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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11
Case No. 09-12889 (REG)

AGT WIND DOWN ACQUISITION LLC, *et al.*,

(Substantively Consolidated)

Post Confirmation Debtors.

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MARIANNE T. O'TOOLE, AS DISTRIBUTION
AGENT OF AGT WIND DOWN ACQUISITION
LLC, *et al.*

Plaintiff,

Adv. Pro. No. 11-_____ (REG)

-against-

[Defendant].,

Defendant.

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**COMPLAINT TO (I) AVOID AND RECOVER
TRANSFERS PURSUANT TO 11 U.S.C. §§547 AND 550;
AND (II) DISALLOW CLAIMS, IF ANY, PURSUANT TO 11 U.S.C. §502(d)**

Marianne T. O'Toole ("Plaintiff"), as distribution agent of the substantively consolidated estates of AGT Wind Down Acquisition LLC, *et al.*¹, by her undersigned counsel, for her complaint against [Defendant] ("Defendant"), alleges as follows:

¹ The substantively consolidated estates are: AGT Acquisition Wind Down LLC, Sports & Fitness Ventures LLC, AGT Services Wind Down LLC, CFI Wind Down, LLC, AGT Atlanta Wind Down LLC, CFI Georgia Wind Down, LLC, CFI Atlanta Wind Down, LLC, AGT Crunch Chicago LLC, Crunch CFI GW, LLC, AGT Los Angeles Wind Down LLC, AGT Union Street LLC, AGT Miami Wind Down LLC, AGT New York Wind Down LLC, Fort Greene Sports Club, LLC, Hauppauge Sports Club, LLC, CFI New York Wind Down, LLC, Park Slope Sports Club, LLC, 113 4th Sports Club, LLC, AGT San Francisco Wind Down LLC, CFI San Francisco Wind Down, LLC, AGT Washington D.C. Wind Down LLC, and The Silver Springs Sports Club, L.L.C.

Nature of the Adversary Proceeding

1. This adversary proceeding seeks a judgment: (a) avoiding and recovering the transfers identified in **Exhibit A** (the “Transfers”); and (b) disallowing any claims filed by Defendant or scheduled in Defendant’s favor in the Debtors’ bankruptcy cases, unless and until the total amount of the Transfers is returned to Plaintiff.²

Jurisdiction and Venue

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.

3. This adversary proceeding is commenced pursuant to Rule 7001, *et seq.* of the Federal Rules of Bankruptcy Procedure and §§502(d), 547(b), and 550(a) of title 11, United States Code (the “Bankruptcy Code”).

4. Venue in this Court is proper pursuant to 28 U.S.C. §1409 because this proceeding arises under, and in connection with, a case under 11 U.S.C. §101, *et seq.*

5. This proceeding is a “core” proceeding pursuant to 28 U.S.C. §§157(b)(2)(B) and (F).

Background

6. On May 6, 2009 (the “Petition Date”), AGT Crunch Acquisition LLC, et al.³, (each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11, United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

² To the extent that Defendant has filed a proof of claim or has a claim listed on the Debtors’ schedules as undisputed, liquidated and not contingent, or otherwise has requested payment from the Debtors (collectively, the “Claims”), this Complaint is not intended to be, and should not be construed as, a waiver of Plaintiff’s right to object to such Claims for any reason, and such rights expressly are reserved. Notwithstanding this reservation of rights, certain relief pursuant to Bankruptcy Code §502 is sought herein as further stated below.

³ The Debtors in these cases are: AGT Crunch Acquisition LLC, Sports & Fitness Ventures LLC, AGT Crunch Services LLC, Crunch CFI, LLC, AGT Crunch Atlanta LLC, Crunch CFI Georgia, LLC, Crunch CFI Atlanta, LLC, AGT Crunch Chicago LLC, Crunch CFI, LLC, AGT Crunch Los Angeles LLC, AGT Union Street LLC, AGT Crunch Miami LLC, AGT Crunch New York LLC, Fort Greene Sports Club, LLC, Hauppauge Sports Club, LLC, Crunch CFI New York, LLC, Park Slope Sports Club, LLC, 113 4th Sports Club, LLC, AGT Crunch San Francisco LLC, Crunch CFI San Francisco, LLC, AGT Crunch Washington D.C. LLC, and The Silver Springs Sports Club, L.L.C.

7. On August 17, 2009, the Court entered an Order approving the sale of substantially all of the Debtors' assets to CH Fitness Investors, LLC.

