IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
TOWN SPORTS INTERNATIONAL, LLC., *et al.*,[1]	)	Case No. 20-12168 (CSS)
Debtors.	)	(Jointly Administered)
	)	**Re: Doc. No. 710**

DEBTORS' OBJECTION TO THE EMERGENCY MOTION OF THE AD HOC TERM LENDER GROUP FOR (A) INJUNCTIVE RELIEF PENDING INTERPRETATION OR (B) AMENDMENT OR ALTERATION OF THE ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING THE DEBTORS TO ENTER INTO THE ASSET PURCHASE AGREEMENT, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] respectfully submit this objection to the motion (the "Motion to Enjoin") of the ad hoc group of certain term loan lenders (the "Ad Hoc Term Lender Group") [Docket No. 710] seeking to enjoin the closing of the sale (the "Sale") authorized by this Court's *Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter into the Asset Purchase Agreement,*

[1] The last four digits of Town Sports International, LLC's federal tax identification number are 7365. The mailing address for Town Sports International, LLC is 399 Executive Boulevard, Elmsford, New York 10523. A complete list of all the Debtors in these jointly administered cases, including the last four digits of their federal tax identification numbers and addresses, may be obtained on the website of the Debtors' claims and noticing agent at http://dm.epiq11.com/TownSports.

[2] A detailed description of the Debtors and their business and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases is set forth in greater detail in the *Declaration of Phillip Juhan in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 12] (the "First Day Declaration").

(III) Authorizing the Assumption and Leases, and (IV) Granting Related Relief [Docket No. 639] (the "Sale Order").[3]

Preliminary Statement

1. The Debtors stand ready, willing, and able to close on the Sale of substantially all of their assets, which has been the cornerstone of these chapter 11 cases. At the direction of the Ad Hoc Term Lender Group—which maintained "required lender" control through a cooperation agreement entered into amongst themselves prepetition—the Debtors agreed early in these chapter 11 cases to a financing and sale process premised on (a) a debtor-in-position financing facility from Tacit Capital ("Tacit"),[4] the Ad Hoc Term Lender Group's selected partner,[5] and (b) a stalking horse credit bid from a buyer entity that would be jointly owned by Tacit and the Ad Hoc Term Lender Group.[6]

[3] Capitalized terms not defined herein shall have the meaning given to them in the Sale Order or the Asset Purchase Agreement, as applicable.

[4] The debtor-in-possession financing lender is Fitness Recovery Holdings, LLC.

[5] As discussed in the declarations in support of the *Debtors' Motion for Entry of Orders (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Approving the Form and Manner of Notice Thereof, (III) Scheduling an Auction And Sale Hearing, (IV) Approving Procedures for the Assumption and Assignment of Contracts, (V) Approving the Sale of the Debtors' Assets Free and Clear, and (VI) Granting Related Relief* [Docket No. 160] (the "Bidding Procedures Motion"), the Ad Hoc Term Lender Group chose to collaborate with Tacit in its asset purchase proposal. The Ad Hoc Term Lender Group expressly turned down the proposal from Kennedy Lewis Investment Management, LLC, which, as discussed in the First Day Declaration, rendered the respective proposal not actionable.

[6] *See* the Settlement Term Sheet attached as Exhibit 2 to the *Interim Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Scheduling a Final Hearing* [Docket No. 64] ("Subject to agreement on an APA acceptable to the Company, Tacit Capital and the Ad Hoc Group, the joint bid by the Ad Hoc Group and Tacit Capital (the "AHG / Tacit Bid") shall serve as the stalking horse bid for a sale overbid process pursuant to agreed-upon bid procedures, provided, that the AHG / Tacit Bid shall include a credit bid of no more than $[85] million of the outstanding obligations under the Prepetition Credit Agreement.").

