

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking
association,

Petitioner,

vs.

ONLINESHOES.COM INC., a Washington
corporation; SHOES.COM, INC., a Delaware
corporation,

Respondents.

No. 17-2-02462-7 SEA

RECEIVER'S MOTION FOR
ORDERS: (1) APPROVING THE
SALE OF ASSETS FREE AND
CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS;
(2) APPROVING BID AND AUCTION
PROCEDURES; (3) SCHEDULING
HEARING TO APPROVE SALE OF
ASSETS; and (4) APPROVING
ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS

I. RELIEF REQUESTED

Oswego Group LLC, doing business as Inverness Group ("Receiver"), for and on
behalf of Respondents Onlineshoes.com Inc. ("OSI") and Shoes.com, Inc. ("Shoes.com"), and
together with OSI, the "Receivership Entity" or "Sellers"), hereby moves the Court (the
"Motion") for the entry of orders pursuant to RCW 7.60.010, *et seq.*, as follows:

1. The Receiver moves the court for immediate entry of the Bid and Auction
Procedures Order,¹ which includes the following relief:

¹ Capitalized terms not otherwise defined in this Motion have the meanings ascribed
to them in the Bid and Auction Procedures, detailed below.

RECEIVER'S MOTION RE ASSET SALE, BID AND
AUCTION PROCEDURES, AND RELATED RELIEF
NO. 17-2-02462-7 SEA - 1

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- 1 (a) Scheduling a hearing on April 3, 2017 at 10:30 a.m. Pacific time, to
2 authorize and approve the sale of the Assets and all other transactions
3 contemplated by the Purchase and Sale Agreement(s) (the “Sale
4 Approval Hearing”);
- 5 (b) Approval of the Bid and Auction Procedures (defined below);
- 6 (c) Setting a deadline and establish requirements and procedures for
7 competing offerors to submit qualifying alternative bids, as set forth in
8 the Bid and Auction Procedures; and
- 9 (d) Setting a deadline that is not later than 12:00 noon Pacific time on
10 March 30, 2017, for filing and serving objections to this Motion,
11 including but not limited to entry of the Sale Approval Order(s) or any
12 alleged irregularities in the conduct of the Auction.

13 2. At the Sale Approval Hearing the Receiver will ask the Court for entry of the
14 Sale Approval Order which, in addition to other relief, will:

- 15 (a) authorize the sale of the Assets under the terms and conditions of one
16 or more approved Purchase and Sale Agreements to the Final
17 Buyer(s), free and clear of all liens, claims, encumbrances and
18 interests (“Liens”), with such Liens attaching to the proceeds of sale to
19 the same extent, priority and validity as they attached to the Assets;
- 20 (b) approve the assumption and assignment to Buyer(s) of certain
21 executory contracts and unexpired leases;
- 22 (c) approve the Back-Up Bid and the Back-Up Bidder; and
- 23 (d) authorize any additional relief consistent with the foregoing and the
24 Bid and Auction Procedures, and as may be necessary to allow the
25 approved transaction(s) to be consummated.
26

1 3. At the Sale Approval Hearing the Receiver will also request that the Court
2 find:

- 3 (a) that the proposed sale(s) to the Final Buyer(s), is in the best interests
4 of OSI, Shoes.com, the receivership estate, and its creditors;
5 (b) that the proposed sale(s) is being proposed and, if approved, will be
6 consummated in good faith and pursuant to the terms of the approved
7 Purchase and Sale Agreement(s); and
8 (c) as may be applicable, that the Final Buyer(s) is not an insider or
9 affiliate of the Receiver or the Receivership Entity, and that the Final
10 Buyer(s) shall purchase the Assets free of any claims of successor
11 liability.

12 This Motion is based upon the records and files herein and the accompanying
13 Declaration of John L. Davidson.

14 II. STATEMENT OF FACTS

15 A. Procedural and Fact Background.

16 1. OSI is a Washington corporation, incorporated on August 16, 1974, and is
17 based in Seattle, Washington. Shoes.com is a Delaware corporation, incorporated on
18 November 22, 1999, and is based in Seattle, Washington. OSI and Shoes.com are both
19 wholly owned subsidiaries of Shoes.com Holdings (USA) Inc., a Washington corporation
20 ("Shoes.com Holdings"). In turn, Shoes.com Holdings is wholly owned by Shoes.com
21 Technologies, Inc., a Canadian corporation ("Shoes.com Canada"). (Declaration of John L.
22 Davidson, ¶2) ("Davidson Decl.")

23 2. On or about January 27, 2017, Sellers' senior management announced the
24 immediate suspension of business activities and terminated all of their employees. All
25 employees were instructed to leave OSI's and Shoes.com's offices, final payroll checks were
26 issued, and there was reportedly little or no notice of the decision and the terminations

1 provided by management to the Receivership Entity's lenders, vendors, customers or other
2 stakeholders. (Davidson Decl., ¶ 3).

3 3. The decision to suspend operations and terminate staff reflected a severe
4 liquidity problem and followed OSI's and Shoes.com's inability to obtain new or additional
5 financing to support ongoing operations. At that time, per their records, OSI and Shoes.com,
6 as co-borrowers, owed approximately \$25 million to their secured lenders, and owed
7 approximately \$55 million to their unsecured creditors, which includes their product
8 suppliers. (Davidson Decl., ¶ 4).

9 4. Prior to the commencement of this receivership case, OSI and Shoes.com
10 operated online retail sales businesses that were generally focused on the sale of men's and
11 women's quality dress, casual and athletic footwear into the United States market. The
12 larger of the two, OSI, is reportedly the oldest online footwear retailer in the United States.
13 OSI and Shoes.com were acquired by Shoes.com Holdings in separate purchase transactions.
14 (Davidson Decl., ¶ 5).

15 5. Despite two to three years of significant sales growth, and despite significant
16 investment and debt funding to support their rapid expansion, OSI and Shoes.com were
17 unable to achieve profitability. Consequently, OSI and Shoes.com announced the immediate
18 shutdown of operations on January 27, 2017. (Davidson Decl., ¶ 6).

19 6. Following discussions between representatives of OSI's and Shoes.com's
20 boards and their first priority secured lender, Petitioner Wells Fargo Bank, National
21 Association ("Wells Fargo"), on February 2, 2017, Wells Fargo filed its Petition for
22 Appointment of General Receiver and (jointly with OSI and Shoes.com) the Joint Motion for
23 Entry of Stipulated Order Appointing General Receiver. Pursuant to this Court's Stipulated
24 Order Appointing General Receiver (the "Receivership Order"), the Receiver was appointed
25 general receiver on February 2, 2017. (Davidson Decl., ¶ 7).

1 7. On or about February 15, 2017, Shoes.com Canada was placed into
2 receivership under Canadian law.²

3
4 **B. Receiver's Analysis: There is No Basis to Resume Operations of the**
5 **Receivership Entity and Its Assets Should be Sold to Maximize the**
6 **Return to the Receivership Estate.**

7 8. At the outset of the receivership, the Receiver reviewed a number of factors
8 that are key to decisions and timing to provide the best opportunity to maximize recovery for
9 the Receivership Entity's stakeholders. These included: (A) the circumstances at OSI and
10 Shoes.com following management's and the Board's decision to suspend operations and to
11 terminate all staff six days prior to entry of the Receivership Order, (B) the significant and
12 unsustainable financial and operating losses of Shoes.com and OSI for FY 2015 and 2016,
13 (C) the status of customer channels, supplier conditions, and prospects for obtaining
14 necessary financing to purchase product, return qualified staff, and restart operations, and
15 (D) the inability of management and Shoes.com Canada to source necessary funding to
16 continue operations prior to the shutdown (Davidson Decl., ¶ 8).

