

COURT FILE NUMBERS B201 731795  
 B201 731797  
 B201 731799

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



70279

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF

INTERNATIONAL FITNESS HOLDINGS INC.  
 INTERNATIONAL FITNESS HOLDINGS LP  
 WORLD HEALTH NORTH LP

APPLICANTS INTERNATIONAL FITNESS HOLDINGS INC., INTERNATIONAL FITNESS HOLDINGS LP and WORLD HEALTH NORTH LP

DOCUMENT **ORDER (CONSOLIDATION, DISTRIBUTION AND ANCILLARY RELIEF)**

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 File No.: 137923-1006

**Counsel for the Applicants, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP**

DATE ON WHICH ORDER WAS PRONOUNCED: June 29, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice K. Feth

LOCATION OF HEARING: Edmonton, Alberta

**UPON THE APPLICATION** of International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the "**Applicants**"); **AND UPON HAVING READ** the Fourth Report of the KPMG Inc. ("**KPMG**") in its capacity as the Proposal Trustee of the Applicants (the "**Proposal Trustee**") dated June 24, 2021 (the "**Fourth Report**"), the Affidavit No. 6 of Peter Melnychuk sworn on

June 24, 2021 (the "**Sixth Melnychuk Affidavit**") and the Affidavit of Service of Taylor Selanders sworn on June 29, 2021; **AND UPON HEARING** submissions by counsel for the Applicants, the Proposal Trustee and any other counsel or other interested parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable on this date.

**INTERPRETATION**

2. Unless otherwise stated, capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to such terms in the Sale Approval and Vesting Order of this Court dated May 27, 2021 and the Sixth Melnychuk Affidavit.

**EXTENSION OF STAY PERIOD**

3. The Stay Period, as ordered and defined in paragraph 3 of the Initial Order of this Court dated May 5, 2021, is hereby extended until and including July 7, 2021.

**ADMINISTRATIVE CONSOLIDATION**

4. The NOI Proceedings of International Fitness Holdings Inc. (Estate Number 25-2731795), International Fitness Holdings LP (Estate Number 25-2731797), and World Health North LP (Estate Number 25-2731799) are hereby administratively consolidated, *nunc pro tunc*:
5. KPMG, in its capacity as the Proposal Trustee of the consolidated NOI Proceedings, and in its capacity as trustee in bankruptcy of any subsequent bankruptcy proceedings of the Applicants, may administer the NOI Proceedings and subsequent bankruptcy proceedings on a consolidated basis, as follows:
  - (a) the Proposal Trustee is authorized to administer the NOI Proceedings and bankruptcy proceedings of the Applicants as if they were each a single proceeding for the purpose of carrying out its administrative duties and responsibilities as proposal trustee and trustee in bankruptcy under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") with respect to the administration of NOI Proceedings and bankruptcy generally, including without limitation:

- (i) the Proposal Trustee is authorized to issue consolidated reports in respect of the NOI Proceedings and any subsequent bankruptcy proceedings; and
- (ii) the Proposal Trustee is authorized to perform all filings, advertising and distribution of all filings and notices in the NOI Proceedings and subsequent bankruptcy proceedings as required under the BIA on a fully consolidated basis.

6. Nothing in this Order shall cause the consolidation of the NOI Proceedings on a substantive basis.

#### **DISTRIBUTION**

7. The Applicants, their counsel and the Proposal Trustee are authorized to distribute the net sale proceeds from the Transaction, including the Secured Promissory Note and the Purchaser Consideration Shares, in accordance with the APA, statutory priorities and the priorities set out in the Restated CIBC Facility, namely:

(a) the cash proceeds of the Transaction, net of (i) a Purchase Price reduction of \$250,000 to reflect amounts draw on the DIP Facility pursuant to the terms of the APA, (ii) the Priority Amounts, and (iii) the cost of administering the bankruptcy proceedings, shall be distributed as follows:

(i) first, to pay any amounts owing to the beneficiaries of the Administration Charge (as defined in the order of this Court dated May 5, 2021);

(ii) second, to TriFit and CIBC, as partial repayment of the amounts owing under the Restated CIBC Facility, in accordance with the priorities established in the Restated CIBC Facility or as otherwise agreed to between TriFit and CIBC;

(b) with respect to the Secured Promissory Note, the payment of the total principal amount owing shall be paid TriFit and CIBC in an allocation to be determined by the parties, as partial repayment of the amounts owing under the Restated CIBC Facility; and

(c) with respect to the Purchaser Consideration Shares, 170 shares shall be issued to TriFit and 30 shares to CIBC.

8. The payments, distributions and disbursements contemplated in this Order are made free and clear of any Encumbrances, and notwithstanding the pendency of these proceedings, the distributions contemplated in this Order shall not be void or voidable at the instance of creditors and claimants and shall not constitute nor shall be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA, as

amended, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **APPROVAL OF FEES AND ACTIVITIES OF PROPOSAL TRUSTEE**

9. The First Report of the Proposal Trustee dated April 27, 2021, the First Supplemental Report of the Proposal Trustee dated May 3, 2021, the Second Report of the Proposal Trustee dated May 21, 2021, the Third Report of the Proposal Trustee dated June 4, 2021, the Fourth Report, and the actions, activities and conduct of the Proposal Trustee as described in each such report, are hereby approved.
10. The fees and disbursements of the Proposal Trustee and its counsel Osler, Hoskin & Harcourt LLP (“Osler”) for the period through to July 7, 2021, including the estimated fees and disbursements of the Proposal Trustee and Osler to complete their remaining duties and the administration of the within proceedings, as set out in the Fourth Report, are hereby approved.

#### **AID AND RECOGNITION**

11. The Applicants and the Proposal Trustee shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought on such notice as this Court required.
12. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, the United States of America or in any other foreign jurisdiction, to act in aid of and to be complementary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Applicants and the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and its agents in carrying out the terms of this Order.

#### **SERVICE OF ORDER**

13. The Applicants shall serve this Order on the persons listed on the service list by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are required to be served with a copy of this Order.

A handwritten signature in black ink, appearing to be "Paul H.", written over a horizontal line.

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J.C.Q.B.A. or Clerk of the Court

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