

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

BURN FITNESS, LLC¹

Debtor.

Chapter 11
Case No. 21-43828-MAR
Hon. Mark A. Randon

Jointly Administered

AFFIDAVIT OF DISINTEREST

I, Julie Beth Teicher, make this affidavit under 28 U.S.C. §1746:

1. Julie Beth Teicher, of Maddin, Hauser, Roth & Heller, P.C. (“Maddin Hauser”), being first duly sworn, deposes and states that I am authorized to make this Affidavit. I have personal knowledge of the matters set forth herein, and I am in all respects competent to make this Declaration. I am a member in good standing of the State Bar of Michigan, and I have been admitted to practice in the United States Bankruptcy Court for the Eastern District of Michigan. There are no disciplinary proceedings against me.

¹ The Debtors in these jointly administered cases are Burn Fitness, LLC, Chapter 11 Case No. 21-43828, filed April 30, 2021; Burn Fitness-2, LLC, Chapter 11 Case No. 21-43840, filed April 30, 2021; Burn Fitness-3, LLC, Chapter 11 Case No. 21-43844, filed April 30, 2021.

2. I submit this Declaration in support of the Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Maddin, Hauser, Roth & Heller, P.C. as Counsel to the Debtors² (the "Application") as proposed counsel pursuant to § 327(a) of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. The Debtors seek to retain Maddin Hauser as their attorneys because of Maddin Hauser's (i) experience and knowledge in the field of debtors' and creditors' rights and business reorganization under chapter 11 of the Bankruptcy Code, (ii) its expertise, experience and knowledge in practicing before this Court, and (iii) its experience in representing Debtors in prior matters and its familiarity with the Debtors' businesses.

4. In preparing for its representation of Debtors in these Chapter 11 cases, Maddin Hauser has consulted with the Debtors pre-petition and become familiar with the Debtors' businesses and potential issues relating to the Debtors' reorganization efforts.

² The Debtors in these proposed jointly administered cases are Burn Fitness, LLC, Chapter 11 Case No. 21-43828, filed April 30, 2021; Burn Fitness-2, LLC, Chapter 11 Case No. 21-43840, filed April 30, 2021; Burn Fitness-3, LLC, Chapter 11 Case No. 21-43844, filed April 30, 2021.

Services to be Provided

5. It is anticipated that the Debtors will continue as debtors in possession and, as such, will require representation of counsel during their chapter 11 proceedings in order to assist them in carrying out their duties pursuant to chapter 11. As such, the professional services Maddin Hauser renders to the Debtors will include, but will not be limited to, the following:

a. Advising the Debtors with respect to their rights, powers and duties as debtors and debtors in possession in the continued management and operation of their financial affairs and property;

b. Assisting in the preparation of schedules and statements of financial affairs;

c. Assisting in the preparation of financial statements, balance sheets and business plans;

d. Attending meetings and negotiating with representatives of creditors and other parties in interest;

e. Advising and consulting with the Debtors regarding the conduct of this case, including all of the legal and administrative requirements of operating in chapter 11;

f. Advising the Debtors on matters relating to the evaluation of unexpired leases and executory contracts;

g. Taking all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on their behalf, the defense of any actions commenced against their estates, negotiations concerning all litigation in which the Debtors may be involved and objections to claims filed against the estates;

h. Assisting the Debtors in selling assets pursuant to § 363 of the Bankruptcy Code and drafting agreements and court papers to accomplish same,

including, without limitation, negotiating and preparing a purchase and sale agreement;

i. Assisting in formulating and prosecuting a plan of reorganization and disclosure statement, along with all related agreements and/or documents, and taking any necessary action on behalf of the Debtors to obtain confirmation of a plan of reorganization;

j. Appearing before this Court and the Office of the United States Trustee, and protecting the interests of the Debtors' bankruptcy estates before the Court and the Office of the United States Trustee; and

k. Performing all other necessary or appropriate legal services and providing all other necessary legal advice to the Debtors in connection with these chapter 11 cases, including analyzing interests, liens, leases, and contracts and advising the Debtors on corporate and litigation matters.

6. Maddin Hauser previously represented Grand Sakwa Property Management or one of its affiliates in 2017 and early 2018 relative to negotiating leases for tenants at North Hill Center, Rochester Hills, MI, Northridge Center, Rochester, MI, and a lease and sale of real property at Heritage Village, Warren, MI. The engagement concluded in April, 2018; none of these matters pertained to any of the Debtors and were unrelated to the instant proceedings.

7. Maddin Hauser previously represented American Express Bank, FSB as local counsel in defense of a preference claim brought by the Chapter 7 Trustee in the matter *Tamarack Development Associates, LLC*, Case No. 16 -06117-jwb, in the Bankruptcy Court for the Western District of Michigan. The matter and the engagement concluded in August 2018, and was unrelated to the instant proceeding. Maddin Hauser also previously represented American Express Company and

American Express National Bank in defense of a preference claim brought by the Chapter 7 Trustee in the matter *Patriot Solar Group, LLC*, Case No. 17-00984, in the Bankruptcy Court for the Western District of Michigan. The matter and the engagement concluded in September 2020, and was unrelated to the instant proceeding.

8. One of the attorneys of Maddin Hauser, Deborah S. Lapin is married to Paul Randel, the Assistant United States Trustee for the Eastern District of Michigan. Ms. Lapin has not and will not perform any legal work on behalf of the Debtor, nor does she have any knowledge of any aspect of this Chapter 11 proceeding. The attorneys of Maddin Hauser otherwise have no connection with any of the forgoing parties.

