

Troy 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

Andrew J. Lee, OSB #023646

Email: ajlee@schwabe.com

SCHWABE, WILLIAMSON & WYATT, P.C.

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 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,

No. 3:16-cv-00438-PK

DECLARATION OF BRAD FOSTER IN
SUPPORT OF RECEIVER'S REPLY IN
SUPPORT OF MOTION TO SET RESERVE



v.

HEARING

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.

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 Reply in Support of Motion to Set Reserve Hearing.

3. In the course of my work for the Receiver, FTI has assisted the Receiver to, among other things, determine the nature, location, and value of all Receivership Property as well as reviewing the books, records, documents, accounts, and all other instruments and papers of the Receivership Entity. I have become familiar with certain electronic communications and other documents associated with the Receivership Entity.

4. Attached as Exhibit A is a true and correct copy of an e-mail exchange occurring in June 2014 between Bruce Forman and Olaf Janke, who was then with Aequitas Capital Management, Inc.

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”).


5. Attached as Exhibit B is a true and correct copy of an e-mail on September 22, 2014 from Olaf Janke to Bob Jesenik, and Brian Oliver, all of whom were then with Aequis Capital Management, Inc.

6. Attached as Exhibit C is a true and correct copy of an e-mail exchange from June 2015 between Bruce Forman and Brian Oliver, who was then with Aequis Capital Management, Inc.

7. Attached as Exhibit D is a true and correct copy of the exemplar promissory note issued by Aequis Commercial Finance, LLC.

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 24th day of April, 2017.



Brad Foster, Managing Director, Corporate Finance
FTI Consulting, Inc.
On behalf of the Receiver, Ronald F. Greenspan

RE: Re:

From:

"Janke, Olaf" <ojanke@aequitascapital.com>

To:

Bruce Forman <bruce.forman@gmail.com>

Cc:

"William M. Malloy III (bmalley@malloyandco.com)" <bmalley@malloyandco.com>

Date:

Wed, 25 Jun 2014 15:54:55 +0000

Bruce,

Sounds good. I will send around an invite with dial-in information.

Talk to you then,

Olaf

Olaf Janke

EVP, Finance and Chief Financial Officer

t. 503.419.3532

c. 503.853.9478

f. 503.549.8113

e. ojanke@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: 503.419.3500 | f: 503.419.3530

www.aequitascapital.com

From: Bruce Forman [<mailto:bruce.forman@gmail.com>]

Sent: Wednesday, June 25, 2014 7:56 AM

To: Janke, Olaf

Cc: William M. Malloy III (bmalley@malloyandco.com)

Subject: Re: Re:

hi olaf, thank you very much for this information and all your best efforts to keep me apprised, much appreciated. because i respect your insight and integrity, i knowingly have asked you questions that are matters of judgment and probabilities, not facts, and appreciate your diligence in responding quickly.

yes, let's discuss at 11am this morning. as part of the call agenda, i would like to understand CSF's balance sheet and cash flow better as it seems to me that CSF's guarantee will be relied upon to repay the debt in full at the end of this year, even if coco resumes recourse payments.

best,

bruce

On Tue, Jun 24, 2014 at 8:10 PM, Janke, Olaf <ojanke@aequitascapital.com> wrote:

Bruce,

Please find attached a presentation which is Aequitas' best estimate on how CSF Leverage I portfolio would run off under three scenarios:

Scenario 1) with Corinthian not performing under any of its obligations, i.e. no recourse or default aversion fee payments as well as not forwarding any money on loans which are partially or fully unwound due to grants, scholarships or other higher than originally estimated funding sources for the student (known as "SSRs");

Scenario 2) similar to Scenario 1) with the exception that Corinthian is paying the SSRs;

Scenario 3) Corinthian is performing under all its obligations.

Under a downside scenario, we believe that Scenario 2) is the most likely one given that per Corinthian certain regulations exist to protect us from not receiving SSR funds.

Further, we provided an overview of how the different monthly loan pools recourse on an actual vs. initially projected basis. Per your request, we did such analysis for the first 12 months of each pool as applicable.