17 9. As a result of this review, the Receiver determined that a restart of the
18 Receivership Entity's businesses within the receivership was not feasible, and that a well-
19 solicited, open and competitive sale process offered the potential for best value to creditors
20 and other stakeholders. The Receiver retained certain former employees of OSI and
21 Shoes.com to assist with, among other things, records retrieval, background, and technical
22 and marketing support and analysis to support the Receiver's sale steps and to generate
23 interest among qualified buyers for OSI's and Shoes.com's business assets. (Davidson Decl.,
24 ¶ 9).

25 ² *In the Matter of the Receivership of Shoeme Technologies Limited and Shoes.com*
26 *Technologies Inc.* (Supreme Court of British Columbia in Bankruptcy and Insolvency, Case
 No. S-171026).

1 10. To assure that the Assets realize the highest value, the Receiver requests that
2 the Court first enter an order approving the Bid and Auction Procedures so that the Receiver
3 may subject the Assets to a competitive bid and auction process. (Davidson Decl., ¶ 10).

4 11. The Receiver has taken certain steps since entry of the Receivership Order to
5 analyze and prepare the Assets for sale, including: (a) identifying and categorizing the Assets
6 from available records, (b) targeting, qualifying and soliciting prospective buyers, (c)
7 completing onsite count updates on February 15-16, 2017, covering product inventories
8 located at the Ohio warehouse, and (d) preparing a buyer data room with initial data for
9 access by prospective buyers under non-disclosure agreements. (Davidson Decl., ¶ 11).

10 12. To date, the Receiver's sale process has resulted in solicitations of more than
11 57 qualified buyer targets, execution of more than 29 non-disclosure agreements, and active
12 participation of potential buyers in the data room and other due diligence materials
13 established by the Receiver. (Davidson Decl., ¶ 12).

14 13. To the best of the Receiver's knowledge, there are no Liens against the Assets
15 other than those alleged by the following (together, the "Lien Claimants"):

- 16 (a) Petitioner Wells Fargo Bank, N.A., claims a first priority security
17 interest in substantially all of the personal property of Sellers.
- 18 (b) Deans Knight Capital Management Ltd., as Collateral Agent, claims a
19 security interest in substantially all of the personal property of Sellers.
- 20 (c) Caleres Investment Company, Inc., claims a security interest in
21 Sellers' inventory, Collateral Records, and Shoes.com Domain Names.
- 22 (d) Daniel Gerler claims a security interest in substantially all of the
23 personal property of Sellers.
- 24 (e) Crown Credit Company claims a security interest in OSI's interests in
25 equipment leased by Crown Credit Company to OSI, pursuant to a
26 Master Lease Agreement.

(f) GEODIS claims a warehouseman's lien on all assets of Sellers that are located at 2250 Spiegel Dr., Groveport, Ohio. (Davidson Decl., ¶ 13).

C. Proposed Terms of Sale.

14. As set forth above, Sellers, by and through the Receiver, seek to sell all or substantially all of their Assets through a bid and auction process. Qualified Bidders may bid on some or all of Sellers' Assets, so there may be multiple Prevailing Bids. The Asset sale(s) shall be free and clear of any and all Liens, including but not limited to those alleged by the Lien Claimants. All Liens, recorded or not as of the date of the closing of sale(s), shall be released as against the Assets, and shall attach to the proceeds of the sale(s) to the same extent, validity, and priority as they attach to the Assets.

15. Pursuant to the Bid and Auction Procedures, each Qualified Bidder will be required to submit both a marked up version and a clean, signed version of the Purchase and Sale Agreement, a copy of which is attached as Exhibit 1. As set out in the Purchase and Sale Agreement, the assets to be sold may include, but are not limited to, the Receivership Entity's inventory, equipment, furniture and fixtures, causes of action, prepaid expenses and deposits, intellectual property rights, certain executory contracts and unexpired leases, and other assets (the "Assets"). Certain material terms of the Purchase and Sale Agreement are summarized as follows:

- (a) Property to be Sold: Assets (as shall be defined in the Purchase and Sale Agreement), including all or substantially all of the Receivership Entity's inventory and intellectual property rights.
- (b) Owners of the Assets: OSI or Shoes.com, as applicable.
- (c) Purchase Price: To be determined as of the Bid Deadline, and subject to increase at the time of the Auction (if any), and as may be subject to additional adjustments for, among other things, prorated expenses,

taxes, inventory count reconciliation, and assumption of liabilities.

(d) Assumption and Assignment of Executory Contracts and Leases:

Sellers will assume and assign the Assumed Contracts (if any) to the Final Buyer(s). Final Buyer(s) shall bear the cost of curing any existing defaults under any Assumed Contract that is assigned to such Final Buyer.

(e) Good Faith Deposit: Qualified Bidders will provide Sellers with a deposit of ten percent (10.0%) of the cash component of their bids.

(f) Limited representations and warranties from the Sellers for the purchase of the Assets.

(Davidson Decl., ¶ 14).

D. The Bid and Auction Procedures.³

16. As detailed above, the Receiver believes that it is in the best interests of the Receivership Entity and its creditors to promptly institute a bid and auction process. Consequently, this Motion seeks entry of an order (the “Bid and Auction Procedures Order”) approving certain bid and auction procedures, as set out in sections A-F below (the “Bid and Auction Procedures”):

A. Bid Procedures.

- (1) Due Diligence. Shoes.com, Inc. and Onlineshoes.com Inc. (together, “Sellers”), by and through their duly appointed General Receiver, Oswego Group LLC, doing business as Inverness Group (the “Receiver”), has afforded and, except as otherwise provided in these Bid and Auction Procedures, will continue to afford potential purchasers due diligence access and information as may be reasonably requested and, in their business judgment, as Sellers determine to be reasonable and appropriate. Sellers will coordinate all reasonable requests for additional information and due diligence access from

³ If there is any inconsistency or contradiction between the Bid and Auction Procedures described in this Motion and the Bid and Auction Procedures set forth in the Bid and Auction Procedures Order, the terms of the Bid and Auction Procedures Order shall control.

1 potential purchasers. Unless otherwise determined by Sellers in their
2 discretion, the availability of additional due diligence to a Qualified Bidder
(defined below) will cease from and after the Bid Deadline (defined below).

3 (2) Qualified Bid. A bid received by the Bid Deadline that meets the
4 requirements in Sections A and B of these Bid and Auction Procedures is
5 considered a "Qualified Bid." A party submitting a Qualified Bid is a
6 "Qualified Bidder." Sellers reserve the right to waive noncompliance with
7 any one or more of these requirements and deem any otherwise non-
8 qualifying bid to be a Qualified Bid. A Qualified Bid will be evaluated based
9 upon factors that include, but are not limited to, the following: (a) the
10 purported amount of the Qualified Bid; (b) the fair, net value to be provided to
11 the Sellers under the Qualified Bid; (c) the ability to close or the likelihood of
12 closing the proposed sale transaction without delay; and (d) any other factors
13 that the Sellers may deem relevant, in their sole discretion.

14 (3) Non-Qualified Bidders. Any potential bidder that is not designated as a
15 Qualified Bidder in accordance with the foregoing shall be disqualified from
16 further participation in the bidding process ("Non-Qualified Bidder"). A
17 Non-Qualified Bidder will not be permitted to conduct due diligence, make a
18 bid for some or all of Sellers' assets ("Assets") under these Bid and Auction
19 Procedures or participate in the Auction (defined below).