2. This Court subsequently approved bidding procedures[7] for an auction and sale process premised on the stalking horse asset purchase agreement, attached as Exhibit B to the Bidding Procedures Motion—which includes an express representation by New TSI Holdings, Inc. ("NewCo" or the "Buyer"), the buyer entity formed by Tacit and the Ad Hoc Lender Group, that it has the purchase consideration, including the credit bid.[8] No third parties submitted competing bids against that stalking horse consideration and, pursuant to the Bidding Procedures Order, the auction was canceled and NewCo was declared the Successful Bidder.[9] This Court then held a hearing to approve the Sale to NewCo—as the highest and best bid—and made relevant findings in the Sale Order.[10] No objections to the Sale Order were raised by the organized and well-represented Ad Hoc Term Lender Group or any other Prepetition Lender.[11]

3. Significantly, the Court need look no further than paragraph X of the Sale Order for the language relevant to the pending dispute:

> NewCo is a Delaware corporation that ***was formed on behalf of the Prepetition Lenders*** (each as defined in the Asset Purchase

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[7] *See* the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Approving the Form and Manner of Notice Thereof, (III) Scheduling an Auction And Sale Hearing, (IV) Approving Procedures for the Assumption and Assignment of Contracts, (V) Approving the Sale of the Debtors' Assets Free and Clear, and (VI) Granting Related Relief* [Docket No. 639] (the "Bidding Procedures Order").

[8] *See* Exhibit B to the Bidding Procedures Motion (representing that "[t]he consideration for the Acquired Assets shall be[, in part,] the credit bid in an amount then-outstanding under the Prepetition Senior Secured Debt, in an amount equal to eighty million Dollars ($80,000,000.00)") (internal definitions excluded).

[9] *See* the *Notice of Cancellation of Auction* [Docket No. 347].

[10] *See* Sale Order ¶ I ("The Asset Purchase Agreement was negotiated, proposed, and entered into by the Sellers and the Buyers . . . without collusion, in good faith, and from arm's-length bargaining positions"); *see also* Sale Order ¶ 3 ("With the exception of objections to Cure Amounts or adequate assurance of future performance . . . all objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included in such objections or otherwise, are *hereby denied* and *overruled on the merits with prejudice*.") (emphasis added).

[11] The Ad Hoc Term Lender Group consented to the Sale Order after providing comments to the Debtors, which were incorporated into the ultimate version of the Sale Order that was entered by the Court.

> Agreement) and New Town Sports Holdings, LLC ("Sponsor"), and upon the Closing Date will be owned by the Prepetition Lenders and Sponsor, in accordance with the terms of the Asset Purchase Agreement. Pursuant to the terms of the Asset Purchase Agreement and that certain *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. 277] (the "DIP Order"), the Prepetition Lenders are secured creditors of the Debtors, holding allowed Claims in the amount of the Prepetition Obligations (as defined in the DIP Order) secured by valid, binding, perfected, and enforceable first-priority security interests in and liens against each of the Debtors, their estates and the property of their estates of which $80,000,000.00 of such Prepetition Obligations will be credit bid in connection with the Sale (such Prepetition Obligations, the "Credit Bid Claim" and, the amount of such Credit Bid Claim, the "Credit Bid Consideration"). The Prepetition Agent (as defined in the DIP Order), on behalf of the Prepetition Lenders, has the right under section 363(k) of the Bankruptcy Code and ***is authorized by this Court pursuant to the Bid Procedures Order and this Sale Order, to credit bid the Credit Bid Consideration***. ***Pursuant to the Asset Purchase Agreement, the Buyers agreed to provide***, as consideration for the Acquired Assets, the Purchase Price, which includes, among other things, ***the Credit Bid Consideration***.

Sale Order ¶ X (emphasis added).

4. These words—and specifically those very deliberately written in the past tense—are consistent with the facts of these chapter 11 cases: the Ad Hoc Term Lender Group credit bid their debt into a purchasing entity and committed that "Credit Bid Consideration" at the time the Buyer executed the Asset Purchase Agreement. Indeed, the contribution of the "Credit Bid Consideration" is the sole consideration that the Ad Hoc Term Lender Group provided to NewCo on account of their joint venture: they have not funded a single dollar of the DIP financing for these chapter 11 cases or made any commitment to capitalize NewCo. So if they have not contributed the Credit Bid Consideration what is the basis for their equity stake in NewCo?

