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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,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;

No. 3:16-cv-00438-PK

~~PROPOSED~~ ORDER GRANTING
RECEIVER'S MOTION TO SELL
PERSONAL PROPERTY TO SILVERMINE
MEDIA HOLDINGS, LLC, FREE AND
CLEAR OF LIENS, INTERESTS, CLAIMS
AND ENCUMBRANCES
(Synchronex, 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 Silvermine Media Holdings, LLC, 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 (Synchronex, LLC) (the "Motion")¹ [Dkt. 600], which Motion is unopposed, and the Court, having considered the Declarations of Brad Foster in support of the Motion [Dkt. 601 and 612], 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.

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 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. On April 16, 2018, pursuant to the Motion, the Court entered the Order Granting Receiver's Motion (1) to Schedule Final Sale Hearing, (2) to Approve Silvermine Media Holdings, LLC, as Stalking Horse Bidder, (3) to Approve Break-Up Fee, (4) to Approve Bidding Procedures, and (5) for Related Relief (the "Bid Procedures Order") [Dkt. 603].

E. 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 Assigned Interests, all on the terms described therein. Pursuant to the Bid Procedures Order, Alternative Bids were due by the Bid Deadline of 12:00 Noon Pacific Time, on May 16, 2018.

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

G. Approval of the Sale and the Purchase Agreement is in the best interests of the Receivership Entity and its estate.

H. The Sale of the Assigned Interests on the terms contemplated by the Purchase Agreement, 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 Silvermine Media Holdings, LLC ("Purchaser"), 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.

I. 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. Purchaser 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 purchasers under applicable law.

J. Purchaser, 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 Agreement do not amount to a consolidation, merger, or *de facto* merger of Purchaser and any Receivership Entity. There is no substantial continuity between Purchaser and the Receivership Entity, and Purchaser is not a successor to the Receivership Entity or its estate.

K. At all times prior to the entry of this Order, the Assigned Interests 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 Assigned Interests to Purchaser.

L. 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,

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Motion is granted and the Purchase 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 Assigned Interests to Purchaser on the terms set forth in the Purchase 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 Assigned Interests to Purchaser 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 Terrell Group Management, LLC ("TGM"). All Liens recorded or not as of the date of the closing of the Sale, if any, shall be released as against the Assigned Interests, and shall attach to the proceeds of Sale to the same extent, validity, and priority as they attached to the Assigned Interests, 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, TGM shall hold a replacement security interest in the proceeds of the ACL Loans 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 "ACL Loans Proceeds") of the same extent, validity, perfection and priority that it holds a security interest in the ACL Loans, (2) the Receiver shall deposit the ACL Loans Proceeds in a segregated, non-interest bearing bank deposit account, and (3) the Receiver shall not withdraw or use the ACL Loans Proceeds for any purpose other than payment of TGM's claims without either TGM's consent or further order of this Court.

5. The provisions of this Order declaring the sale of the Assigned Interests free and clear of Liens shall be self-executing, and neither the Receiver, Purchaser, 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.

6. The Receiver and Purchaser 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 Agreement, including the Sale and any other transactions required by the Sale.

7. 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 Assigned Interests, if any, as such may have been recorded, filed, or otherwise exist. Purchaser is hereby authorized to execute and file such documents solely with respect to the Assigned Interests 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 Agreement or take any other actions that would diminish the value to be received or retained by the Receivership Entity.

8. Purchaser is not a successor to the Receivership Entity or its estate by reason of any theory of law or equity, and Purchaser, 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.

9. Neither Purchaser, 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 Agreement.

10. The Final Hearing to approve the Sale, scheduled for June 12, 2018, at 10:00 a.m. Pacific Time, is cancelled.

11. This Court shall retain exclusive jurisdiction over any issues relating to the Sale of the Assigned Interests to Purchaser, 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 Purchaser.

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

Dated this 17th day of May, 2018.


United States Magistrate Judge Paul Papak

SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

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