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and Comvest Freedom Administration, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

Case No. 3:16-cv-00438-PK

SWORN STATEMENT OF CECILIO M.
RODRIGUEZ ON BEHALF OF COMVEST
CAPITAL III, L.P. AND COMVEST
FREEDOM ADMINISTRATION, LLC

**AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
INC.; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK; BRIAN A.
OLIVER; and N. SCOTT GILLIS,**

Defendants.

I, Cecilio M. Rodriguez, being duly sworn, state as follows:



1. I currently serve as Chief Financial Officer of Comvest Capital III, L.P (“**Comvest Capital**”), a position I have held since 2004.

2. I understand that this declaration may be used for any purpose permitted by law.

3. The statements contained herein are based on my own personal knowledge, including my knowledge about the business records referenced in this declaration as well as Comvest Capital’s policies and procedures with respect to business records.

4. In 2014, the Trusts (defined below) and one or more affiliates of Defendants Aequitas Capital Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, Inc., Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC (collectively, “**Aequitas**”) entered into certain loan purchase agreements (the “**Loan Purchase Agreements**”) pursuant to which the Trusts or an Aequitas affiliated entity purchased and/or would purchase certain consumer installment loans (the “**Consumer Loans**”) arranged by Freedom Financial Asset Management, LLC (“**Freedom**”).

5. In connection with the Loan Purchase Agreements, Aequitas and the Trusts entered into certain servicing agreements pursuant to which Freedom would service the Consumer Loans in accordance with the usual standards of practice of prudent services of similar loans, provided that such services would at all times be performed on a basis consistent with applicable law, certain service level standards and Freedom’s Policy and Procedures Guide.

6. On or around March 30, 2015, ACC Holdings 1, LLC and ACC Holdings 2, LLC (collectively, the “**Parents**”) and ACC Funding Trust 2014-1 and ACC Funding Trust 2014-2 (collectively, the “**Trusts**”), entered into a Credit Agreement dated March 30, 2015 (the “**Credit Agreement**”) with Comvest Capital and the Lenders set forth therein under which the Lenders extended a term loan to the Trusts in the initial principal amount of \$35,000,000.00 to facilitate

the Trust's refinance and acquisition of the Consumer Loans. Over time, the parties amended the Credit Agreement to increase the principal amount of the loan to an aggregate principal amount of \$65,000,000.00.

7. To secure the Credit Agreement, Parents, as Pledgors, entered into that certain Pledge Agreement dated March 30, 2015 (the "**Pledge Agreement**"). Pursuant to the Pledge Agreement, each Parent pledged as security for the obligations owing under the Credit Agreement "all beneficial or trust interests of [the Trust] held by such Pledgor and [the certificates representing 100% of the beneficial interests in the Trusts (the "**Trust Certificates**")].

8. In addition to a pledge of the Parent's interests, the Pledge Agreement granted to Comvest Capital the authority to assume ownership of the Trust Certificates and/or control each Trust, by, among other things, re-registering the Trust Certificates in the name of its agent.

9. To further secure the Credit Agreement, the Trusts and Comvest Capital entered into that certain Collateral Agreement dated March 30, 2015 between the Trusts and Comvest Capital (the "**Collateral Agreement**"). Pursuant to the Collateral Agreement, each Trust "grant[ed], pledg[ed], and assign[ed]" to Comvest Capital, as agent, for the benefit of Lenders, as security for the obligations owing under the Credit Agreement, all of such Trust's right, title, and interest in substantially all of its property.¹

¹ Specifically, the security interest included: cash and currency, Chattel Paper; Commercial Tort Claims; Deposit Accounts; Documents; Equipment; Farm Products; Fixtures; General Intangibles; Goods; Health-care Insurance Receivables; Instruments; Intellectual Property; Inventory; Investment Property; Letter of Credit rights; Supporting Obligations; Vehicles; Receivables and Receivable Files (including Receivable Contracts); all other personal property not otherwise described above; all books and records pertaining to the Collateral; and all Proceeds and products of any and all of the forgoing and all collateral security and Supporting Obligations given by any Person with respect to any of the foregoing.