5. The Sale Order also expressly authorizes the Prepetition Agent (as defined in the DIP Order), on behalf of *all* Prepetition Lenders, to take any further action necessary with respect to the Credit Bid Consideration— there is no further direction required by the prepetition "required lenders" as they already acted in forming NewCo for the benefit of all Prepetition Lenders who will retain equity in that entity.

6. The Ad Hoc Term Lender Group devotes many pages of the Motion to Enjoin to the "understanding" they believed they had with Tacit or its co-investors, 507 Capital and Peak Credit LLC (collectively, "Peak"), regarding the post-close capital structure for NewCo. The Debtors have no insight into those negotiations, nor do they wish to interfere. Indeed, those negotiations can continue post-closing, which may appropriately include litigation between the joint venture parties regarding whether all parties received the benefit of their anticipated bargain. However, there is simply nothing in the Asset Purchase Agreement or the Sale Order approved by this Court that conditions the closing of the Sale on any specific arrangement among the owners of NewCo.[12]

7. With no relevant contractual or court-ordered provisions to cite to, the Ad Hoc Term Lender Group simply cannot show a likelihood of succeeding the merits of its request to revisit the Sale Order. The conditions to close have been satisfied and the Ad Hoc Term Lender Group's assertions to the contrary do not withstand scrutiny:

- The Ad Hoc Term Lender Group asserts that they are receiving ***no*** consideration on account of their credit bid, however, 20 percent of the equity in NewCo is being reserved for distribution to the Prepetition Lenders on account of the Credit Bid Consideration.

[12] Sale Order ¶ X ("NewCo is a Delaware corporation that was formed on behalf of the Prepetition Lenders (each as defined in the Asset Purchase Agreement) and New Town Sports Holdings, LLC, and upon the Closing Date will be owned by the Prepetition Lenders and Sponsor, in accordance with the terms of the Asset Purchase Agreement.") (internal definition omitted).

- The Ad Hoc Term Lender Group asserts that NewCo will be inadequately capitalized, however, (a) the Buyer has represented to the Debtors in a signed Asset Purchase Agreement that it has the purchase consideration, (b) Peak has provided to the Debtors proof of funds adequate to close and assume the liabilities required by the Asset Purchase Agreement, and (c) Peak has given assurances to the Debtors, and directly to counsel for the creditors' committee, of its ability and willingness to fund post-closing operating expenses.[13]

8. The Ad Hoc Term Lender Group is dissatisfied with the form and amount of consideration Prepetition Lenders are receiving for the contribution of its credit bid. The Sale closing, however, neither "foreclose[s] any recovery by the Prepetition Lenders" (who are receiving equity in NewCo and who may enforce any and all rights and causes of action they may have against their joint venture partner post close) nor "facilitate[s] the establishment of an uncapitalized Buyer."[14]

9. So while the Ad Hoc Term Lender Group warns of hypothetical and highly speculative irreparable harm that will come to the Buyer or the Prepetition Lenders if the Sale closes as contemplated, they ignore the very real, immediate, and irreparable harm that will come *to the Debtors* and the many employees, landlords, and trade partners counting on the Sale to close. The balance of equities weighs heavily against the Ad Hoc Term Lender Group.

10. The Debtors take no issue with sophisticated investors engaging in hardnosed negotiations. However, the time for such negotiations was before the Ad Hoc Term Lender Group submitted a joint stalking horse bid with Tacit and the Sale was approved, or, after closing, when the Ad Hoc Term Lender Group is free to renegotiate economics with its partners. The Ad Hoc Term Lender Group's cannot, however, hold the Debtors' business hostage (and the livelihood of its more than 1,500 employees and numerous vendors, landlords, and other stakeholders) as a

[13] *See* the *Declaration of Kyle Cleeton* (the "Cleeton Declaration"), filed contemporaneously herewith.

[14] *See* Motion to Enjoin ¶

negotiation tactic. The Ad Hoc Term Lender Group's grievances with respect to the post-closing economic terms—terms which were never put before this Court for approval or made a condition to closing the Sale—are not an appropriate basis to jeopardize a transaction that will save this business from a chapter 7 liquidation. Accordingly, the Debtors submit that the Motion to Enjoin should be denied and the Sale Order should be enforced.