20 (4) Purchase and Sale Agreement. A form of Asset Purchase and Sale Agreement
21 ("PSA" or "Purchase and Sale Agreement") is attached to this Motion and is
22 also available for download from the Receiver's website:
23 <http://inverness.us/receivership-shoes-com-onlineshoes-com>. All bids must
24 include **both** (a) a marked up PSA, compared against the attached form PSA,
25 **and** (b) a clean, duly executed version of the PSA.

26 (5) Bid Deadlines.

(a) **Bid Deadline:** All bids must be submitted by **12:00 Noon Pacific
Time, on March 17, 2017 (the "Bid Deadline").**

(b) **Method of Submitting a Bid:** A potential purchaser that desires to
make a Qualified Bid shall either (i) deliver written copies of its bid to
John L. Davidson, Oswego Group LLC, c/o Schwabe, Williamson &
Wyatt, PC, Attn: Alex Poust, 1211 SW Fifth Avenue, Suite 1500,
Portland, Oregon 97204 (FAX 503.796.2900) or (ii) e-mail an
electronic copy of its bid to both jddavidson@inverness.us and
apoust@schwabe.com.

1 **B. Bid Requirements.**

2 (1) Assets. Qualified Bidders may make a bid for all of the Assets or some subset
3 thereof. Sellers reserve the right, in their discretion, to consider bids for all of
4 the Assets or any combination of the Assets, but are not required to do so.

5 (2) Form and Content of Bid. A bid must include:

6 (a) a signed PSA from a Qualified Bidder stating that:

7 (i) The Qualified Bidder offers to purchase the Assets for cash.
8 The PSA must clearly delineate all components of the
9 proposed purchase price and whether any or all of the Assets
 will be purchased subject to liens relating to assumed
 obligations, if any;

10 (ii) The Qualified Bidder's offer is open and irrevocable through
11 the conclusion of the Sale Approval Hearing unless (A)
12 extended by agreement of the parties or the terms of these Bid
13 and Auction Procedures, or (B) the Qualified Bid is designated
14 a Back-Up Bid, which shall then remain open until twenty (20)
 calendar days following the date that the Sale Approval Order
 becomes a final, non-appealable order;

15 (iii) The Qualified Bidder's offer is not subject to any additional
16 due diligence, board approval or financing contingency and
 does not contain any other material conditions to closing; and

17 (iv) If the Qualified Bidder's offer includes the assumption and
18 assignment of any unexpired leases or executory contracts
19 (each, an "Assumed Contract"), the PSA must identify which
20 Assumed Contract(s) the Qualified Bidder wishes to assume,
21 and that the Qualified Bidder shall be responsible for paying
 for any and all costs to cure such Assumed Contract at closing
 or pursuant to any agreement reached between the Qualified
 Bidder and the counterparty to the relevant Assumed Contract.

22 (b) To the extent not previously provided to Seller, be accompanied by
23 evidence satisfactory to Seller, in its sole discretion, that the purchaser
24 is willing, authorized, capable and qualified financially, legally and
25 otherwise, of unconditionally performing all obligations under its PSA
26 in the event that it submits the Prevailing Bid (defined below) at the
 Auction.

1 (c) Identify the proponent of the Qualified Bid and an officer or
2 representative who is duly authorized in all respects to appear, act on
3 behalf of, and legally bind such proponent (an "Authorized
Representative").

4 (3) Required Good Faith Deposit. By the Bid Deadline, a Qualified Bidder must
5 deposit with the Receiver a good faith deposit (the "Good Faith Deposit") in
6 the amount of 10% of the cash component of its bid. The Good Faith Deposit
7 must be made by **either** (i) certified check, payable to "Oswego Group LLC,
8 Receiver", and delivered to Schwabe Williamson & Wyatt, PC, 1211 SW
Fifth Avenue, Suite 1900, Portland, Oregon 97204, Attn: Alex Poust, **or** (ii)
by wire transfer (wiring instructions are available upon request). The Good
Faith Deposit will be held by the Receiver subject to Section E (below).

9 (4) Rejection of Bid. Notwithstanding the foregoing, Sellers shall have authority
10 to reject any bid if such bid:

- 11 (a) is on terms that are materially more burdensome or conditional than
12 those set out in these Bid and Auction Procedures and the form PSA,
13 (b) requires any indemnification of such Qualified Bidder in its PSA,
14 (c) is not received by the Bid Deadline,
15 (d) includes a non-cash instrument or similar consideration,
16 (e) requires any regulatory or other approval that would delay the closing,
17 (f) contains any material conditions to closing.

18 If any bid is rejected, it will not be considered a Qualified Bid.

19 (5) Secured Creditors as Qualified Bidders; Credit Bids. Subject to the last
20 sentence of this Section B(5), secured creditors whose claims are **either** (i) not
21 disputed by the Receiver, or (ii) have been allowed by order of the Superior
22 Court prior to the start of the Auction, shall be entitled to participate in the
23 Auction and credit bid the amount of their allowed secured claims with
24 respect to the assets that secure such claims (a "Credit Bid"). Such a creditor
25 is a Qualified Bidder for purposes of these Bid and Auction Procedures.
26 Notwithstanding the foregoing, in order to participate in the Auction the
holder of such an allowed secured claim must deliver a letter to the Receiver
by the Bid Deadline stating the amount of its Credit Bid, and the particular
Assets that are the subject of the Credit Bid.

1 **C. Pre-Auction and Auction Procedures.**

2 (1) Bid Negotiations. Upon the receipt of Qualified Bids Sellers may, at their
3 discretion, negotiate with one or more Qualified Bidders regarding the terms
4 of the applicable Qualified Bids.

5 (2) Pre-Auction Notice of Highest and Best Bid(s).

6 (a) After the Bid Deadline passes the Sellers shall identify the prevailing
7 highest and best Qualified Bid(s) (each a "Highest Pre-Auction
8 Qualified Bid"). On or before March 24, 2017, the Receiver shall give
9 notice of the Highest Pre-Auction Qualified Bid(s) and whether there
10 will be an Auction (i) to all Qualified Bidders, and (ii) counsel for
11 Petitioner Wells Fargo Bank, NA.

12 (b) If more than one Qualified Bid is received for the same set of Assets,
13 then Sellers shall conduct an auction, as set out below (the "Auction").

14 (3) Auction. The Auction, if any, will start on March 28, 2017, at 9:00 a.m.
15 Pacific time at the offices of Schwabe, Williamson & Wyatt, PC, 1420 Fifth
16 Avenue, Suite 3400, Seattle, Washington 98101, or at such other time and
17 location as may be designated by Sellers. The following procedures shall
18 apply to the conduct of the Auction:

19 (a) Qualified Participants. Unless otherwise ordered by the Superior
20 Court overseeing Sellers' receivership case (the "Receivership Case"),
21 for cause shown, only Qualified Bidders (and their counsel) are
22 eligible to attend and participate in the Auction (each a "Qualified
23 Participant"). Prior to the start of the Auction the Authorized
24 Representative of each Qualified Participant shall certify, in writing or
25 on the record, as follows:

26 (i) Each bid it makes at the Auction shall, if accepted by the
Receiver, constitute a binding and legally enforceable contract
of the bidder to timely close a purchase of the Assets according
to the terms of the bid in the event an order of the Court is
entered approving a sale based upon such bid.

 (ii) No bids made, whether before or during the Auction, shall be
subject to any conditions or contingencies related to due
diligence, financing, or any other further approval other than
the Authorized Representative present at the Auction.