9. Amongst the Debtors, there are certain intercompany loans and obligations. As of December 31, 2020, Burn Fitness-3, LLC owes Burn Fitness, LLC a total of approximately \$47,295.00 for direct loans from Burn Fitness, LLC, with approximately \$5,000.00 of that amount owed pursuant to inter-company transfers made in 2020. In addition, it is estimated that Burn Fitness-3, LLC owes Burn Fitness, LLC approximately \$10,000.00 for charges incurred by Burn Fitness, LLC pursuant to the Debtors' pre-petition cash management system, whereby Burn Fitness, LLC would charge certain operational expenses, which would be split 3 ways, with each of Burn Fitness, LLC, Burn Fitness-2, LLC and Burn Fitness-3,

LLC sharing the expenses pro-rata, paid in full on a monthly basis. Burn Fitness-3, LLC owes Burn Fitness-2, LLC approximately \$291,749.17, with approximately \$33,000.00 of that amount owed pursuant inter-company transfers made in 2020. As of December 31, 2020, Burn Fitness-2, LLC owes Burn Fitness, LLC approximately \$2,241.51 pursuant to inter-company transfers made in 2020 and approximately \$10,000.00 pursuant to the Debtors' pre-petition cash management system, described above.

10. The Debtors have common ownership, as Burn Fitness Holdings LLC is the sole member of each of the Debtors. Alissa Tushman has a 51% membership interest in Burn Fitness Holdings LLC and Mark DuFresne has a 49% membership interest. Additionally, Alyssa Tushman is the manager of each of the Debtors. Accordingly, the same individuals are responsible for the day-to-day and financial affairs of each Debtor. And while the corporate and financial affairs of the Debtors are related, the Debtors have operated as separate and distinct entities, responsible for the collection of their respective receivables and with certain minor exceptions, responsible for their own bills.

11. A conflict and connections check was conducted in regard to this matter. An email was circulated to all attorneys and support staff advising of the name of the clients and the principal, and significant creditors. Once the list of trade creditors was received, further inquiry was made in the firm with respect to those

trade creditors. Attorneys and support staff review the conflict check request and advise by email response if they have or know of a conflict or connection. If any connection is revealed, the connection is further explored for the status of the firm's representation of any such entity. The results of this process are set forth in paragraphs 6,7, and 8 above. Maddin Hauser had previously represented the Debtors, and in particular Burn Fitness-3, LLC relative to issues with its landlord. Based on the results of the conflict check conducted to date, and except as set forth above, the attorneys of Maddin Hauser currently have no connection with, hold no interest in, nor represent any party's interest adverse to those of the Debtors and their estates, the creditors of the Debtors, their respective accountants and attorneys, the Office of the U.S. Trustee, and the employees of the U.S. Trustee.

12. Maddin, Hauser, Roth & Heller, P.C. are disinterested persons as that term is defined by §101(14) of the Bankruptcy Code.

13. Maddin Hauser recognizes that additional parties in interest may surface during the course of this proceeding. As parties become known, or make appearances in this case, Maddin Hauser will supplement its disclosures as necessary and appropriate.

14. As of the Petition Date, the Debtors do not owe any amounts to Maddin Hauser for legal services rendered before the Petition Date unrelated to the preparation for this chapter 11 case.

15. The Debtors paid to Maddin Hauser \$42,382.50 pre-petition for services in preparing for these chapter 11 filings.

16. Two of the Debtors has paid Maddin Hauser a retainer of \$12,522.33 and one paid a retainer of \$12,522.34, plus each paid the filing fee of \$1,738.00 within 90 days before the filing of the chapter 11 petitions. The retainers will be held in trust as collateral security for the payment of fees and expenses that are allowed by the Court. The Debtors do not owe Maddin Hauser any prepetition debts, having paid Maddin Hauser for services related to and in preparation of these cases prior to the Petition Date. Maddin Hauser has not received any other payments or compensation from the Debtors or their affiliates for services related to these bankruptcy cases.

17. Maddin Hauser intends to apply for compensation for professional services rendered in connection with these chapter 11 cases subject to approval of this Court and in compliance with applicable provisions of the Bankruptcy Code, this Court's Local Rules and Orders of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges that Maddin Hauser incurs. Maddin Hauser will charge the Debtors hourly rates consistent with the rates it charges in bankruptcy and non-bankruptcy matters of this type.

18. The Debtors have been advised of the current fees charged by the firm relative to the attorney who will or may work on this matter, which are:

Earle I. Erman	\$485.00
Julie Beth Teicher	\$435.00
David H. Freedman	\$410.00
David M. Eisenberg	\$385.00

19. Maddin Hauser's hourly rates are set at a level designed to fairly compensate Maddin Hauser for the work of its attorneys and to cover fixed and routine overhead expenses. Hourly rates vary with experience and seniority of the individuals assigned.

20. It is Maddin Hauser's policy to charge its clients for expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, photocopying, witness fees, travel expenses, filing and recording fees, postage, express mail and messenger charges. Maddin Hauser will charge the Debtors for these expenses in a manner and at rates consistent with those it generally charges its other clients.

21. No promises have been received by Maddin Hauser as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code.

22. Maddin Hauser further states pursuant to Rule 2016(b) of the Bankruptcy Rules that it has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the

members, counsel and associates of Maddin Hauser or (b) any compensation another person or party has received or may receive.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

By: /s/Julie Beth Teicher

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Dated: May 13, 2021