In addition, we researched the California Tuition Recovery Fund and found out that such fund would be to the benefit of CSF Leverage I, as the Recovery Fund would make payment to CSF Leverage I "on behalf of the student" in case the student suffered a loss. Please see below a short synopsis of the mechanics which we have not verified and are solely based on our understanding of publicly available information:

If COCO:

- made the required payments into the Student Tuition Recovery Fund (50 cents for each \$1,000 of tuition) for each CA resident,
- filed the required reporting forms,
- fails to pay refunds to such students,

- the schools such students attended close prior to completion of the program, and such students either do not participate in a teach-out, or if they do participate in a teach-out their losses will likely be greatly mitigated (and thus their recovery from the fund will be for a reduced amount),
- and the student suffered a loss (such as the failure to complete their course work), then the effected students may file claims with the fund and obtain reimbursement for their losses.
- The fund may require that reimbursement be paid directly to the lender. The fund may also seek to settle for less than the full amount of students' losses.

The above response is based on a preliminary, first read of California's Student Tuition Recovery Fund statute.

I am hopeful that all the information we provided over the last several days were helpful to you in assessing the current situation. Please keep in mind that we furnished all the information on a best effort basis and with our understanding of the facts at that time.

In case you want to clarify some aspects, I would be available for a call tomorrow at either 11am or noon.

Best,

Olaf

Olaf Janke

EVP, Finance and Chief Financial Officer

t. [503.419.3532](tel:503.419.3532)

c. [503.853.9478](tel:503.853.9478)

f. [503.549.8113](tel:503.549.8113)

e. ojanke@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: [503.419.3500](tel:503.419.3500) | f: [503.419.3530](tel:503.419.3530)

www.aequitascapital.com

From: Bruce Forman [mailto:bruce.forman@gmail.com]

Sent: Tuesday, June 17, 2014 5:55 PM

To: Janke, Olaf

Subject: Re: Re:

what are the consequences to coco of defaulting to acf in terms of late fees, default interest, etc? how does this (and the hcm-1 change) affect their bank debt if they can't cure their default to acf?

can you pls refresh my memory and send the latest cumulative default curve over time and % percentage of paying borrowers by loan aging from 0-12 months?

understood re: confidentiality.

On Tue, Jun 17, 2014 at 5:01 PM, Janke, Olaf <ojanke@aequitascapital.com> wrote:

Bruce,

I wanted to let you know that Corinthian failed to perform under its recourse agreement yesterday. The failure seems to be attributable to the fact that the Department of Education (DOE) has imposed a heightening review of Corinthian's Title IV student loan disbursements, also known as HCM-1 process. As a result of the HCM-1 process, the DOE has up to 21 days to process the Title IV disbursement vs. previously when such disbursement were made within 24 hours (this is my understanding).

Aequitas is in the process of crafting the payment default notice to Corinthian. Per our existing agreements, Corinthian has 15 days upon receipt of such default notice to cure.

Per our prior discussions, all of the loans held by CSF Leverage I are originated prior to 2014 and thus enjoy the benefit of having already achieved a certain maturity which provides for a greater percentage of paying borrowers.

We continue to monitor the situation closely and will let you know if and when Corinthian cures its payment default.

Last but not least, we view the foregoing as material non-public information which is particularly sensitive in this case given that Corinthian is a publicly traded entity. Hence, I would like to remind you of your confidentiality agreement and that security laws typically prohibits people in possession of non-public information to transact in any security of such entity affected by such information.

I hope you appreciate the details I provided to the best of my understanding. I will be travelling the next three days but can be reached on my cell phone in case you want to talk.

Best,

Olaf

Olaf Janke

EVP, Finance and Chief Financial Officer

t. [503.419.3532](tel:503.419.3532)

c. [503.853.9478](tel:503.853.9478)

f. [503.549.8113](tel:503.549.8113)

e. ojanke@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: [503.419.3500](tel:503.419.3500) | f: [503.419.3530](tel:503.419.3530)

www.aequitascapital.com

From: Bruce Forman [mailto:bruce.forman@gmail.com]

Sent: Monday, June 16, 2014 10:43 AM

To: Janke, Olaf

Subject: Re:

hi olaf, could you pls let me know when possible if coco meets its may recourse obligations? thanks.

On Tue, Jun 3, 2014 at 2:28 PM, Janke, Olaf <ojanke@aequitascapital.com> wrote:

Bruce,

COCO paid its April recourse in May. The May recourse is due and payable around mid June as we don't receive the necessary servicing reports from the third party servicer until the 5th or 7th business day after month end which is needed for invoicing COCO.

Hope this is helpful,

Olaf

Olaf Janke

EVP, Finance and Chief Financial Officer

t. [503.419.3532](tel:503.419.3532)

c. [503.853.9478](tel:503.853.9478)

f. [503.549.8113](tel:503.549.8113)

e. ojanke@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: [503.419.3500](tel:503.419.3500) | f: [503.419.3530](tel:503.419.3530)

www.aequitascapital.com

From: Bruce Forman [mailto:bruce.forman@gmail.com]

Sent: Tuesday, June 03, 2014 9:48 AM

To: Janke, Olaf

Subject:

Hi Olaf, is coco is still honoring its recourse obligations?