 (iii) The Authorized Representative present for the Qualified

Participant at the Auction has the full power and authority to act on behalf of and to legally bind the Qualified Participant for any bids made, and any agreements entered into at or in connection with the Auction.

(iv) Each Qualified Participant that participates in the Auction shall authorize the Receiver to conditionally accept such bidder's second-highest bid at the Auction as a back—up to the Prevailing Bid, which shall become binding upon and enforceable against such bidder in the event that the Prevailing Bid is approved by the Court, but such Prevailing Bidder fails or otherwise refuses to close its purchase of the Assets for any reason other than a material failure of performance by the Sellers.

(v) That the Qualified Participant has at all times proceeded in good faith in submitting its bids, and has not engaged in any collusion with any other person or bidder with respect to the Auction and related proceedings.

(vi) Each Qualified Participant must disclose at or before the Auction, (A) whether the bidder is bidding on its own behalf or on behalf of others, or on behalf of itself and others, (B) if the bidder is bidding other than on its own behalf, the identity of each entity on whose behalf the bidder is acting, and (C) whether the bidder is a party to any agreement limiting the bidders at the auction.

(b) Only Qualified Participants, including through their counsel, shall be permitted to make any additional bids ("Subsequent Bids") at the Auction.

(c) All Qualified Participants that desire to participate in the Auction shall have their Authorized Representatives physically present for all bidding, each with the understanding that the true identity of each Qualified Participant shall be fully disclosed to all other Qualified Participants and that all material terms, including but not limited to the amount, of each bid will be fully disclosed to all other bidders throughout the entire Auction.

(4) The Receiver shall have reasonable discretion with respect to the conduct of the Auction. Among other things, the Receiver may announce at the Auction additional procedural rules that he determines to be reasonable under the circumstances (e.g. the amount of time allotted to make subsequent

1 alternative bids) for conducting the Auction so long as such additional rules
2 are not materially inconsistent with these Bid and Auction Procedures and
3 the terms, deadlines, and intent of the Purchase and Sale Agreement(s).

- 4 (a) At the Auction, bidding shall begin with the Highest Pre-Auction
5 Qualified Bid(s). Any Subsequent Bids must be in increments to be
6 established by the Receiver at the Auction, and each such increment
7 must be payable in cash.
- 8 (b) The Auction, at the discretion of the Receiver, shall be recorded by
9 stenographer or other reliable means of preserving the record of the
10 Auction proceedings, and shall continue in one or more rounds of
11 "open cry," or publicly announced bidding and shall conclude after
12 each participating bidder has had the opportunity, within any time
13 period specified by the Receiver, to submit an additional Subsequent
14 Bid with full knowledge of the then-existing highest bid.
- 15 (c) For the purpose of evaluating the value of the consideration provided
16 by each Subsequent Bid, the value shall be the net consideration
17 payable to the Sellers.
- 18 (d) At the conclusion of the bidding, the Receiver shall announce his
19 determination (pursuant to the following paragraph) as to the bidder(s)
20 (the "Prevailing Bidder(s)") submitting the highest and best bid(s) (the
21 "Prevailing Bid(s)"), which shall be submitted to the Court for
22 approval at the Sale Approval Hearing.
- 23 (e) In determining the Prevailing Bid(s) to submit to the Court for
24 approval, the Receiver, in his sole discretion and in consultation with
25 his professionals, shall determine whether a Subsequent Bid
26 constitutes a higher and better offer than the Pre-Auction Highest Bid.
In making that determination, the Receiver may consider any and all
factors associated with all Qualified Bids and Qualified Bidders,
including but not limited to factors such as the likelihood and ability of
the proposed buyer(s) to immediately consummate and close the
proposed transactions, other timing issues, employment issues, overall
value of the Qualified Bids, and any other material factors.
- (f) If, following the entry of the Sale Approval Order approving a sale or
sales to the Successful Bidder(s), such Successful Bidder(s) fails or
otherwise refuses to consummate such sale, then the next highest or
best bid shall be deemed as the back-up bid (the "Back-Up Bid" and,
such bidder, the "Back-Up Bidder") and the Seller will be obligated to
effectuate a sale to the Back-Up Bidder subject to the terms of the

1 Back-Up Bid without further order of the Court. The Back-Up Bid
2 shall remain open until twenty (20) calendar days following the date
3 that the Sale Approval Order becomes a final, non-appealable order.
4 All Qualified Bids (other than the Successful Bid and the Back-Up
5 Bid) shall be deemed rejected by the Receiver on and as of the date of
6 entry of the Sale Approval Order by the Court.

- 7
- 8 (5) The "Final Buyer(s)" shall be the party or parties that submit the Prevailing
9 Bid(s) at the Auction. No bids may be received after the announced
10 conclusion of the Auction.
- 11 (6) Prevailing Bid Notice. At the conclusion of the Auction, Sellers shall file
12 with the Superior Court and serve (via email on the parties to the Receivership
13 Case, persons who have filed a notice of appearance in the Receivership Case,
14 and parties to executory contracts or unexpired leases that are to be assumed
15 and assigned pursuant to the sale(s)) a notice identifying the Final Buyer(s),
16 and the amount and other material terms of the Prevailing Bid(s), if any (the
17 "Prevailing Bid Notice"). Sellers shall also include in the Prevailing Bid
18 Notice disclosure of the Back-Up Bids, as may be applicable. Such Back-Up
19 Bid(s) will be submitted for Court approval in case the Final Buyer(s) fails to
20 close. The Prevailing Bid Notice and Sale Approval Order will provide that,
21 if for any reason the Final Buyer(s) fails to consummate the transaction
22 contemplated by its Prevailing Bid, the Back-Up Bidder will automatically be
23 deemed to be a Final Buyer and will be obligated to consummate the
24 transaction proposed in its Back-Up Bid, without further notice or order of the
25 Superior Court. If no Prevailing Bids are generated, the Seller shall file a
26 notice with the Court indicating the inability to obtain a Prevailing Bid at the
Auction.

18 **D. Superior Court Approval and Jurisdiction.**

- 19 (1) Sellers and the Final Buyer(s) shall each use their commercially reasonable
20 efforts, and shall cooperate, assist and consult with each other, to secure the
21 entry of an order (the "Sale Approval Order"), which is reasonably acceptable
22 to Sellers and the Final Buyer(s), of the Superior Court in the Receivership
23 Case (a) approving the applicable PSA (b) authorizing the sale of the Assets
24 pursuant to RCW 7.60.260, free and clear of all liens, claims, interests and
25 encumbrances ("Liens"), (c) relieving the Final Buyer(s) of any claim of
26 successor liability, (d) authorizing the assumption and assignment of the
Assumed Contracts pursuant to RCW 7.60.130, and (e) other appropriate
relief. Sellers and the Final Buyer(s) shall consult with one another regarding
pleadings that either of them intends to file or positions either of them intend
to take, with the Superior Court in connection with or that reasonably affect,
the Superior Court's entry of the Sale Approval Order. The Sale Approval
Order shall further provide that if for any reason a Final Buyer is unable or

1 unwilling to consummate an approved sale because of breach or failure,
2 without legal excuse, to perform on the part of the Final Buyer(s) (y) it will
3 forfeit its Good Faith Deposit to Sellers and Sellers may pursue any and all of
4 its options at law and in equity with respect to such breach, and (z) the
5 Qualified Bidder making the Back-Up Bid shall be deemed to be the Final
6 Buyer, the purchase price shall be the amount of such Back-Up Bid, and
7 Seller shall be authorized to effectuate the sale(s) without further notice or
8 order of the Superior Court.