Objection

I. All Conditions Precedent to the Sale Have Been Satisfied and the Sale Is Ready To Close.

11. The Debtors and the Buyer have satisfied all conditions precedent for closing the Sale.[15] Specifically, no conditions precedent relate to the specific economics or capital structure of NewCo. As contemplated in the Sale Order and the Asset Purchase Agreement, NewCo will be co-owned by New TSI Holdings, Inc. and the Ad Hoc Term Lender Group.[16] Nowhere does the Motion to Enjoin dispute the fact that the Prepetition Lenders are receiving equity in NewCo as consideration for the contribution of the credit bid provided during the auction process.[17] Neither the Sale Order nor the Asset Purchase Agreement require any additional consideration be given to the Ad Hoc Term Lender Group, including in relation to any takeback debt of NewCo.

12. The Ad Hoc Term Lender Group is comprised of sophisticated investors and is represented by competent advisors. The parties negotiated the Asset Purchase Agreement, the Sale Order, and other related documents in good faith. If there was a specific term or condition that

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[15] APA §§ 7.1–7.2 (stating, among other things, that (a) the Buyer and the Sellers must perform and comply with all covenants and agreements that are required to be performed prior to the sale closing, (b) that the Bidding Procedures Order must be entered, and (c) the Sale Order must be entered).

[16] Sale Order ¶ X; APA, preamble.

[17] To the extent the Ad Hoc Term Lender Group did not intend to contribute the credit bid amount to NewCo, they falsely represented to the Debtors that they were putting forth the credit bid by virtue of them sitting on their hands during the auction process.

any party felt was a necessary condition to closing the Sale, there was ample opportunity during the negotiation process to incorporate any such terms in the Sale documents prior to the Court's consideration of the Bidding Procedures, the Asset Purchase Agreement, and the Sale Order. For example, the Ad Hoc Term Lender Group negotiated a consent right over the Wind-Down Budget in the Asset Purchase Agreement, which is required to be "reasonably acceptable to Buyer, *the majority of the Prepetition Lenders*, and Sellers based on the general categories discussed by the Parties in negotiating the Wind-Down Amount to date."[18] The Ad Hoc Term Lender Group also negotiated a consent right over the Bidding Procedures that were approved by this Court.[19] Unlike these provisions, however, there is no provision in the Sale documents that requires a certain type of post-closing capital structure for NewCo or provides that the Ad Hoc Term Lender Group must be satisfied with their equity amount or takeback debt in NewCo.

13. Further, the Debtors and the Buyer have showed, and continue to show, a willingness to close the Sale as soon as possible for the benefit of all parties in interest. As discussed in the Cleeton Declaration, the Buyer has represented that it has the wherewithal to close and is prepared to meet its related financial obligations as soon as Monday, November 30.[20] For these reasons, the Debtors submit that all conditions precedent to closing the Sale have been satisfied, the Debtors and Buyer are ready and willing to move forward, and the Sale should be permitted to close.

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[18] APA § 2.3 (emphasis added).

[19] In the "Termination of Agreement" section of the Asset Purchase Agreement, the Ad Hoc Term Lender Group negotiated the following language: "the Bankruptcy Court shall have entered an order approving the Bidding Procedures in a form satisfactory to Buyer and *the Prepetition Lenders* no later than October 12, 2020." APA § 8.1 (emphasis added).

[20] Cleeton Declaration ¶ 3.