Bruce

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

FW: Weider

From:

"Oliver, Brian" <boliver@aequitascapital.com>

To:

"Malloy, Bill" <bmalloy@aequitascapital.com>

Date:

Mon, 22 Sep 2014 17:09:08 +0000

FYI

Probably makes sense for you to let it lie at this point while Olaf sorts it out with him.

Brian Oliver

Executive Vice President

t. 503.419.3512

c. 503.539.7399

e. boliver@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: 503.419.3500 | f: 503.419.3530

www.aequitascapital.com

From: Janke, Olaf

Sent: Monday, September 22, 2014 9:51 AM

To: Jesenik, Bob

Cc: Oliver, Brian

Subject: Weider

Bob,

Just had another call with Bruce Foreman. He is basically freaking out! He requests to find ways to

- a) Return at least \$7MM of his money
 - a. Either right away or
 - b. Via a payment plan
- b) The remaining balance of \$5.625MM he is willing to roll into another Aequitas strategy
- c) Return is no longer an issue so we could put him into CarePayment 2nd lien senior for maybe 6% or 6.5%
 - a. He is also open to consider the P2P or MotoLease strategy.
- d) Per the above, he prefers to stay in a SMA.

I promised him to get back with some initial thoughts Wednesday morning so another topic for our 1:1.

Best,

Olaf

Olaf Janke

EVP, Finance and Chief Financial Officer

t. 503.419.3532

c. 503.853.9478

f. 503.549.8113

e. ojanke@aequitascapital.com



Aequitas Capital Management

5300 Meadows Rd Suite 400

Lake Oswego, OR 97035

t: 503.419.3500 | f: 503.419.3530

www.aequitascapital.com

RE: Weider Health & Fitness**From:**

"Oliver, Brian" <boliver@aequitascapital.com>

To:

Bruce Forman <bruce.forman@gmail.com>

Cc:

"Malloy, Bill" <bmalloy@aequitascapital.com>, "Jesenik, Bob" <bjesenik@aequitascapital.com>

Date:

Mon, 15 Jun 2015 15:56:24 +0000

Bruce,

Hope you had a great weekend.

Given the ongoing conversations below and hopes that we will be able to find agreeable terms for a new financing arrangement, we hadn't been planning to make the \$1,000,000 principal repayment today. Hopefully this is consistent with your understanding and expectation.

Please let us know when you might be prepared to have a further conversation.

Brian Oliver

Executive Vice President

t. 503.419.3512

c. 503.539.7399

e. boliver@aequitascapital.com**From:** Oliver, Brian**Sent:** Friday, June 12, 2015 4:14 PM**To:** 'Bruce Forman'**Cc:** Malloy, Bill (bmalloy@aequitascapital.com); 'Jesenik, Bob'**Subject:** FW: Weider Health & Fitness

Bruce, thank you for your junior position financing proposal for \$10MM against CarePayment recourse receivables. We have been working on coming as close to accommodating your proposed structure as possible, but we are simply not able to completely get there operationally. To be able to access any of the senior leverage facilities available from Wells Fargo or Bank of America, we cannot move pools of receivables to a separate, segregated SPV. Also, into the SPVs into which Wells Fargo and Bank of America lend, they require that the junior capital be in the form of equity as opposed to 2nd lien debt. And, of course, not utilizing any senior leverage against a pool of CarePayment receivables makes the cost of capital prohibitively high. So, the only structure we can really accommodate for the junior financing is at the parent entity level, secured by the equity of the underlying SPVs that own the receivables. Attached is a chart that reflects this organizationally and pictorially.

In addition, limiting the financing to 50% senior leverage can't be supported within our existing entity and financing structures, and would also make the effective financing cost prohibitive. In your proposal you had suggested an advance rate of 50% senior leverage, and 50% junior financing by Weider Health & Fitness, for 100% leverage in total. We would like to ask you to consider a structure that would be 70% senior leverage, 20% junior leverage by Weider Health & Fitness, and 10% equity/1st loss capital by Aequitas against the face value of the receivables being financed.

Below is a summary of the current financing being provided by Weider Health & Fitness vs. the revised financing proposal from Weider Health & Fitness vs. the structure we would like to propose for your further consideration.

