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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 RECEIVER'S MOTION FOR AN ORDER AUTHORIZING AEQUITAS PARTNER FUND, LLC, TO SELL COMMON STOCK IN CERTIFIED SECURITY SOLUTIONS, INC., FREE AND CLEAR OF LIENS,

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.

CLAIMS, ENCUMBRANCES AND INTERESTS

LR 7-1 CERTIFICATION

On December 23, 2017, the undersigned circulated to the approximately 74 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific Time) on January 2, 2018, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received one consent and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver ("Receiver") for Aequitas Partner Fund, Inc. ("APF"), hereby moves (the "Motion") this Court for the entry of an order (1) approving the Common Stock Repurchase Agreement ("Agreement")[1] between APF, as seller, and Certified Security Solutions, Inc. ("CSS"), as purchaser, for the purchase and sale of 1,596,643 shares of the common stock of CSS (the "Common Stock"), (2) authorizing the sale of the Common Stock free and clear of liens, claims, encumbrances and interests ("Liens"), and (3) authorizing CSS and the Receiver, on behalf of APF, to perform the Agreement and to execute such other instruments and take such other actions as may reasonably be required to effectuate the Agreement.

[1] A copy of the Agreement is attached to the Declaration of Brad Foster, submitted herewith.

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This Motion is supported by the Declaration of Brad Foster ("Foster Decl.") submitted herewith, and the following memorandum.

I. Procedural and Fact Background.

A. Appointment of the Receiver.

1. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (the "Interim Receivership Order"). On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the "Final Receivership Order") [Dkt. 156].[2] (Foster Decl., ¶ 2).

B. CSS and the Proposed Stock Repurchase Agreement.

3. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes APF's ownership of the Common Stock. (Foster Decl., ¶ 3).

4. Receivership records show that CSS has between 82-85 million shares of common stock outstanding. Since the time of APF's investment, CSS has raised four additional rounds of preferred, participating stock with a 1X liquidation preference. The total capital raise is between $14-15 million, which would be paid prior to common shareholders such as APF receiving anything. (Foster Decl., ¶ 4).

5. CSS recently completed a valuation of the fair market value of the company

[2] Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Final Receivership Order.

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consistent with the provisions of Internal Revenue Code 409A. That valuation established the value for common shares, such as the Common Stock owned by APF, on a minority, nonmarketable basis, at $.05/share. (Foster Decl., ¶ 5).

6. CSS is pursuing additional financing that will further dilute the Common Stock. Under the Agreement, the purchase price for the Common Stock is $.03/share, for a total purchase price of $47,899.29 (the "Purchase Price").[3] Because of the limited market for shares of common stock of CSS, and the ongoing dilution of those shares, in the Receiver's opinion the Purchase Price is a reasonable value to recover for the Common Stock held by APF. (Foster Decl., ¶ 6).

7. The Agreement was negotiated in a fair and reasonable manner under the circumstances and at arm's-length. There is no evidence that the Receivership Entity, Receiver, or CSS engaged in any conduct (including but not limited to collusion or fraud of any kind) that would cause or permit the Agreement or the sale of the Common Stock to be avoided. CSS has at all times acted in good faith in connection with the negotiation of the Agreement and therefore is entitled to all the protections afforded good faith purchasers under applicable law. (Foster Decl., ¶ 7).

8. To the best of the Receiver's knowledge, after diligent investigation, there are no Liens against the Common Stock. (Foster Decl., ¶ 8).

C. Business Justification for Sale of the Common Stock.

9. There is substantial business justification for the Agreement. First, the Receiver does not believe there is a meaningful market for equity in CSS, so a repurchase by CSS under the terms of the Agreement provides an opportunity for the Receivership Estate to liquidate one of its smaller assets. (Foster Decl., ¶ 9).

10. Second, the Purchase Price is reasonable under the circumstances given the

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[3] Foster Decl., Ex. 1, at p. 1.

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minority position held by APF and the probable further dilution of the value of the Common Stock as a result of CSS's ongoing financing efforts. For these reasons, the Receiver believes, in the exercise of his reasonable business judgment, that the Agreement and sale of the Common Stock is in the best interests of the Receivership Entity, its creditors, and the Aequitas investors. (Foster Decl., ¶ 10).

11. Closing the repurchase agreement is conditioned on this Court entering an order approving the Agreement and authorizing the Receiver to perform his obligations on behalf of APF. (Foster Decl., Ex. 1, at ¶ 3(a)).

II. <u>Points and Authorities</u>.

12. Pursuant to the Final Receivership Order, the Receiver may sell assets "outside the ordinary course of business…only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard." (Final Receivership Order, ¶ 26). Here, the proposed sale of APF's Common Stock in CSS is outside the ordinary course of business. Consequently, this Court's approval of the Receivership Entity's entering and performing the Agreement is required.

13. The Receiver's proposed sale of the Common Stock free and clear of Liens is comparable to a bankruptcy trustee's sale of assets in a bankruptcy proceeding under Section 363 of the Bankruptcy Code. 11 USC § 363. That section authorizes a trustee, "after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 USC § 363(b)(1). This provision generally allows a debtor in possession to sell property of the estate outside the ordinary course of business where the proposed sale is within the sound exercise of the trustee's business judgment and when the sale is proposed in good faith and for fair value. *See In re Lionel Corp.*, 722 F2d 1063, 1070-71 (2nd Cir 1983). When a trustee or debtor articulates a reasonable basis for its business decisions, the "court will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 BR

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612, 616 (Bankr SDNY 1986).

14. Here, for the reasons set forth in section 1.C above, there is substantial business justification for APF to sell the Common Stock. The Receiver believes, in the exercise of his reasonable business judgment, that the Agreement and sale of the Common Stock is in the best interests of the Receivership Entity, its creditors, and the Aequitas investors.

III. Conclusion.

For the foregoing reasons, the court should enter an order (1) approving the Agreement, (2) authorizing the sale of the Common Stock free and clear of Liens, and (3) authorizing the Receiver, on behalf of APF, and CSS to perform the Agreement and to execute such other instruments and take such other actions as may reasonably be required to effectuate the Agreement, and granting related relief.

A proposed form of order is submitted herewith.

Dated this 2nd day of January, 2018.

Respectfully submitted,

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