside as adequate protection; anything less than the full disputed amount is—by definition—not adequate.

In light of this, we propose the following procedure to resolve the issues identified above:

- By February 24, 2017, Weider and Forman will produce all loan documents and documents incorporated into them by reference, all correspondence regarding the collateral for these loans, documents demonstrating that Weider and Forman perfected their security interests, documents demonstrating that Weider and Forman transferred \$10.5 million in principal, and documents demonstrating the amount of money (if any) CarePayment Holdings, LLC has paid in principal and interest to date.
- By February 24, 2017, the Receiver will produce all correspondence regarding the collateral for the loans, documents underlying their allegations that Weider and Forman did not transfer some or all of the \$10.5 million in principal, and documents demonstrating the amount of money (if any) CarePayment Holdings, LLC has paid in principal and interest to date.
- By March 10, 2017, Weider and Forman will file a brief addressing: (1) whether collateral for the Weider and Forman loans includes the CarePayment® healthcare receivables that are part of the sale option; (2) whether Weider and Forman perfected their security interests; and (3) the amount of Weider's and Forman's security interests.
- By March 24, 2017, the Receiver will file a response brief.
- By March 31, 2017, Weider and Forman will file a reply brief.

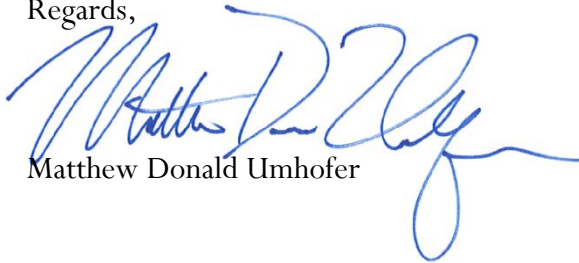
SPERTUS  
LANDES &  
UMHOFFER  
LLP

February 2, 2017  
Page 3 of 3

- On April 7, 2017, or any time thereafter convenient for the Court, the parties will appear for argument on these issues.

We see no need for depositions, live testimony, or a hearing. We are, of course, happy to discuss the matter further if you disagree. I am available to speak at your convenience. If we cannot come to an agreement by the close of business on Monday, February 6, 2017 at 12:00 p.m. Pacific Standard Time, we suggest that both parties file statements with the Court setting forth competing proposals identifying the issues to be resolved, and a proposed procedure for resolving them.

Regards,



Matthew Donald Umhofer



# EXHIBIT 2

**EXHIBIT 2**

## Jennifer LaGrange

---

**From:** Matthew Umhofer  
**Sent:** Friday, February 03, 2017 3:33 PM  
**To:** Greenfield, Troy D.  
**Cc:** Ream, Larry; Jennifer LaGrange  
**Subject:** Re: Weider/Forman

Thanks. You too.

On Feb 3, 2017, at 3:26 PM, Greenfield, Troy D. <[TGreenfield@SCHWABE.com](mailto:TGreenfield@SCHWABE.com)> wrote:

Hi Matthew,

Larry and I buried in a couple of other matters through Tuesday morning. We will be in touch by COB on Wednesday to discuss your clients' position stated in the attached letter.

Have a good weekend.

**Schwabe Williamson & Wyatt**  
**Troy Greenfield**

Shareholder

Office Direct: 206.407.1581

Cell: 206.419.5041

[tgreenfield@schwabe.com](mailto:tgreenfield@schwabe.com)

[Vcard](#) [LinkedIn](#)

**Ideas fuel industries. Learn more at:**  
[www.schwabe.com](http://www.schwabe.com)



---

**From:** Matthew Umhofer [<mailto:matthew@spertuslaw.com>]  
**Sent:** Thursday, February 02, 2017 3:32 PM  
**To:** Ream, Larry  
**Cc:** Jennifer LaGrange; Greenfield, Troy D.  
**Subject:** RE: Weider/Forman

Larry:

Please see the attached letter.

Regards,  
Matthew

Matthew Donald Umhofer  
310.826.4700  
[matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)

<image001.png>  
1990 South Bundy Drive, Suite 705  
Los Angeles, Ca. 90025  
<http://www.spertuslaw.com/>

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# EXHIBIT 3

**EXHIBIT 3**

## Jennifer LaGrange

---

**From:** Greenfield, Troy D. <TGreenfield@SCHWABE.com>  
**Sent:** Wednesday, February 08, 2017 10:25 AM  
**To:** Matthew Umhofer; Ream, Larry  
**Cc:** Jennifer LaGrange  
**Subject:** RE: Weider/Forman

Hi Matt,

We received a pretty decent hit of snow on Monday and Tuesday, closing our office and putting us a bit behind schedule. As a result, it may be Friday before I can give you a call to discuss your clients' position. In light of where Judge Papak and the Receiver left it at the conclusion of the hearing, we are not under an impending deadline.

Take care,

**Schwabe Williamson & Wyatt**

**Troy Greenfield**

Shareholder

Office Direct: 206.407.1581

Cell: 206.419.5041

[tgreenfield@schwabe.com](mailto:tgreenfield@schwabe.com)

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[www.schwabe.com](http://www.schwabe.com)

---

**From:** Matthew Umhofer [mailto:matthew@spertuslaw.com]  
**Sent:** Thursday, February 02, 2017 3:32 PM  
**To:** Ream, Larry  
**Cc:** Jennifer LaGrange; Greenfield, Troy D.  
**Subject:** RE: Weider/Forman

Larry:

Please see the attached letter.