II. The Credit Bid of the Ad Hoc Term Lender Group Is Binding.

14. The bidding procedures approved by the Bidding Procedures Order expressly requires that any competing bidders submit irrevocable binding offers in order to be selected as the Successful Bid.[21] On the Bid Deadline, by virtue of no other submitted bids, the Stalking Horse Bid was accepted as the Successful Bid.[22] The Ad Hoc Term Lender Group's binding commitment was documented in the Asset Purchase Agreement.[23] The language in the Sale Order pointed to by the Ad Hoc Term Lender Group that states that $80 million of their prepetition debt "*will be* credit bid in connection with the Sale"[24] is merely an iteration of what the Ad Hoc Term Lender Group bound themselves to in putting forth the Stalking Horse Bid. Through the approval of the bidding procedures, the entry into the Asset Purchase Agreement, and the entry of the Sale Order, all of which were premised on the binding Stalking Horse Bid that included the Credit Bid Consideration, at no point did the Ad Hoc Term Lender Group argue or include language that the credit bid was conditioned on a certain post-closing capital structure at NewCo.[25]

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[21] "To be selected to acquire the Assets or to be eligible to participate in the Auction, if applicable, an Acceptable Bidder (other than the Stalking Horse Bidder) must deliver to the Debtors and their advisors a written, irrevocable, and binding offer for the purchase of the Assets." Bidding Procedures, Article IV; *see also* Bidding Procedures Order ¶¶ D, E (finding that the Stalking Horse Bid constituted the highest and best bid for the Debtors' assets and will serve as "a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders *may rely*") (emphasis added).

[22] *See* Exhibit 1 of the Bidding Procedures Order ("If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction, and designate the Stalking Horse Bid as the Successful Bid and pursue entry of the Sale Order approving a Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement.").

[23] In relevant part, "[t]he consideration for the Acquired Assets shall be . . . (b) the credit bid in an amount then-outstanding under the Prepetition Senior Secured Debt, in an amount equal to eighty million Dollars ($80,000,000.00). . ." APA § 2.3 (internal definitions excluded).

[24] In relevant part, "$80,000,000.00 of such Prepetition Obligations will be credit bid in connection with the Sale." Sale Order ¶ X.

[25] No objection was raised at the Sale Hearing by the Ad Hoc Term Lender Group as to the acceptance of the Stalking Horse Bid or the entry into the Asset Purchase Agreement, both of which contemplated the credit bid. *See* Sale Transcript, November 3, 2020.

15. Further, the bidding procedures approved by the Bidding Procedures Order stated that "[a]ny Bid shall not be conditioned on the obtaining or the sufficiency of financing."[26] It would be inconsistent and inequitable for the Ad Hoc Term Lender Group, in connection with its Stalking Horse Bid, to be permitted greater conditionality in connection with their Stalking Horse Bid than the Bidding Procedures Order permitted competing bidders to include with respect to competing bids.

16. Importantly, the Sale Order does not provide authority for the Ad Hoc Term Lender Group to add additional terms to either the Sale Order or the Asset Purchase Agreement after its approval or otherwise hold up the closing of the Sale when all other expressly negotiated and documented conditions precedent have been satisfied.

III. The Sale Order Does Not Require The Consent of the Ad Hoc Term Lender Group to Close the Sale.

17. Pursuant to the Sale Order, the Court approved "[t]he Asset Purchase Agreement and all other ancillary documents, and all of the terms and conditions thereof, including the Credit Bid Claim."[27] All terms and provisions of the Asset Purchase Agreement and the Sale Order are binding "in all respects" upon the Debtors and all other holders of Claims, including the Ad Hoc Term Lender Group.[28] Further, the Sale Order expressly states that any party, including the Ad Hoc Term Lender Group, that did not raise an objection or whose objection had been overruled effectively consented to the Sale upon entry of the Sale Order.[29] No term or provision in the Asset Purchase Agreement or the Sale Order requires the consent of the Ad Hoc Term Lender

[26] *See* Exhibit 1 of the Bidding Procedures Order.

[27] Sale Order ¶ 4.

[28] Sale Order ¶ 6.

[29] Sale Transcript, November 3, 2020.

Group to close the Sale or conditions the Sale closing on the post-closing capital structure of NewCo. Again, if such terms were critical to the Ad Hoc Term Lender Group, the opportunity to negotiate the terms was prior to the execution of the Asset Purchase Agreement and its subsequent approval through the Sale Order.

