



B201 731795

COURT FILE NUMBER

25-2731795  
25-2731797  
25-2731799

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

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

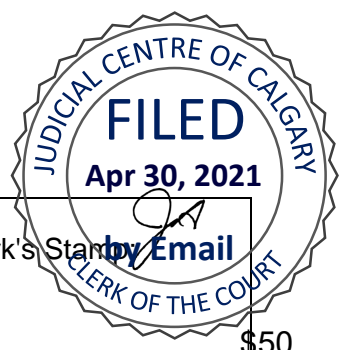
**APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**STIKEMAN ELLIOTT LLP**  
4300 Bankers Hall West  
888 – 3<sup>rd</sup> Street S.W.  
T2P 5C5

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Fax Number: (403) 266-9034  
File No.: 137923-1006

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



Clerk's Stamp  
by Email

\$50  
COM  
April 30, 2021  
Justice Mah

**ENTERED**

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



\$50  
CQM  
April 30, 2021  
Justice Mah

This application will be heard as shown below:

DATE: April 30, 2021  
TIME: 3:00 pm  
WHERE: Edmonton, via Webex  
BEFORE WHOM: The Honourable Justice D.R. Mah

### III. INTRODUCTION AND REMEDY SOUGHT

26. On April 23, 2021, the Applicants, International Fitness Holdings Inc. ("**IFH**"), International Fitness Holdings LP ("**IFH LP**") and World Health North LP ("**WHN LP**") (collectively, the "**Applicants**"), filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and such proceedings, the "**NOI Proceedings**") and appointed KPMG Inc. as its proposal trustee (the "**Proposal Trustee**").
27. As a result of the filing of the NOI, all proceedings against the Applicants and their assets were automatically stayed for an initial period of thirty (30) days (i.e. until May 23, 2021) (the "**Stay Period**").
28. The Applicants hereby seek from this Honourable Court the issuance of an order, substantially in the form of draft Order attached as Schedule "A" to the within Application, providing for, *inter alia*:
  - (a) abridging the time for delivery of this Application and deeming service of this Application to be good and sufficient;
  - (b) extending the Stay Period for an additional eight (8) days from the expiry of the Stay Period (i.e. until May 31, 2021);
  - (c) (i) authorizing IFH to obtain and borrow under a debtor-in-possession credit facility (the "**DIP Facility**") to permit it to finance its working capital requirements and other general corporate purposes and capital expenditures, and (ii) granting the lender of the DIP Facility a priority charge over IFH's assets in order to secure the reimbursement of said DIP Facility;
  - (d) granting each of the following professionals a priority charge over IFH's assets to secure the payment of their respective fees and disbursements incurred in connection with these proceedings up to an amount of \$300,000.00: (i) the Proposal Trustee; and (iii) the Proposal Trustee's counsel (the "**Administration Charge**"); and
  - (e) granting a priority charge over IFH's assets securing the payment of the amounts for which the Applicants may be called upon to indemnify its directors and officers, acting in such capacity during the post-NOI period, up to an amount of \$600,000.00 (the "**D&O Charge**").

## IV. BACKGROUND

### A. Company Overview

4. IFH is a privately-owned company incorporated under the Alberta *Business Corporations Act*, RSA 2000, c B-9 in 2014. IFH's head office is located in Calgary, Alberta. IFH is the general partner of the other two Applicants, WHN LP and IFH LP.
5. The Applicants are part of a fitness enterprise which operates fitness clubs in Calgary and Edmonton (the “**IFH Group**”). The Applicants are the primary operating entities of the IFH Group.
6. The IFH Group operates twenty-one (21) fitness centre locations in Edmonton and Calgary under four fitness brands. GYMVMT (ten locations), GYMVMT/HER GYMVMT (one location), HER GYMVMT (seven locations), ClubFit (two locations), Banker’s Hall Club (one location).
7. On August 1, 2014, IFH entered into a term loan facility with the Canadian Imperial Bank of Commerce (“**CIBC**”), which was subsequently amended and restated to finance, *inter alia*, the expansion of its footprint in Calgary and Edmonton through an amalgamation with World Health Club, Inc. and the acquisition of the assets of World Health Edmonton Inc., and to provide working capital thereafter (the “**CIBC Credit Facility**”).
8. Most recently, the CIBC Credit Facility was further amended and restated in January and February of 2019, and in September of 2020, pursuant to which CIBC and TriFit Holdings Limited Partnership, by its general partner Trifit Holdings (GP) Ltd. (collectively, “**TriFit**”), agreed to each lend IFH \$11,500,000.00 (the “**Restated CIBC Credit Facility**”). The purpose of the Restated CIBC Credit Facility was to provide IFH with capital and operational runway to enable the execution of a turnaround strategy focused on recapturing market share.