9
10 (2) Sale Approval Hearing and Objection Deadline.

11 (a) A hearing to consider the proposed sale will take place on April 3,
12 2017, at 10:30 a.m., in the Superior Court for King County, Seattle,
13 Washington (or at another date and time established by the Superior
14 Court) (the "Sale Approval Hearing"). If any Final Buyer is selected
15 by Sellers, Sellers shall seek the entry of a Sale Approval Order from
16 the Superior Court at the Sale Approval Hearing, authorizing the
17 proposed sale to the Final Buyer(s) on terms and conditions
18 substantially consistent with and in accordance with these Bid and
19 Auction Procedures.

20 (b) Objection Deadline.

21 (i) Objections to approval of any proposed sale(s) and entry of the
22 Sale Approval Order(s) (including but not limited to any
23 objection based on any alleged irregularities in the conduct of
24 the Auction) must be both filed with the Court and served on
25 (A) Schwabe Williamson & Wyatt, PC, 1211 SW Fifth
26 Avenue, Suite 1900, Portland, Oregon 97204, Attn: Alex
Poust; (B) Lane Powell, PC, 1420 Fifth Avenue, Suite 4100,
Seattle, Washington 98101, Attn: Greg Fox, and (C) All other
parties who have filed a notice of appearance, by not later than
12:00 noon Pacific Time, on March 30, 2017.

(ii) The failure of any party to file and serve an objection as
provided herein shall be deemed the consent of such a party to
the granting of the Motion and the sale and transfer of the
Assets to the Final Buyer(s) (including the assumption and the
assignment of Assumed Contracts).

(3) Jurisdiction. All potential and Qualified Bidders will be deemed to have
submitted to the jurisdiction of this Court with respect to all matters related to
their bids, the Motion, or the Auction.

1 **E. Return of Good Faith Deposit.**

2 The Good Faith Deposit, together with all interest accrued thereon, if any, shall be
3 returned to any bidder whose bid was not the Prevailing Bid or the Back-up Bid
4 within five (5) business days of the Auction. The Good Faith Deposit submitted by
5 the Final Buyer, together with all interest thereon, if any, shall be applied against the
6 payment of the purchase price, as defined in the relevant PSA, at the closing of the
7 sale to the Final Buyer. Upon closing of the Prevailing Bid, the deposit of the Back-
8 up Bid will be returned, or if the Final Buyer fails to consummate the Prevailing Bid
9 in accordance with the terms of the PSA, the Sellers will retain the Good Faith
10 Deposit of the Final Buyer as liquidated damages, and the Back-up Bidder will
11 become the Final Buyer.

12 **F. Executory Contracts and Unexpired Leases.**

- 13 (1) Information Available Upon Request. Upon request, Seller will provide on a
14 confidential basis to each counterparty to a proposed Assumed Contract or
15 executory contract (each, an "Assumed Contract Creditor") the identity of (a)
16 the relevant Qualified Bidder, and (b) the Seller's calculation of the cure
17 amount applicable to the relevant Assumed Contract to be assumed and
18 assigned pursuant to RCW 7.60.130 (the "Cure Amount").
- 19 (2) Treatment of Objections. If an objection is raised by an Assumed Contract
20 Creditor solely regarding the Cure Amount, and such dispute cannot be
21 resolved by the parties prior to the Sale Approval Hearing, Sellers may seek to
22 assume such Assumed Contract and assign it to the Final Buyer, provided that
23 both (a) the undisputed portion of the Cure Amount must be immediately paid
24 by the Final Buyer to the Assumed Contract Creditor upon assumption and
25 assignment, and (b) the disputed portion of the Cure Amount must
26 simultaneously be paid by the Final Buyer to Sellers. Sellers shall hold the
 disputed portion of the Cure Amount pending resolution of the dispute by the
 Superior Court or mutual consent of the parties. Upon resolution, the
 previously disputed portion of the Cure Amount shall be distributed to the
 Final Buyer and/or Assumed Contract Creditor in accordance with their
 agreement or the order of the Superior Court.

III. STATEMENT OF THE ISSUES

17. The initial issues before the Court are whether the Court should enter orders,
as follows: (A) Schedule the Sale Approval Hearing for April 3, 2017, (B) approving the Bid
and Auction Procedures, (C) setting a deadline and establishing requirements and procedures
for competing offerors to submit qualifying bids, as set forth in the Bid and Auction

1 Procedures; and (D) setting deadlines for filing and serving objections to the Motion or entry
2 of the Sale Approval Order(s).

3 18. In addition, at the Sale Approval Hearing, the Receiver will request that the
4 Court enter one or more Sale Approval Order(s) that will, in addition to other relief: (A)
5 authorize sale of the Assets under the terms and conditions of the approved Purchase and
6 Sale Agreement(s) to the Final Buyer(s), free and clear of all Liens, with such Liens
7 attaching to the proceeds of sale to the same extent, priority and validity as they attached to
8 the Assets; (B) the assumption and assignment of executory contracts and unexpired leases to
9 the Final Buyer(s), as may be applicable; and (C) approve the Back-Up Bid and the Back-Up
10 Bidder.

11 19. In addition, at the Sale Approval Hearing, the Receiver will request that the
12 Court find: (A) that the proposed sale(s) to the Final Buyer(s), is in the best interests of OSI,
13 Shoes.com, the receivership estate, and its creditors; (B) that the proposed sale(s) is being
14 proposed and, if approved, will be consummated in good faith and pursuant to the terms of
15 the approved Purchase and Sale Agreement(s); and (C) as may be applicable, that the Final
16 Buyer(s) is not an insider or affiliate of the Receiver or the Receivership Entity.

17 IV. EVIDENCE RELIED UPON

18 20. This Motion is supported by the record and files herein, the Receivership
19 Order, and the accompanying Declaration of John L. Davidson.

20 V. AUTHORITY

21 A. Sale of Assets and Bid and Auction Procedures.

22 21. The receivership statute provides that “[t]he receiver, with the court’s
23 approval after notice and a hearing, may use, sell or lease estate property other than in the
24 ordinary course of business.” RCW 7.60.260(1). Further, with limited exceptions, the
25 statute also authorizes the court to approve of the sale “free and clear of liens and of all rights
26 of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all

1 claims secured by the property....” RCW 7.60.260(2). Upon such a sale free and clear of
2 liens, all security interests and other liens encumbering the property conveyed transfer and
3 attach to the proceeds of sale...in the same order, priority, and validity as the liens had with
4 respect to the property immediately before the conveyance.”

5 22. In addition to this statutory authority the Receiver’s authority to sell the
6 Assets is established in the Receivership Order, which provides that “[t]he Receiver is
7 authorized to (i) sell the Assets, whether in bulk, or in parts, and whether as a going concern
8 or by liquidation....” (Receivership Order, ¶ 4.a).

9 23. The decision to sell the Assets has substantial business justification. The
10 Receivership Entity has shuttered its headquarters. There is no ready source for new debt or
11 equity financing to resume operations as a going concern. Rather than allow the value of the
12 Assets to continue to deteriorate over time, the Receiver has determined that it is in the best
13 interests of the receivership estate to seek to sell the Assets pursuant to the Bid and Auction
14 Procedures in order to maximize the recovery for the receivership estate.

15 24. As described above, during the pendency of this receivership the Receiver
16 solicited and received expressions of interest from industry participants and other interested
17 parties. The Receiver also believes, in the exercise of his business judgment, that the Bid
18 and Auction Procedures represent the best means to maximize the value of the Assets.