10. To further secure the Credit Agreement, the Trusts entered into certain deposit account control agreements (the “**DACAs**,” together with the Trust Agreements, Credit Agreement, Pledge Agreement, and the Collateral Agreement, the “**Loan Documents**”) in favor of Comvest Capital.

11. On or around January 2016, Comvest learned that the Trusts and the Parents were in default of their obligations under the Credit Agreement and that certain defaults dated back to April 2015.

12. As a result of these defaults, on or around February 2, 2016, Comvest Capital sent a Notice of Default (the “**Default Notice**”) to each Parent and each Trust.

13. On or around February 2, 2016, as a result of the defaults set forth in the Default Notice, Comvest Capital exercised its rights under the Loan Documents.

14. Specifically, effective February 2, 2016, Comvest Capital exercised its right under the Loan Documents to take ownership and control of the Trusts, through its agent Comvest Freedom Administration, LLC (“**Comvest Administration**,” together with Comvest Capital, “**Comvest**”) by: (i) re-registering the Trust Certificates in the name of Comvest Administration; (ii) replacing Aequitas Commercial Finance, LLC (“**ACF**”) with Comvest Administration as administrator of each Trust pursuant to the applicable Trust Agreement; and (iii) exercising their rights under the DACAs.²

15. As a result of Comvest’s exercise of its enforcement remedies under the Loan Documents, Comvest Administration owns the Trusts (including their assets) and the Trust

² The Loan Documents, together with the Default Notice and Payment and Delivery Instructions referenced in paragraph 12, are attached as Exhibits to the Declaration of Jeff S. Pitzer in Support of Comvest’s Limited Objection to Stipulated Order Appointing Receiver [ECF 28].

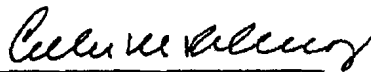
Certificates. Therefore, no Defendant to this action or any affiliate or subsidiary thereof has any interest, equitable or legal, in the Trusts or Trust Certificates.

16. Therefore, Comvest does not have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, the Receivership Entity.

17. In the event that, through an Article 9 foreclosure sale or other disposition of the Trust Certificates, the Trusts, or any assets of the Trusts (the "Trust Assets"), Comvest receives proceeds in excess of the outstanding indebtedness under the Credit Agreement and Comvest's reasonable expenses in conducting a disposition of the Trust Assets (the "Excess Proceeds"), Comvest will, in accordance with Paragraph 10 of the Stipulated Interim Order Appointing Receiver [ECF 30] (the "Receivership Order"), file with the Court and serve on the Receiver and counsel for the Securities and Exchange Commission a sworn statement setting forth the balance of the Excess Proceeds within five (5) business days of a disposition of the Trust Assets and will cooperate expeditiously with the Receiver to transmit the Excess Proceeds to the Receiver at the direction of the Receiver.

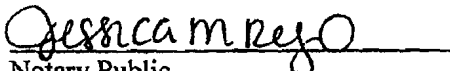
I hereby declare that the above statement is true and to the best of my knowledge and belief, and that I understand it may be used as evidence in court and is subject to penalty for perjury.

Dated March 22, 2016.


Cecilio M. Rodriguez

Sworn before me

this 22 day of March, 2016.


Notary Public



My commission expires: April 25, 2019

I hereby certify that I served the foregoing **SWORN STATEMENT OF JASON GELBERD ON BEHALF OF COMVEST CAPITAL III, L.P AND COMVEST FREEDOM ADMINISTRATION, LLC** on the following parties via certified mail:

Sheila E. O'Callaghan
U.S. Securities and Exchange Commission
44 Montgomery Street
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San Francisco, CA 94104

Ronald F. Greenspan
FTI Consulting
633 W. 5th Street
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Brian M. Nichilo
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DATED: March 22, 2016

Respectfully submitted,
PITZER LAW

By: Jeff Pitzer / by EAC
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