### B. Events Preceding the NOI

9. The rapid onset of the COVID-19 pandemic in February and March of 2020 presented the Applicants with considerable operational challenges given the nature of the fitness industry, including closures of varied duration depending on the applicable COVID-19 measures that were in effect in various municipalities which resulted in significantly reduced membership and revenues.
10. Since the onset of the COVID-19 pandemic, the IFH Group immediately began implementing strategies designed to mitigate the number of frozen billings and membership cancelations, all of which were aimed at positioning the business for an effective re-opening once the provincial health restrictions were eased, including:
  - (a) Negotiating rent deferral arrangements with its landlords in response to the forced closures of its facilities, with certain landlords agreeing to accept 50% of the rent due in 2021 and certain other landlords agreeing to defer rent;
  - (b) Reducing staff and streamlining operations;

- (c) Offering the IFH Group's membership base a number of options, including a paid remote fitness program and a loyalty credit program for members who continued their billings while clubs were closed; and
  - (d) Accessing the Canada Emergency Wage Subsidy ("**CEWS**") program; the Canada Emergency Commercial Rent Assistance ("**CECRA**") program, and following the termination of the CECRA program, the Canada Emergency Rent Subsidy ("**CERS**") program.
11. In September of 2020, the Applicants engaged MNP Ltd. ("**MNP**") to lead a strategic process, including for a possible sale of the IFH Group's assets, the result of which yielded one potential viable transaction involving an arm's-length third party purchaser (the "**Purchaser**").
  12. The Applicants hope to close a transaction with the Purchaser and will be seeking a Sale Approval and Vesting Order before May 31, 2021.

### **C. Financial Information**

13. IFH's financial statements reveal they are insolvent. IFH's current and capital assets as of December 31, 2020 totalled \$22,347,000.00 consisting of cash, accounts receivable, prepaid expenses, deposits, inventory, and fixed assets, while its liabilities totaled \$118,630,000.00.
14. The Applicants' primary liability relates to the Restated CIBC Credit Facility. IFH is the borrower under the Restated CIBC Credit Facility, with CIBC and TriFit as lenders. IFH LP and WHN LP guaranteed IFH's obligations under the Restated CIBC Credit Facility, and also provided secured share pledges in respect of the same.
15. The total indebtedness of the Applicants to CIBC and TriFit under the Restated CIBC Credit Facility as of March 31, 2021 totals approximately \$72.9 million.
16. The Applicants are also indebted to unsecured creditors in the total approximate amount of \$40.2 million as of March 31, 2021, comprised of \$5.4 million in rent owing, \$900,000 owing in accounts payables, and approximately \$34.0 million in unsecured subordinated loans advanced by former shareholders.

## **V. GROUNDS FOR THE REQUESTED ORDERS**

### **A. DIP Facility and DIP Charge**

17. The Applicants engaged with the Proposal Trustee and First Canadian Cardio-Fitness Clinics Ltd. (the "**Lender**") to finalize the DIP Facility in accordance with the terms and conditions of an interim financing facility term sheet (the "**DIP Term Sheet**"), pursuant to which the Lender will provide the Applicants with a secured non-revolving credit facility with a maximum principal amount of \$10,000,000.00, limited to an initial maximum of \$2,000,000.00.
18. The DIP Facility is to be guaranteed and secured by a super-priority charge (the "**DIP Charge**") on all present and after-acquired property of the Applicants, ranking in priority

to all other encumbrances other than the Administration Charge, and has an outside maturity date of May 31, 2021.