	<u>Current Deal</u>	<u>Weider Proposal</u>	<u>Aequitas Counter</u>
Lender:	Weider Health & Fitness	Weider Health & Fitness	Weider Health & Fitness
Borrower:	CarePayment Holdings	Weider SPV	CarePayment Holdings
Amount:	\$6,000,000	\$10,000,000	\$10,000,000
Maturity:	10/31/15	6/30/17	6/30/17
Prepayment:	Allowed	Prohibited w/out consent	Yr 1 – 90 day notice, 2% prepayment penalty Yr 2 – 90 day notice, 1% prepayment penalty
Interest:	7% monthly in arrears	12% monthly in arrears	12% monthly in arrears
Fees:	N/A	Up to \$15K legal reimburse	Up to \$15K legal reimburse
Collateral:	Pledge of Equity Interests <ul style="list-style-type: none"> CarePayment, LLC CP Leveraged I, LLC 	2 nd lien on dedicated pool of CarePayment receivables	Pledge of Equity Interests <ul style="list-style-type: none"> CarePayment, LLC CP Leveraged I, LLC CP Funding 1 Holdings, LLC
	Max Senior Advance – N/A	Max Senior Advance – 50%	Max Senior Advance – 70% of Face; 80% of Cost
	Max Junior Advance – N/A	Max Junior Advance – 50%	Max Junior Advance – 20% of Face; 15% of Cost
	Min Aequitas Equity – N/A	Min Aequitas Equity – N/A	Min Aequitas Equity – 10% of Face; 5% of Cost
	100% recourse to hospitals at Face	100% recourse to hospitals at Face	100% recourse to hospitals at Face
Guarantor:	Aequitas Commercial Finance, LLC	CarePayment, LLC	Aequitas Commercial Finance, LLC

Alternatively, if the structural and financing options we can make available against CarePayment simply won't work for you within your requirements, perhaps you would consider simply extending the existing \$6MM owed to a new maturity of 6/30/16 (1 year) in return for increasing the interest rate from 7% to 12%.

Lastly, the final option we could make available would be to move away from the CarePayment assets and consider a \$10MM senior secured financing against our MotoLease Financial used motorcycle leasing portfolio (see attached Term Sheet and Overview), with a maximum advance of 40% against the collateral. This would get you much closer to the assets and the type of structure you are looking for. As, whereas the underlying entity structure and contractual relationship with the originator/servicer of the portfolio results in us having to document the financing at the Aequitas Commercial Finance level; we are in fact able to provide a senior lien on the underlying leases in addition to being secured by an assignment of the equity interests.

If you are open to a further conversation, Bob Jesenik and I would like to schedule a call with you for some time next week.

Regards,

Brian Oliver
Executive Vice President
t. 503.419.3512
c. 503.539.7399
e. boliver@aequitascapital.com



From: Bruce Forman [<mailto:bruce.forman@gmail.com>]

Sent: Wednesday, June 10, 2015 4:48 PM

To: Oliver, Brian

Cc: Malloy, Bill

Subject: Re: Weider Health & Fitness
up to \$10mm

On Wed, Jun 10, 2015 at 3:19 PM, Oliver, Brian <boliver@aequitascapital.com> wrote:

Got it. What amount were you thinking of investing if we could come to terms?

Brian Oliver
Executive Vice President
t. [503.419.3512](tel:503.419.3512)
c. [503.539.7399](tel:503.539.7399)
e. boliver@aequitascapital.com



From: Bruce Forman [<mailto:bruce.forman@gmail.com>]

Sent: Wednesday, June 10, 2015 11:36 AM

To: Oliver, Brian

Cc: Malloy, Bill

Subject: Re: Weider Health & Fitness

hi brian, sorry, i assumed 2 yrs per your earlier email--if you have a different term in mind please let me know.

primarily, i'm not willing to be levered as much as 3:1, don't want to be more than 50% of the capital behind the bank debt, and need to be in a second lien position ahead of any other capital outside the bank debt.

if we can make something work along these lines, that would be great. i understand and respect you have your own capital equation to solve for, just trying to be clear about mine.

best,

bruce

On Tue, Jun 9, 2015 at 1:41 PM, Oliver, Brian <boliver@aequitascapital.com> wrote:

Hi Bruce, could you clarify what level of investment you are considering in relation to the terms you have proposed? We would obviously look at it differently if it is just an extension of the existing \$6MM as opposed to being inclusive of a further meaningful allocation.

Also, given the no prepayment condition, what term are you suggesting?

