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MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

No. 3:16-cv-00438-PK

~~PROPOSED~~ ORDER GRANTING
RECEIVER'S MOTION TO SELL ASSETS
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS (Civitas)

Page 1 - ~~PROPOSED~~ ORDER GRANTING RECEIVER'S MOTION
TO SELL ASSETS FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND INTERESTS (Civitas)

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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.

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 Civitas Senior Healthcare, LLC as Stalking Horse Bidder; (3) Approving Bidding Procedures; and (4) Approving the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests [Dkt. 421] (the "Motion"), and the Court, having given all counsel an opportunity to oppose the Motion and 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 Entity Defendants¹ and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

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 (together, the "Receivership Entity") 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 Receivership Entity on a final basis (the "Final Receivership Order").

C. Due, timely, and adequate notice of the Motion was given, and such notice was

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

good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. The Bid Procedures Order entered on April 26, 2017, provides, in part, that if no Qualified Alternative Bids are received by the Receiver by the Bid Deadline, then this Final Sale Order may be entered without further notice or hearing. No Qualified Alternative Bids were received by the Bid Deadline.

E. The Letter Agreement that was submitted with the Motion [Dkt. 422, Exhibit 1], and the transactions described therein, is in the best interests of the Receivership Entity and its estate.

F. The Letter Agreement and Sale was negotiated in a fair and reasonable manner under the circumstances. There is no evidence that the Receivership Entity, Receiver, or Civitas Senior Healthcare, LLC ("Buyer") engaged in any conduct (including but not limited to collusion or fraud of any kind) that would cause or permit the Sale to be avoided.

G. The Sale is an arms'-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 negotiation of the Letter Agreement and therefore is entitled to all the protections afforded good faith purchasers under applicable law.

H. The Letter Agreement is the result of good faith negotiations at arms'-length between the Receiver and Buyer.

I. The transactions contemplated under this Order and the Letter Agreement do not amount to a consolidation, merger, or *de facto* merger of Buyer and the Receivership Entity. There is no substantial continuity between Buyer or the Receivership Entity, and Buyer is not a successor to the Receivership Entity or its estate.

J. At all times prior to the entry of this Order, the Purchased Assets have been the

property of the 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, Receiver has full power and authority to convey and deliver the Purchased Assets to Buyer.

K. 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 Agreement is in the best interest of the Receivership Entity and its estate, and for good cause shown,

IT IS HEREBY ORDERED AND DECREED as follows.

1. The Motion is granted 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 hereby overruled.
3. The Sale on the terms set forth in the Letter Agreement are approved. Pursuant to the Motion and the Final Receivership Order, the transfer of the Purchased Assets to Buyer shall be free and clear of any and all liens, claims, interests, and encumbrances ("Liens"). All Liens of record, if any, shall be released as against the Purchased Assets as of the date of the closing of the Sale, and such Liens shall attach to the proceeds of sale of the Purchased Assets to the same extent, validity, and priority as they attached to the Purchased Assets.
4. The provisions of this Order declaring the sale of the Purchased Assets 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.

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5. The Receiver and Buyer are authorized to execute, deliver, and perform all obligations and related documents as are necessary or appropriate to close the transactions contemplated by this Order and the Agreement.

6. 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 Purchased Assets, if any, as such may have been recorded, filed, or otherwise exist. Buyer is hereby authorized to execute and file such documents solely with respect to the Purchased Assets and related Liens should the Receivership Entity's creditors fail to do so.

7. Buyer 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, 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.

8. This Court shall retain jurisdiction over any issues relating to the Letter Agreement and Sale, and to enforce this Order.

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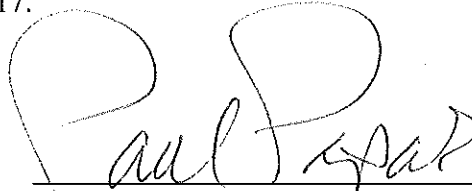
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9. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity, and their successors and assigns.

Dated this 25th day of May, 2017.



United States Magistrate Judge Paul Papak

SUBMITTED BY:

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