19. The DIP Facility will be used, to the extent required, to ensure the Applicants' continued operations by funding the Applicants' working capital and for other general corporate purposes, as well as to pay the costs and expenses incurred by the Applicants in connection with the NOI Proceedings.
20. The DIP Facility is critical to maintaining the Applicants' ongoing operations, to afford them an opportunity to finalize and implement the APA for the purpose of maximizing the value of the Applicants' assets.

***B. Administration Charge***

21. The participation of the Proposal Trustee and the Proposal Trustee's counsel are essential to the Applicants' restructuring. Accordingly, the Applicants seek a \$300,000.00 Administration Charge which shall affect their assets and secure the payments to be made to the foregoing professionals.
22. The Administration Charge is to rank in priority to all other encumbrances.

***C. D&O Charge***

23. The Applicants request a D&O Charge in the amount of \$600,000.00 over their assets, property and undertaking to indemnify their current and future directors and officers (collectively, the "D&Os") in respect of any liability which they may incur over the course of the NOI Proceedings, which figure is based on a calculation of the potential liability of the D&Os during this period.
24. The D&O Charge is to rank in priority to all other encumbrances other than the Administration Charge and the DIP Charge.

***D. Extension of Stay Period***

25. The Applicants are seeking an extension of the Stay Period to May 31, 2021 to provide sufficient time for the Applicants to finalize and seek approval of the APA, and to close the APA on or before May 31, 2021, which is the maturity date of the DIP Facility.

***D. REMEDY SOUGHT:***

26. The Applicants seek from this Court an order, substantially in the form attached hereto as Schedule "A":
  - (a) Abridging the time for delivery of this Application and deeming service of this Application to be good and sufficient;
  - (b) extending the Stay Period for an additional period of eight (8) days from the expiry of the Stay Period (i.e. until May 31, 2021);

- (c) approving the DIP Facility, as well as the DIP Charge intended to guarantee the Applicants' obligations under the DIP Term Sheet and the priorities as set out therein;
- (d) approving the Administration Charge in favour of the Proposal Trustee and its counsel in order to secure the payment of their fees in the context of the present NOI Proceedings;
- (e) approving the D&O Charge to indemnify the D&Os in respect of any liability which they may incur over the course of the present NOI Proceedings;
- (f) approving the ranking of the priorities as set forth above as between the Administration Charge, the DIP Charge, and the D&O Charge, and ensure that each charge will rank ahead of any and all charges, security interests and encumbrances against the Applicants' assets;
- (g) providing such other relief as may seem just and reasonable to this Honourable Court.

**Affidavit or other evidence to be used in support of this application:**

- 27. The Affidavit of Peter Melnychuk, sworn on April 26, 2021;
- 28. The first report of the Proposal Trustee; and
- 29. Such further information as counsel may advise and as this Honourable Court may permit.

**Applicable Acts and Regulations:**

- 30. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 11.27 and 13.5 of the Alberta *Rules of Court*, Alta Reg 124/2010.
- 31. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

**Any Irregularity Complained of or Objection Relied on:**

- 32. None

**How the Application is proposed to be heard or considered:**

- 33. Electronically by video-conference.



**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the Applicant and against all persons claiming under the Applicant. You will be bound by any order that the Court makes, or another order might be given or other proceedings taken which the Applicant is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.