19 **B. Sale Free and Clear of Liens, Claims, Encumbrances and Interests.**

20 25. The Receiver requests that the Court authorize the sale of the Assets free and
21 clear of all Liens which may be asserted against the Assets, with any such Liens attaching to
22 the proceeds of the sale the same extent, priority and validity as they attach to the Assets.
23 Washington law and the Receivership Order authorize a receiver to sell estate property out of
24 the ordinary course of business. *See* RCW 7.60.260(1).

25 26. Buyers of assets from insolvent entities frequently require that the assets be
26 sold “free and clear” of liens. Here, the Assets can be sold free and clear of Liens and any

rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the Assets. See RCW 7.60.260(2).

C. Assumption and Assignment of Executory Contracts and Unexpired Leases.

27. A general receiver is authorized to assume and assign executory contracts and unexpired leases, subject to such conditions at this Court may determine are “just and proper” under the circumstances. RCW 7.60.130(1). Here, the potential purchasers have not yet identified the agreements that they may want the Receiver to assume and assign.

However, assumption and assignment should be allowed under the circumstances of this case because, pursuant to the terms of the PSA and the Bid and Auction Procedures, the buyer(s) will be required to cure any monetary defaults existing as of the date of the sale(s), or on such other terms as the buyer(s) and Assumed Contract counterparties may mutually agree.

28. Under comparable federal bankruptcy law, Section 365 of the Bankruptcy Code,⁴ the standard to be applied in determining whether an executory contract should be assumed or rejected is the “business judgment” test, which is premised upon the Receiver’s business judgment that assumption would be beneficial to the estate. See *G.I. Indus.*, 204 F3d 1276 (9th Cir. 2000); *In re Orion Pictures, Corp.*, 4 F3d 1095, 1099 (2nd Cir 1993). “Except in extraordinary situations, court approval should be granted as a matter of course.” *In re Summit Land Co.*, 13 BR 310, 315 (Bankr. D. Utah 1981). Here, the business judgment test is met because an executory contract will only be assumed in order to enhance the return to the receivership estate, for the benefit of its creditors.

VI. CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court:

A. immediately enter the Bid and Auction Procedures Order in substantially the form attached as Exhibit 2, which includes the following relief:

(i) Schedule the Sale Approval Hearing on April 3, 2017, at 10:30 a.m.,

⁴ 11 USC § 365.

1 to authorize and approve the sale of the Assets and all other
2 transactions contemplated by the Purchase and Sale Agreement(s);
3 (ii) Approval of the Bid and Auction Procedures;
4 (iii) Set a deadline and establish requirements and procedures for
5 competing offerors to submit qualifying alternative bids, as set forth in
6 the Bid and Auction Procedures; and
7 (iv) Set March 30, 2017, at 12:00 noon Pacific time as the deadline for
8 filing objections to the Motion, including but not limited to objections
9 to entry of the Sale Approval Order(s) or any alleged irregularities in
10 the conduct of the Auction.

11 B. At the Sale Approval Hearing, the Receiver will ask the Court for entry of the
12 Sale Approval Order in substantially the form attached as Exhibit 3, which will, among other
13 things:

- 14 (i) authorize the sale of the Assets under the terms and conditions of one
15 or more approved Purchase and Sale Agreements to the Final
16 Buyer(s), free and clear of all Liens, with such Liens attaching to the
17 proceeds of sale to the same extent, priority and validity as they
18 attached to the Assets;
19 (ii) authorize the assumption and assignment of executory contracts and
20 leases to the Final Buyer(s);
21 (iii) approve the Back-Up Bid and the Back-Up Bidder; and
22 (iv) authorize any additional relief consistent with the foregoing and the
23 Bid and Auction Procedures, and as may be necessary to allow the
24 approved transaction to be consummated.
25
26

1 C. At the Sale Approval Hearing the Receiver will also request that the Court
2 find:

- 3 (i) that the proposed sale(s) to the Final Buyer(s), is in the best interests
4 of OSI, Shoes.com, the receivership estate, and its creditors;
5 (ii) that the proposed sale is being proposed and, if approved, will be
6 consummated in good faith and pursuant to the terms of the approved
7 Purchase and Sale Agreement(s); and
8 (iii) as may be applicable, that the Final Buyer(s) is not an insider or
9 affiliate of the Receiver or the Receivership Entity, and that the Final
10 Buyer(s) shall purchase the Assets free of any claims of successor
11 liability.

12 Dated this 28th day of February, 2017.

13 SCHWABE, WILLIAMSON & WYATT, P.C.

14
15 By: /s/ Claire L. Rootjes
16 Alex I. Poust, WSBA #22660
17 apoust@schwabe.com
18 Claire L. Rootjes, WSBA #42178
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24 *Attorneys for Oswego Group LLC, dba*
25 *Inverness Group, Receiver*
26

EXHIBIT 1

EXHIBIT 1

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (“**Agreement**”) is between [NAME], a [State] [Entity Type] (“**Buyer**”) and **ONLINESHOES.COM INC.**, a Washington corporation, and **SHOES.COM, INC.**, a Delaware corporation, acting by and through their Receiver (together, “**Sellers**”). Buyer and Sellers are sometimes individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Sellers operated online retail sales businesses, generally focused on the sale of men’s and women’s quality dress, casual and athletic footwear into the United States market from their headquarters in Seattle, Washington (the “**Business**”);

WHEREAS, Sellers desire to sell, transfer, convey, assign and deliver the Purchased Assets (as defined below) and to assign the Assumed Liabilities (as defined below), and Buyer desires to purchase, take delivery of, and assume such Purchased Assets and Assumed Liabilities, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, on February 2, 2017 (the “**Receivership Date**”), a receivership action was commenced against Sellers (the “**Receivership Case**”) captioned *Wells Fargo Bank, National Association v. Onlineshoes.com Inc., and Shoes.com, Inc.* (Case No. 17-2-02462-7SEA), pending in the Superior Court for King County, Washington (the “**Superior Court**”). Pursuant to the Stipulated Order Appointing General Receiver entered in the Receivership Case on February 2, 2017, Oswego Group LLC, doing business as Inverness Group (the “**Receiver**”) was appointed as General Receiver for Sellers; and

WHEREAS, the Transactions (as defined below) contemplated by this Agreement will be consummated pursuant to a Sale Approval Order (as defined below) to be entered in the Receivership Case under RCW 7.60.260 and other applicable provisions of RCW 7.60 and applicable law, and the Transactions and this Agreement are subject to the approval of the Superior Court.

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements, covenants, representations, warranties and promises set forth herein, and in order to prescribe the terms and conditions of such purchase and sale, intending to be legally bound the Parties agree as follows:

SECTION 1 DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement will have the meanings ascribed to them in the attached Appendix A.