Once I have further clarity on amount and term, I will circulate your proposal internally for discussion, but I think we are going to be challenged by:

- I don't know if we can operationally segregate pools of CarePayment receivables; and, particularly I don't think we would be able to segregate a pool of receivables into an SPV and still utilize/access any of the senior leverage we have, as those receivables have to stay within the senior lender's SPV.
- 12% cost of capital with only an allowance for 50% senior leverage (1:1) makes the overall financing cost against the block of receivables prohibitive. Given these receivables carry 100% recourse to the hospitals and we have never experienced a loss in 10+ years, why such a conservative view on senior leverage?

Brian Oliver
Executive Vice President
t. [503.419.3512](tel:503.419.3512)
c. [503.539.7399](tel:503.539.7399)
e. boliver@aequitascapital.com



From: Bruce Forman [<mailto:bruce.forman@gmail.com>]

Sent: Tuesday, June 09, 2015 10:53 AM

To: Oliver, Brian

Cc: Malloy, Bill

Subject: Re: Weider Health & Fitness

hi brian, below is a summary structure that i need to move forward:

- pool of carepayment receivables (not carepayment holdings membership interest) within our SPV that are leveraged no more than 1:1 with existing bank line/senior secured notes
- second lien interest/guarantee of carepayment llc
- legal fee reimbursement up to \$15K
- no prepayment without consent

-rate: 12%, based on above security package
thanks,
bruce

On Tue, Jun 9, 2015 at 8:58 AM, Bruce Forman <bruce.forman@gmail.com> wrote:

hi brian, i have a few questions about the financials but i would prefer to send you a structure that would work for us and see if mutually beneficial before reviewing further.

best,
bruce

On Mon, Jun 8, 2015 at 10:09 AM, Oliver, Brian <boliver@aequitascapital.com> wrote:

Hi Bruce, just wanted to let you know I am in New York through Wednesday evening, back in the office Thursday and Friday. But, I have some available times the next couple of days if we need to get on the phone to cover anything. My cell phone is [503-539-7399](tel:503-539-7399).
Do you need anything else from us?

Brian Oliver
Executive Vice President
t. [503.419.3512](tel:503.419.3512)
c. [503.539.7399](tel:503.539.7399)
e. boliver@aequitascapital.com



From: Oliver, Brian
Sent: Friday, June 05, 2015 10:43 AM
To: 'Bruce Forman'
Cc: Malloy, Bill
Subject: RE: Weider Health & Fitness
Attached are the 12/31/14 audited financials for CarePayment, LLC.
Brian Oliver
Executive Vice President
t. [503.419.3512](tel:503.419.3512)
c. [503.539.7399](tel:503.539.7399)
e. boliver@aequitascapital.com



From: Bruce Forman [mailto:bruce.forman@gmail.com]
Sent: Friday, June 05, 2015 9:52 AM
To: Oliver, Brian
Cc: Malloy, Bill
Subject: Re: Weider Health & Fitness

thanks brian. could you pls forward the latest financials for carepayment llc?

On Thu, Jun 4, 2015 at 3:35 PM, Oliver, Brian <boliver@aequitascapital.com> wrote:

Hi Bruce,
Just wanted to follow up with you directly after your visit with Bill Malloy on Tuesday. Bill and I had talked about a couple of options to present to you in regards to extending the existing \$6,000,000 of loans from Weider Health & Fitness, and of course potentially getting you to consider advancing additional funds. In that regard, hopefully you and Bill discussed two different alternatives on Tuesday:

1. Extend the existing \$6,000,000, and consider advancing additional funds anywhere up to \$12,000,000 total, to CarePayment Holdings, LLC secured by the same junior lien position on full recourse CarePayment receivables not to exceed a 100% advance of cost (as of 3/31/15 we had \$48MM of funded CarePayment receivables, less \$36MM owed in senior debt to Bank of America and Wells Fargo; but, there has been some growth since then and we expect a pretty significant ramp in the 2nd half of the year). In exchange for the extension of the maturity to 6/30/17 (2 years) we would be willing to increase the interest rate from the current 7.0% up to 11.0%.
2. Roll the existing \$6,000,000, and increase as interested/willing, into the MotoLease senior note offering per the attached Term Sheet. Although the Term Sheet reflects an interest rate of 9.25%, we would be willing to pay Weider Health & Fitness 10.25% if they invest at least \$7.50MM during the month of June into this offering. There is a full data room available on MotoLease performance information if interested.

Does it make sense for the three of us to schedule a call in the next couple of days to discuss in more detail?
Thanks for your consideration.