Regards,  
Matthew

Matthew Donald Umhofer  
310.826.4700  
[matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)



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Los Angeles, Ca. 90025

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# EXHIBIT 4

**EXHIBIT 4**

**Jennifer LaGrange**

---

**From:** Matthew Umhofer  
**Sent:** Thursday, January 12, 2017 3:10 PM  
**To:** lream@schwabe.com  
**Cc:** Jennifer LaGrange  
**Subject:** Letter re: Weider/Forman  
**Attachments:** 2017-01-12 Letter to Larry Ream.pdf; Weider and Forman Draft Objection 2017-01-12.pdf

Larry:

Please see the attached letter.

Regards,  
Matthew



Matthew Donald Umhofer  
1990 S. Bundy Dr., No.  
705  
Los Angeles, CA 90025  
310.826.4700  
[matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)  
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VIA E-MAIL ONLY

January 12, 2017

Lawrence R. Ream  
Schwabe, Williamson & Wyatt, P.C.  
Pacwest Center  
1211 SW 5th Ave., Suite 1900  
Portland, OR 97204

Re: In re: Aequitas Management, LLC  
Case No. 16-438-PK (D. Or.)

Dear Mr. Ream:

Thank you for your January 9, 2017, letter regarding the CarePayment Technologies sale.

We've reviewed your letter and the authorities you've cited, and remain confident in the enforceability of the consent provisions in the Weider and Forman loan agreements based on controlling case authority. I have attached a draft of a limited objection to the CarePayment Technologies sale that lays out, in greater detail, the authority for our position.

Of course, we'd prefer to resolve the matter with no further delay and avoid objections. While we firmly believe that a court would uphold our clients' rights as secured creditors to both their principal and accrued interest through distribution, my clients are prepared to accept the reduced amount of \$8.5 million, on the condition that the receiver seeks immediate court approval of this \$8.5 million settlement—no later than January 17, 2017—and makes full payment to my clients immediately upon court approval of the settlement.

James W. Spertus | [jim@spertuslaw.com](mailto:jim@spertuslaw.com)  
Samuel A. Josephs | [samuel@spertuslaw.com](mailto:samuel@spertuslaw.com)  
Julia Tuverson | [julia@spertuslaw.com](mailto:julia@spertuslaw.com)

Matthew Umhofer | [matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)  
Jennifer E. LaGrange | [jennifer@spertuslaw.com](mailto:jennifer@spertuslaw.com)  
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Ezra D. Landes | [ezra@spertuslaw.com](mailto:ezra@spertuslaw.com)  
Dolly K. Hansen | [dolly@spertuslaw.com](mailto:dolly@spertuslaw.com)  
Suzanne S. Obeda | [suzie@spertuslaw.com](mailto:suzie@spertuslaw.com)

SPERTUS  
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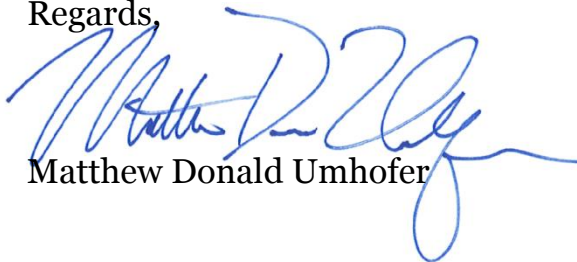
January 12, 2017  
Page 2 of 2

Based on receivables debt and pricing information that you provided, it is our understanding that the principal of the Weider and Forman loans is over-collateralized by 2.4 times, and therefore there are more than sufficient proceeds to pay the principal and interest on the loans at the contract interest rate for a period of eight years. I am highly confident that the Court will grant us adequate protection, and rightfully safeguard and preserve the money owed to Weider and Forman until the Receiver pays Weider and Forman in full.

Please keep in mind that, given the deadline for objections (next Wednesday, January 18, 2017), we will need to move quickly in reaching and executing any settlement. Unless we have an executed settlement agreement, we will need to file our objections to preserve our rights.

I'm available to speak at your convenience.

Regards,



Matthew Donald Umhofer

# EXHIBIT 5

**EXHIBIT 5**

Begin forwarded message:

**From:** "Greenfield, Troy D." <[TGreenfield@SCHWABE.com](mailto:TGreenfield@SCHWABE.com)>  
**Date:** February 10, 2017 at 4:10:28 PM PST  
**To:** "Matthew Umhofer ([matthew@spertuslaw.com](mailto:matthew@spertuslaw.com))" <[matthew@spertuslaw.com](mailto:matthew@spertuslaw.com)>  
**Subject:** Aequitas - Weider/Forman

Good Afternoon Matthew,

We have reviewed your clients' position as stated in your letter of February 2. Judge Papak has already ruled on the scope of the hearing, noting that he will hear evidence relating to failure of consideration and other factors affecting his ultimate determination of whether your clients are entitled to a reserve and, if so, in what amount. I understand that you have a copy of the transcript of the January 20 hearing.

Judge Papak instructed the parties to confer regarding both the timing of the hearing and an appropriate discovery plan. Written discovery and a few depositions are necessary to prepare for the anticipated hearing. We were prepared to comply with Judge Papak's directive during the call two weeks ago. However, you and Jennifer were intent upon essentially revisiting the arguments presented during the January 20 hearing.

Based on the comments in your February 2 letter, your clients seek reconsideration of Judge Papak's ruling. If they choose to file a motion for reconsideration or similar relief, the Receiver and perhaps other interested parties will necessarily file oppositions.

We remain prepared to discuss the timing of the hearing and an appropriate discovery plan as directed by Judge Papak.

Have a good weekend.

**Schwabe Williamson & Wyatt**

**Troy Greenfield**

Shareholder

Office Direct: 206.407.1581

Cell: 206.419.5041

[tgreenfield@schwabe.com](mailto:tgreenfield@schwabe.com)

[Vcard](#) [LinkedIn](#)

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[www.schwabe.com](http://www.schwabe.com)



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