SECTION 2 ASSETS AND LIABILITIES

- 2.1 Assets.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers agree to sell, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Sellers, those assets, property and rights of Sellers listed below, whether tangible or intangible, real, personal or mixed, wherever located and whether or not carried or reflected on the books and records of Sellers, but excluding, without limitation, the Retained Assets (the “**Purchased Assets**”). The Purchased Assets include all right, title and interest of Seller as of the Closing Date, to the extent owned by Sellers, free and clear of all Liens

and Claims (other than Permitted Liens and the Assumed Liabilities) to the maximum extent permitted by RCW 7.60.260 and applicable law, including the following:

- (a) Sellers' inventories, including finished goods, work-in-process, raw materials, packaging, supplies, parts and other inventories;
- (b) Sellers' intellectual property assets (the "**Intellectual Property Rights**"), including, but not limited to, the intellectual property assets listed on Schedule 2.1(b), and all rights under pending patent and copyright applications;
- (c) Those executory contracts and licenses that were executed or entered into on or prior to the Receivership Date and that are set forth on Schedule 2.1(c) as such may be amended (at the request of or with the consent of Buyer) up until the Closing Date (the "**Assumed Contracts**");
- (d) Sellers' licenses, permits, registrations, and other governmental authorizations, including but not limited to the governmental authorizations listed on Schedule 2.1(d), together with all applications for governmental authorizations;
- (e) Sellers' data and records containing information related to the Business, whether in hard copy or soft-copy formats, and including but not limited to all books of account and records, business models, customer and supplier lists, marketing plans, financial and technical information, trade secrets, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, processes, and computer software;
- (f) All of Sellers' office equipment and fixed assets, including, but not limited to, all furniture, fixtures, equipment, machinery, tools, vehicles, point-of-presence displays, office equipment, supplies, computers, servers, monitors, printers, routers, cables, and all computer-related equipment and peripherals, phones, facsimile machines, and other tangible personal property;
- (g) All warranty claims assertable against third party manufacturers of the personal property included in the Purchased Assets;
- (h) Sellers' goodwill, trade names, Internet domain names, telephone numbers, fax numbers, e-mail addresses, and other similar items, together with associated listings and registrations; and
- (i) All claims and causes of action necessary to enforce Buyer's rights in and to the Purchased Assets.

2.2 Retained Assets. Sellers will not sell the following property to Buyer:

- (a) All of Sellers' real and personal property used or held for use exclusively in connection with any other business of Sellers other than the Business, whether tangible or intangible, wherever located;
- (b) Sellers' cash and cash equivalents;
- (c) Sellers' minute books and stock records;

- (d) All claims that Seller may have for tax refunds;
- (e) Sellers' personnel and other records that Seller is required by law to retain;
- (f) Sellers' rights under any Employee Benefit Plan, together with the assets of any Employee Benefit Plan;
- (g) All claims and causes of action other than those described in Section 2.1;
- (h) All insurance policies relating to the Business and all claims arising under such policies prior to the Closing, and all credits, proceeds, insurance premium refunds and all causes of action or rights thereunder;
- (i) All claims, actions, proceedings, damages, liabilities, and expenses of every kind that Seller may have against or be able to recover from Buyer relating to the Transactions;
- (j) All prepaid expenses;
- (k) All utility deposits, security deposits and other deposits of any kind or nature whatsoever;
- (l) All rights of Sellers under any executory contract or unexpired lease that are not Assumed Contracts;
- (m) All claims and causes of action that Sellers have against their former directors, officers and employees; and
- (n) Sellers' rights under this Agreement and the other agreements and documents relating to the Transactions.

2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, from and after the Closing Date, Buyer will assume, pay, perform and discharge, promptly when payment or performance is due or required, the following liabilities and obligations of Sellers or the Business (the "**Assumed Liabilities**");

- (a) All liabilities and obligations of Sellers arising under the Assumed Contracts, only to the extent that such liabilities first accrue and arise on or after the Closing Date;
- (b) All liabilities and obligations of Sellers arising under the Intellectual Property Rights, only to the extent that such liabilities first accrue and arise on or after the Closing Date; and
- (c) All liabilities first arising from the ownership of the Purchased Assets on and after the Closing Date.

2.4 Retained Liabilities. Except for the Assumed Liabilities, Buyer will not assume or be liable for any of Sellers' liabilities and obligations of any kind to any person, whether known or unknown, including, but not limited to:

- (a) Any Claims, liabilities or costs of the Sellers incident to, arising out of or incurred with respect to this Agreement and the Transactions contemplated hereby;

- (b) Any Claims, liabilities or costs arising under any contract that is not an Assumed Contract and which has not been expressly assumed by Buyer pursuant to Section 2.3.
- (c) Sellers' liabilities and obligations arising out of or resulting from the ownership of the Purchased Assets before the Closing, including, without limitation, any warranty claims or related liabilities;
- (d) Sellers' liabilities and obligations for taxes;
- (e) Sellers' liabilities and obligations arising out of or resulting from any failure by Sellers to comply with any applicable law, judgment, or order;
- (f) Sellers' liabilities and obligations arising out of or resulting from any legal proceeding;
- (g) Sellers' liabilities and obligations to any employee of Sellers arising out of or resulting from the employee's service as an employee of Sellers through the close of business on the Closing Date, whether or not the employee is hired by Buyer;
- (h) Sellers' liabilities and obligations under any Employee Benefit Plan;
- (i) Sellers' liabilities and obligations to any current or former shareholder, director, or officer of Sellers or of any of their affiliates;
- (j) Sellers' liabilities and obligations under this Agreement and the other agreements and documents relating to the Transactions; and
- (k) Sellers' liabilities and obligations arising out of or resulting from any act or omission of Seller after the Closing.

Any obligee of any such Retained Liability shall be permanently enjoined from commencing, continuing or otherwise pursuing or enforcing any Retained Liabilities against the Purchased Assets or the Buyer.

2.5. Assignment of Contracts and Rights. To the maximum extent permitted by RCW 7.60 and applicable law, the Assumed Contracts and Intellectual Property Rights shall be assumed by Sellers and assigned to Buyer at the Closing pursuant to RCW 7.60 and applicable law. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the consent of a third party or order of the Superior Court, would constitute a breach or in any way adversely affect the rights of Buyer or Sellers thereunder. If such consent is not obtained or such assignment is not attainable pursuant to RCW 7.60, then such Purchased Asset shall not be transferred hereunder, and Buyer shall have the right to not proceed with Closing and/or to seek an adjustment to the Purchase Price.

SECTION 3 PURCHASE PRICE

3.1 Purchase Price. The Purchase Price for the Assets is:

(a) _____ (\$_____);

PLUS

(b) the assumption of the Assumed Liabilities.

3.2 Payment. Buyer will pay the Purchase Price for the Assets as follows:

(a) at the Closing, Buyer will pay Seller _____ Dollars (\$_____) in immediately available funds; and

(b) at the Closing, Buyer will assume the Assumed Liabilities.

3.3 Prorated Expenses. Any utilities, rents, real and personal property taxes, wages, and other similar expenses with respect to the Assets or the Assumed Liabilities will be prorated between Sellers and Buyer as of the Closing Date. The proration will be made at the Closing to the extent possible. The proration of any remaining expenses will be made as soon as practicable after the Closing Date.

3.4 Good Faith Deposit.

(a) Within one (1) Business Day after Sellers' execution of this Agreement, Buyer will transfer, to an account specified by Seller, a deposit in the amount equal _____ (\$_____) (the "**Good Faith Deposit**"), payable to the order of "Oswego Group, LLC, Receiver", to be applied as provided in Section 3.4(b). Sellers shall hold such Good Faith Deposit in a segregated interest-bearing account. The Good Faith Deposit shall not be deemed part of Sellers' estate in the Receivership Case unless and until the Good Faith Deposit is disbursed to Sellers pursuant to the terms of Section 3.4(b).