Brian Oliver
Executive Vice President
t. [503.419.3512](tel:503.419.3512)
c. [503.539.7399](tel:503.539.7399)
e. boliver@aequitascapital.com



Aequitas Capital Management
5300 Meadows Rd Suite 400
Lake Oswego, OR 97035
t: [503.419.3500](tel:503.419.3500) | f: [503.419.3530](tel:503.419.3530)
www.aequitascapital.com

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

This message (including any attachments) is intended solely for the use of the intended recipient and may contain confidential and/or privileged information. If you are not the intended recipient and you received this message in error: please notify the sender, delete this message and destroy all copies of this message and any attachments. Any disclosure, copying, distribution or use of the contents of the information received in error is strictly prohibited. Thank you.

SECURED SUBORDINATED PROMISSORY NOTE
 (____.00% initial rate)

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE CANNOT BE SOLD OR TRANSFERRED WITHOUT THE CONSENT OF MAKER AND UNLESS AND UNTIL IT IS SO REGISTERED OR UNLESS MAKER RECEIVES AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH REGISTRATION IS NOT THEN REQUIRED UNDER THE CIRCUMSTANCES OF SUCH SALE OR TRANSFER.

\$____,000.00

Lake Oswego, Oregon
 _____, 20__

FOR VALUE RECEIVED, the undersigned, AEQUITAS COMMERCIAL FINANCE, LLC, an Oregon limited liability company ("**Maker**"), hereby promises to pay to the order of _____ ("**Holder**"), in immediately available funds the principal sum of _____ Thousand Dollars (\$____,000.00) or such amounts as are actually advanced to Maker with respect to this Note, together with interest on the outstanding principal amount hereof from the date of each advance hereunder until paid in full at the Applicable Rate (as defined below), calculated on the basis of a 365-day year and actual days elapsed, as follows: (a) interest earned for each calendar quarter to be paid in arrears on or before the 15th day following the end of such quarter beginning _____, 20__; and (b) the outstanding principal balance and all accrued and unpaid interest to be paid on or before _____, 20__ (the "**Scheduled Maturity Date**"); provided, however, if (i) Holder has not given Maker written notice of intent not to renew this Note at least 60 days prior to the Scheduled Maturity Date, and (ii) Maker and Holder have not otherwise agreed on renewal terms by written amendment, then the Scheduled Maturity Date will be extended for successive 6-month periods until Holder gives 60 days prior written notice of intent not to renew at the end of an extension term. Notwithstanding the foregoing, after the occurrence of an Event of Default, the outstanding principal and all accrued interest shall be payable on demand to the extent set forth below. Maker may prepay this Note in whole or in part at any time.

Each payment on account of the obligations evidenced by this Note shall be applied first to expenses for which Maker is liable hereunder, next to accrued interest and the balance to outstanding principal.

This is one of a series of Secured Subordinated Promissory Notes (collectively, the "**Secured Notes**") issued by Maker which comprise the revolving subordinated debt facility arranged by Maker. This Note is secured by a security interest (the "**Lien**") on Maker's assets granted in favor of LeaseDimensions, Inc. as the representative of, and for the benefit of, all holders of the Secured Notes (the "**Collateral Agent**") pursuant to an Amended and Restated Security Agreement dated March 1, 2011 (the "**Security Agreement**"), with respect to the following assets of Maker:

All of Maker's right, title and interest in, to and under all of its personal property, wherever located and whether now existing or owned or hereafter acquired or arising,

including without limitation all personal property, cash, securities, investments, accounts receivable, intangibles, contracts, furnishings, fixtures, trade fixtures, equipment, machinery, inventory, deposits, documents, motor vehicles and all other property, assets or rights of whatever nature now owned or hereafter acquired by Maker, together with all accessories, substitutions, additions, replacements, parts and accessions affixed to or used in connection therewith, and all products and proceeds (including insurance proceeds) of any and all of the foregoing (the "**Collateral**").

Maker will, at its expense, promptly and duly execute, acknowledge and deliver all such instruments and documents and take all such action as Holder from time to time may reasonably request in order to ensure to Holder the benefits of the Lien on the Collateral created by this Note and the Security Agreement, including the filing of any necessary Uniform Commercial Code financing statements, which may be filed by the Collateral Agent, and will cooperate with Holder, at Maker's expense, in making all necessary filings under federal or state law in connection with such Liens or any sale or transfer of the Collateral.