## Schedule "A"

COURT FILE NUMBERS 25-2731795  
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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER

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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**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**  
4300 Bankers Hall West  
888 – 3<sup>rd</sup> Street S.W.  
T2P 5C5

Karen Fellowes, Q.C. / Elizabeth Pillon  
Phone Number: (403) 724-9469 / (416) 869-5623  
Email: kfellowes@stikeman.com / lpillon@stikeman.com  
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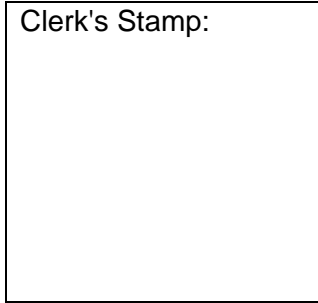
**Counsel for the Applicants, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP**

**DATE ON WHICH ORDER WAS PRONOUNCED:** April 30, 2021

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice D.R. Mah

**LOCATION OF HEARING:** Edmonton, via Webex

**UPON** the Application of International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the “**Applicants**”); **AND UPON** reading



the Order; **AND UPON** reading the Affidavit of Peter Melnychuk, sworn on April 26, 2021 (the "**Melnychuk Affidavit**"); **AND UPON** reading the Report of KPMG Inc., in its capacity as proposal trustee of IFH (the "**Proposal Trustee**"); **AND UPON** hearing submissions by counsel for the Applicants and any other counsel or other interested parties present,

**IT IS HEREBY ORDERED THAT:**

1. The time for delivery of the Application and supporting materials is hereby abridged and service is deemed to be good and sufficient;
2. Capitalized terms not otherwise defined in this Order shall have the meaning set forth in the Melnychuk Affidavit;
3. The Stay Period is hereby extended for an additional period of eight (8) days (i.e. until May 31, 2021);
4. The Applicants are hereby authorized to obtain and borrow under a debtor-in-possession credit facility from First Canadian Cardio-Fitness Clinics Ltd. (the "**DIP Lender**") in an amount of up to \$10,000,000.00 (the "**DIP Facility**") in accordance with the terms of the DIP Term Sheet attached as Exhibit "E" to the Melnychuk Affidavit (the "**DIP Term Sheet**");
5. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), including such documents already granted to the DIP Lender, as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order;
6. The DIP Lender is hereby granted, and is entitled to the benefit of, a charge over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") in order to secure the performance and payment of all obligations described in the DIP Facility (the "**DIP Charge**");

8. The following professionals are hereby granted a priority charge over the Applicants' Property to secure the payment of their respective fees and disbursements incurred in connection with these proceedings up to an amount of \$300,000.00: (i) the Proposal Trustee; and (iii) the Proposal Trustee's counsel (the "**Administration Charge**");
9. The Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants following the NOI Filing Date, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct;
10. The current and future directors and officers of the Applicants are granted a charge over the Applicants' Property securing the payment of the amounts for which the Applicants may be called upon to indemnify its current and future directors and officers, acting in such capacity following the NOI Filing Date, when and if D&O insurance coverage is denied or insufficient, in an amount up to \$600,000.00 (the "**D&O Charge**", and together with the DIP Charge and the Administration Charge, the "**Charges**").
11. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Applicants' current and future directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order;
12. The priority ranking of the Charges shall be as follows:
  - a) Administration Charge;
  - b) DIP Charge; and
  - c) D&O Charge.
13. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges

coming into existence, notwithstanding any such failure to file, register, record or perfect.

14. The Charges shall constitute a charge on the Applicants' assets and such Charges shall rank in priority to all other security interests, trust, liens, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any person;
15. Except as otherwise expressly provided for herein, or as may be approved by the Court, the Applicants shall not grant any Encumbrances over any assets that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants obtain the prior written consent of the beneficiaries of the Charges or further order of this Court;
16. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by:
  - a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - d) the provisions of any federal or provincial statutes; or
  - e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement: (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party; (ii) none of the Chargees shall have any liability to any person whatsoever as a result of any

breach of any Agreement caused by or resulting from the creation of the Charges; and (iii) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law;

17. Any interested person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets of the Applicants;
18. Any party to these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List to be maintained by the Proposal Trustee, and the Proposal Trustee shall post a copy of all prescribed materials on its website;
19. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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Justice of the Court of Queen's  
Bench of Alberta