18. The Sale Order also authorizes the Debtors to effectuate all necessary actions contemplated by the Asset Purchase Agreement and Sale Order to close the Sale.[30] The Debtors have done just that. The Ad Hoc Term Lender Group does not, and cannot, demonstrate that any necessary actions required to satisfy the conditions precedent pursuant to the Asset Purchase Agreement and the Sale Order remain outstanding.

19. Rather, the Ad Hoc Term Lender Group seems to make a detrimental reliance argument by relying on an email exchange regarding certain tax-related structuring steps on the date of the Sale Hearing to argue that there was an understanding that the prepetition lenders would receive a certain amount of takeback debt in NewCo as consideration for the credit bid. However, this email exchange referencing bracketed numbers does not evidence a negotiated agreement amongst the parties.[31] If, as the Ad Hoc Term Lender Group argues, this agreement was the "clear understanding of the parties and intent of the Sale mechanics,"[32] then such critical terms of the deal should have been included in the Asset Purchase Agreement or the Sale Order, or, at least, flagged for the Court expressly at the Sale Hearing. As reflected by the governing Sale documents

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[30] Sale Order ¶ 5.

[31] In the same email correspondence, counsel for the Debtors specifically stated "the DIP has already been funded and the credit bid is capped (by agreement with the lender) at $80m. That credit bid sale to the purchaser party to the APA will be approved tomorrow." Clearly, Debtors' counsel's understanding was that the Sale Order approved the Sale in all respects, including the credit bid. If counsel for the Ad Hoc Term Lender Group had a different understanding, they should have used this email exchange to clear up the disconnect.

[32] Motion to Enjoin ¶ 26.

and the transcript of the Sale Hearing, the Credit Bid Consideration was simply not conditioned on any specific terms relating to the post-closing capital structure of NewCo.

IV. The Balance of the Equities Strongly Weighs In Favor of the Closing of the Sale.

20. The balance of the equities strongly favors enforcing the Sale Order and denying the Motion to Enjoin. The Ad Hoc Term Lender Group is effectively asking the Court to enjoin the Sale not on the basis of any violation of the Asset Purchase Agreement or the Sale Order, but solely on the basis that they now have an intercreditor dispute with Tacit regarding their economics in NewCo. In doing so, the Ad Hoc Term Lender Group is asking this Court for more than what it is entitled to under the Sale documents and is imperiling the Debtors' business in the process, including risking the livelihoods of the Debtors' employees, vendors, landlords, and other stakeholders. For the sake of all of the Debtors' stakeholders depending on the value realized through this Sale, any additional consideration sought by the Ad Hoc Term Lender Group—including their piece of the post-closing capital structure—can, and should, be negotiated or litigated between the Ad Hoc Term Lender Group and Tacit after the closing of the Sale.

21. If the Sale does not close, the Debtors would be forced to scramble to find the liquidity necessary to run a new, expedited sale process, likely premised on a credit bid of just the DIP claims. This would require time and money that the Debtors simply do not have. In other words, if the Sale falls through, the Debtors will need to immediately find new funding or face a likely liquidation. Even more, enjoining the Sale and requiring the Debtors to pursue a new sale would also not benefit the Ad Hoc Term Lender Group, as it would likely leave them without the contemplated equity in NewCo and potentially with no recovery at all. The Debtors already conducted a sale process and received market feedback from a range of strategic companies in the fitness space and distressed and private equity investors who might consider operating the Debtors'

gyms in the face of COVID-19 uncertainty. No potential bidders other than the Stalking Horse Bidder submitted a binding bid.

22. In short, every step necessary to close has occurred or can now occur, and the parties should be permitted to consummate the Sale. Although the Debtors do not believe any further steps are required to consummate the Sale, to the extent this Court finds that the Credit Bid Consideration has not yet been contributed to NewCo, in the alternative, the Debtors request that the Court direct the Prepetition Agent to transfer prepetition debt in the amount of $80 million to NewCo so that the parties may proceed with the closing of the Sale.

Conclusion

23. For the foregoing reasons, the Debtors respectfully request that the Court deny the Motion to Enjoin and order such other relief as the Court determines is necessary and proper.

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Dated: November 29, 2020
Wilmington, Delaware

/s/ Robert S. Brady

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