The Lien on the Collateral for the benefit of Holder is expressly subordinate to any security interest granted by Maker to secure Senior Indebtedness (as defined below). Holder acknowledges and agrees that the Lien on the Collateral for the benefit of Holder is of equal priority with the security interests granted for the benefit of all holders of Secured Notes, notwithstanding the date, manner or order of grant, attachment or perfection of any such security interest. Holder acknowledges and agrees that if Holder shall, after the foreclosure on any Collateral, be in possession of any proceeds thereof in excess of such Holder's pro rata portion thereof (based on the aggregate principal amount of Secured Notes at the time outstanding), Holder shall set aside and hold in trust for the other holders of Secured Notes, such amounts in excess of such pro rata portion to be paid over to the other holders of Secured Notes, so that all holders of Secured Notes recover from the Collateral on a pro rata basis.

As used herein:

"Applicable Rate" means __.00% per annum. If the Scheduled Maturity Date is extended as set forth in the first paragraph of this Note, the Applicable Rate shall be adjusted as of the first day of any extension term to the current rate then published by Maker as in effect generally for other newly-issued Secured Notes with a 6-month term. During the continuation of an Event of Default due to failure to make any payment when due, the Applicable Rate shall be increased by 200 basis points effective as of the payment due date.

"Event of Default" means the occurrence of any of the following events:

- (a) Maker fails to pay (i) any interest within 20 business days from when due, (ii) any principal within 60 days from when due or (iii) any other amounts due hereunder within 10 business days from when due;
- (b) Maker fails to pay any Senior Indebtedness when due or any event occurs or exists which gives the holder of any Senior Indebtedness the right to accelerate the payment thereof;

- (c) Maker shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of its property, or shall generally be unable to or fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors; or
- (d) Maker shall file a voluntary petition in bankruptcy, or seek to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code, or under any state or other Federal law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or other Federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Maker and is not dismissed, stayed or vacated within 60 days thereafter; Maker shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Maker shall be adjudicated a bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or Federal law relating to bankruptcy, reorganization or other relief for debtors; or
- (e) Any judgment or order for the payment of money (net of anticipated insurance proceeds, as determined in good faith by Maker's Manager) in excess of \$1,000,000 shall be rendered against Maker and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or
- (f) Maker shall fail to perform or observe any term, covenant or agreement contained herein (other than those terms described in (a) above) on its part to be performed or observed and such failure shall remain unremedied for 15 business days after written notice thereof shall have been given to Maker by the Holder.

"Senior Creditor" means any bank, commercial finance company, insurance company, surety company or other institutional lender, or other person who provides a credit facility to Maker or any subsidiary of Maker.

"Senior Indebtedness" means all obligations now or hereafter owed by Maker or any subsidiary of Maker to Senior Creditors for or in connection with borrowed money, capitalized leases, guaranties, surety bonds or other similar obligation.

Holder, by acceptance hereof, acknowledges that this Note shall be subordinate and junior in right of payment to all Senior Indebtedness (as defined herein) of Maker. Holder agrees to execute a subordination or inter-creditor agreement requested by a Senior Creditor.

No payment shall be made pursuant to this Note if Maker is in default of any of its obligations with respect to Senior Indebtedness (or if such payment would itself constitute a

default) until such default is cured to the written satisfaction of or waived by the applicable Senior Creditor, provided that Maker's failure to make any such payment shall nonetheless constitute a default by Maker of its obligations to Holder hereunder. Upon any dissolution, winding up, liquidation or reorganization of Maker, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all Senior Indebtedness shall first be paid in full in cash, or payment thereof provided for, before any payment is made on the obligations evidenced by this Note, and any payment received by Holder in violation of the foregoing shall be paid to the holders of Senior Indebtedness for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in cash, after giving effect to any concurrent payment to the holders of Senior Indebtedness. The provisions of this paragraph are included solely for the purpose of defining the relative rights of Holder and holders of Senior Indebtedness, and nothing herein shall impair, as between Maker and Holder, Maker's unconditional and absolute obligation to pay Holder all amounts owing hereunder.

Except to the extent otherwise prohibited by the preceding paragraph, during the continuation of an Event of Default (other than an Event of Default under clause (c) or (d) of the definition of "Event of Default"), the holders of more than 50% of the aggregate principal amount of the Secured Notes at the time outstanding (the "**Majority Holders**") by written notice to Maker, may declare all (or from time to time part) of the obligations evidenced by the Secured Notes immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Maker. Upon the occurrence of an Event of Default under clause (c) or (d) of the definition of "Event of Default," all of the obligations evidenced by the Secured Notes shall automatically become immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Maker. In all cases, Holder may not take any action, including without limitation the commencement of any legal proceeding to foreclose the Lien on, or to otherwise enforce any security interest in, any of the Collateral without the prior written consent of the Majority Holders and the Collateral Agent.