8. On October, 14, 2009, the Court entered an Order authorizing the modification of the caption of the Debtors to reflect "In re AGT Wind Down Acquisition LLC, et al." and modify the name of 13 of the 22 Debtors.

9. On March 17, 2010, the Court entered an Order approving the First Modified Disclosure Statement of AGT Wind Down Acquisition LLC, et al. Thereafter on July 15, 2010, the Court held a hearing to consider confirmation of the First Modified Joint Plan of Liquidation of AGT Wind Down Acquisition LLC, et al. (the "Plan").

10. On July 15, 2010, the Court entered an Order confirming the Plan. On August 2, 2010, the Court entered an amended Order confirming the Plan. The Plan as confirmed provides for substantive consolidation of the Debtors' estates in all respects.

11. Pursuant to the confirmed Plan's terms, the Debtors and the Committee of Unsecured Creditors agreed that Plaintiff will perform certain services, including but not limited to, commencing and prosecuting avoidance claims and objection to claims.

12. Plaintiff has the authority to commence this proceeding.

First Claim for Relief

(Avoidance and Recovery of Preferential Transfers - 11 U.S.C. §§547(b) and 550(a))

13. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

14. As more particularly described on **Exhibit A** attached hereto and incorporated herein, within the 90 days immediately prior to the Petition Date, the Transfers identified on **Exhibit A** were made by AGT Crunch Acquisition LLC (the "Transferring Debtor") to or for the benefit of Defendant totaling \$17,347.79 (the "Transfers").

15. The Transfers were transfers of an interest in the Debtors' property.

16. The Transfers were made by the Transferring Debtor on account of a prior

contractual obligation owed to Defendant or prior invoices issued to the Debtors by Defendant.

17. The goods or services paid for by each of the Transfers were provided by Defendant to the Debtors before the Transfers were made.

18. According to the Debtors' books and records, the Debtors applied the Transfers to the invoices for goods and services that were provided to the Debtors prior to the Transfers being made, as evidenced on **Exhibit A**.

19. At the time the Transfers were made, Defendant was a creditor of the Debtors.

20. At the time the Transfers were made, the Debtors owed Defendant an amount equal to or greater than the amount of the Transfers.

21. Under Bankruptcy Code §547(f), the Debtors are presumed to have been insolvent at the time the Transfers were made.

22. The Debtors were insolvent at the time the Transfers were made.

23. Unsecured creditors of the Debtors will not be paid in full in the Debtors' bankruptcy cases.

24. The Transfers enabled Defendant to receive more than it would have received if: (i) the Debtors' chapter 11 cases were administered under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant had received payment of its claims to the extent provided by the Bankruptcy Code.

25. Defendant was the initial transferee of the Transfers, or the entity for whose benefit the Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Transfers.

26. Based upon the foregoing, Plaintiff is entitled to an order and judgment against Defendant: (i) avoiding the Transfers under Bankruptcy Code §547(b); and (ii) entitling Plaintiff to recover the Transfers, or the value of the Transfers, from Defendant under Bankruptcy Code §550(a), together with the award of pre-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment.

Second Claim for Relief
(Disallowance of Claims Pursuant to 11 U.S.C. §502(d))

27. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

28. Defendant is the recipient of the Transfers, which are avoidable and recoverable under Bankruptcy Code §§547 and 550.

29. Despite due demand, Defendant has not returned the Transfers.

30. Based upon the foregoing, and pursuant to Bankruptcy Code §502(d), any claims filed by Defendant or scheduled in Defendant's favor against the Debtors must be disallowed unless and until Defendant returns the Transfers.

WHEREFORE, Plaintiff respectfully request entry of judgment as follows:

- a. On Plaintiff's First Claim for Relief, pursuant to 11 U.S.C. §§547(b) and 550(a), in Plaintiff's favor and against Defendant, avoiding the Transfers identified in **Exhibit A**, and directing Defendant to pay to Plaintiff the total amount of the Transfers, plus pre-judgment interest, together with the costs and expenses of this proceeding;
- b. On Plaintiff's Second Claim for Relief, pursuant to 11 U.S.C. §502(d), in Plaintiff's favor and against Defendant, disallowing any claims filed by Defendant against the Debtor(s) or scheduled in Defendant's favor in the Debtors' bankruptcy cases unless and until Defendant returns the Transfers to Plaintiff; and
- c. For such other and further relief as this Court deems just and proper.

Dated: April 27, 2011
Jericho, New York

SILVERMANACAMPORA LLP

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