Notwithstanding the foregoing, unless all of the Senior Indebtedness has been paid in full, Holder shall not take any of the following actions without consent of all Senior Creditors (which consent may be withheld in the sole and absolute discretion of the Senior Creditors) for a period of six months after Holder provides Maker with written notice of an Event of Default (provided that such default is not cured during that six-month period):

(a) Commence, prosecute or participate in any action, whether private, judicial, equitable, administrative or otherwise (including, without limitation, any bankruptcy case) against Maker or any assets of Maker; provided that Maker may file a proof of claim in a bankruptcy or insolvency case or proceeding involving Holder, which proof of claim shall indicate Holder's subordination under this Note;

(b) Possess any of Maker's assets, or enforce any security interests in, foreclose, levy or execute upon or collect or attach any such assets, whether by private or judicial action or otherwise;

(c) Commence, or join with any creditors in commencing (unless the Senior Creditors have also joined therein), any bankruptcy case or proceeding against Maker; and

(d) Contest, protest or object to any foreclosure proceeding, postpetition financing, use of cash collateral, or other action brought by a Senior Creditor or any other exercise by a Senior Creditor of any rights and remedies under any of its loan documents.

Holder acknowledges and agrees that the fact that Holder can take the above-described actions under the circumstances specified in the foregoing paragraphs does not entitle Holder to receive or obtain any payments in respect of this Note, or to accept or obtain any assets (or any interest therein) of Maker, if Maker is in default of any of its obligations with respect to Senior Indebtedness.

If a Senior Creditor, in its sole and absolute discretion, desires to release or terminate its security interest in any of Maker's assets to permit the sale, exchange or other disposition of such assets, Holder covenants and agrees that, promptly upon written demand by the Senior Creditor, Holder similarly will release or terminate its security interest in such assets; provided such sale, exchange or other disposition was for reasonably equivalent value (as determined by the Senior Creditor in its good faith discretion). Such release or termination shall not extend to or otherwise affect any of Holder's rights, if any, to the proceeds from any such sale or other disposition of such assets or properties.

Maker shall pay all costs of collection, including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy (including, without limitation, any adversary proceeding, contested matter or motion) or otherwise. No delay or failure on the part of Holder to exercise any of its rights hereunder shall be deemed a waiver of such rights or any other right of Holder nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of such rights or any other right on any future occasion. Maker hereby waives presentment, demand, protest, notice of intention to accelerate, notice of acceleration, notice of nonpayment and all other notices of every kind, and agrees that its liability under this Note shall not be affected by any renewal, postponement or extension in the time of payment hereof, by any indulgence granted by Holder hereof with respect hereto, or by any release or change in any security for the payment of this Note, and hereby consents to any and all renewals, extensions, indulgences, releases or changes, regardless of the number of such renewals, extensions, indulgences, releases or changes.

Time is of the essence in the performance of all obligations of Maker under this Note. This Note shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to its conflict-of-law provisions).

This Note or any provision hereof may be amended or waived by an instrument in writing signed by Maker and Holder; provided, however, that any amendment of any provision hereof that would reasonably be expected to adversely affect the rights of the Secured Notes as a whole shall require the consent of the Majority Holders. Any such amendment or waiver shall be binding upon Maker, Holder and each transferee of this Note. No delay on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or any other right.

This Note shall be binding upon and inure to the benefit of Maker and Holder and their respective successors, heirs, legal representatives and permitted assigns. Maker may not assign its rights or obligations under this Note without the prior written consent of Holder. Holder may not assign its rights or obligations under this Note without the prior written consent of Maker which shall not be unreasonably withheld; provided, however, that no consent of Maker shall be required for any transfer by Holder to any person or entity that controls, is controlled by or is under common control with Holder.

This Note is registered as to both principal and any stated interest on the books and records of Maker. The transfer of this Note may only be effected by surrender of this Note to Maker and reissuance of this Note or the issuance of a new Note to the transferee.

By acceptance of this Note, Holder acknowledges that (a) Maker is making no representations regarding the manner in which Holder should report any interest payment for income tax purposes, and (b) Holder will consult with and rely on its own tax advisor as to the proper method for reporting any interest payment.

AEQUITAS COMMERCIAL FINANCE, LLC

By: Aequitas Capital Management, Inc., its
Manager

By 

Olaf Janke
Chief Financial Officer