(b) The Good Faith Deposit, together with accrued interest, may be retained by Sellers only if (i) the Transactions are consummated, in which case the Good Faith Deposit plus accrued interest will be applied at the Closing as a credit against the Purchase Price, or (ii) the Transactions are not consummated solely as a result of (x) Buyer's failure to perform the obligations required of the Buyer hereunder at or prior to the Closing Date, or (y) the representations and warranties of Buyer contained in this Agreement fail to be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date (or to the extent such representations and warranties speak as of an earlier date, they shall fail to be true and correct in all material respects as of such earlier date). If Sellers retain the Good Faith Deposit under either clause (x) or (y) above, the Superior Court shall retain jurisdiction to determine any dispute relating thereto. It is agreed that in any other circumstance Buyer is entitled to a return of the Good Faith Deposit plus accrued interest upon termination of this Agreement pursuant to Section 12. To the extent Buyer is entitled to a return of the Good Faith Deposit, the Good Faith Deposit, together with accrued interest, shall be returned to Buyer within five (5) Business Days after the date of the Auction authorized in the Receivership Case.

3.5 Allocation. The Purchase Price for the Assets will be allocated as set forth on Schedule 3.5. After the Closing, the Parties will use the allocations set forth on Schedule 3.5 on each applicable tax return and report filed with a taxing authority. Each of Sellers and Buyer will comply with Section 1060 of the Code and, if applicable, use commercially reasonable efforts to file a consistent Internal Revenue Service Form 8594. Notwithstanding the

foregoing, nothing herein shall be construed to require the Receiver to file tax returns for the Seller.

- 3.6 **Closing.** The Closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities shall take place at the offices of Schwabe, Williamson & Wyatt, PC, 1420 Fifth Avenue, Suite 3400, Seattle, Washington 98101 no later than _____, 2017, or at such other time or place as Buyer and Sellers may mutually agree in writing.
- 3.7 **Deliveries by Seller.** At the Closing, Sellers will deliver or cause to be delivered to Buyer (unless delivered previously) a Bill of Sale with respect to the Purchased Assets substantially in the form attached hereto as Schedule 3.7, duly executed by Sellers, and all other documents, certificates, instruments or writings reasonably requested by Buyer in connection herewith.
- 3.8 **Deliveries by Buyer.** At the Closing, Buyer will deliver or cause to be delivered to Sellers the Purchase Price, less the Good Faith Deposit.

SECTION 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Except for the express representations and warranties in this Agreement, Sellers expressly exclude all warranties with respect to the Transactions, express and implied, including, but not limited to, the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranties that may have arisen from course of dealing or usage of trade. Sellers represent and warrant to Buyer as follows:

- 4.1 **Authority.** Subject to the limitations imposed on and authorities granted to Sellers as a result of the Receivership Case, Sellers have the requisite power and authority to sell the Purchased Assets.
- 4.2 **Binding Obligation.** This Agreement is the legal, valid, and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.
- 4.3 **“AS IS, WHERE IS” TRANSACTION.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION 4, THE CONSENT OF A PARTY TO THE CLOSING SHALL CONSTITUTE A WAIVER BY SUCH PARTY OF ANY CONDITIONS TO CLOSING NOT SATISFIED AS OF THE CLOSING DATE, AND FOLLOWING CLOSING SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS OR THE BUSINESS, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS OR THE BUSINESS, THE PHYSICAL CONDITION OF ANY PERSONAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR THE BUSINESS OR WHICH IS THE SUBJECT OF ANY LEASE OR CONTRACT TO BE ASSIGNED TO BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR ANY OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS OR THE BUSINESS (OR ANY PORTION

THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE TITLE OF THE PURCHASED ASSETS OR THE BUSINESS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS OR THE BUSINESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR THE BUSINESS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS OR THE BUSINESS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND THE BUSINESS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AND THE BUSINESS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS AND THE BUSINESS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 4, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, UPON THE CLOSING DATE, BUYER WILL ACCEPT THE PURCHASED ASSETS AND THE BUSINESS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

SECTION 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Except for the express representations and warranties in this Agreement, Buyer expressly excludes all warranties with respect to the Transactions, express and implied. Buyer represents to Sellers as follows:

- 5.1 Organization.** Buyer is a [Entity Type] duly organized and validly existing under the laws of the State of [____], and has the requisite power and authority to carry on in all material respects its business as now conducted.
- 5.2 Authority.** The execution, delivery and performance by Buyer of this Agreement and the consummation of the Transactions are within the powers of Buyer and have been duly authorized by all necessary action on the part of Buyer. This Agreement constitutes a valid and binding agreement of the Buyer that is enforceable in accordance with its terms.
- 5.3 Governmental Authorization.** The execution, delivery and performance by Buyer of this Agreement and the consummation of the Transactions by Buyer does not require Buyer to make any filing with, or to obtain any permit, authorization, license, consent or approval of, any Governmental Authority, except where the failure to so make or obtain would not have a Material Adverse Effect.
- 5.4 Binding Obligation.** This Agreement is the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

5.5 No Conflicts. The signing and delivery of this Agreement by Buyer and the performance by Buyer of all of Buyer's obligations under this Agreement will not:

- (a) conflict with Buyer's operating agreement;
- (b) breach any agreement to which Buyer is a party, or give any person the right to accelerate any obligation of Buyer; or
- (c) violate any law, judgment, or order to which Buyer is subject.

5.6 Litigation. There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Buyer, threatened against or affecting, Buyer before any court or arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transactions.

5.7 No Brokers or Finders. Buyer has not employed any broker, finder, investment banker or other intermediary or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or other similar fees in connection with this Agreement or the Transactions

SECTION 6 COVENANTS OF SELLERS

Sellers covenant to Buyer as follows:

6.1 Buyer's Investigation. Until the Closing and upon reasonable advance notice from Buyer and during normal business hours, Sellers shall afford to Buyer and its representatives reasonable access to Sellers' former personnel, to the extent that they are available, for the purposes of evaluating the Purchased Assets and the Assumed Liabilities, and all properties, books, accounts, records and documents of, or relating to, the Purchased Assets.

6.2 Sellers' Business. Except (1) as may be required by the Superior Court, (2) for the consequences resulting from the commencement and continuation of the Receivership Case, and (3) as may be required or contemplated by this Agreement, from the date of this Agreement until the sooner of the Closing Date or the date of termination of this Agreement, Sellers will not:

- (a) with respect to the Business, acquire a material amount of assets from any other person;
- (b) sell, lease, mortgage, encumber, license or otherwise dispose of any of the Purchased Assets;
- (c) agree or commit to do any of the foregoing;
- (d) fail to maintain the Purchased Assets in good working order and condition in all material respects; or
- (e) materially alter any Assumed Contract.

6.3 Insurance. To the extent that any insurance policies of Sellers cover any Assumed Liabilities or loss, liability, claim, damage or expense relating to any Purchased Assets with respect to events occurring on or after the Closing Date, Sellers shall, at the request of Buyer,

cooperate with Buyer in submitting and pursuing such claims on behalf of Buyer and any insurance recoveries resulting therefrom shall belong to Buyer.

6.4 Notification. Until the Closing, Sellers will promptly notify Buyer if Sellers obtain Knowledge of:

- (a) any notice or other written communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the Transactions;
- (b) any material written communication from any Governmental Authority in connection with or relating to the Transactions;
- (c) the commencement of any actions, suits, investigations or proceedings relating to Sellers or the Business that are material to the Transactions or that could constitute, or result in, a Material Adverse Effect; and
- (d) the occurrence or existence of any other matter following the date of this Agreement that would have been required to have been disclosed pursuant to Section 4 or might otherwise constitute, or result in, a Material Adverse Effect.

SECTION 7 COVENANTS OF BUYER

Buyer covenants to Sellers as follows:

- 7.1 Confidentiality.** Prior to the Closing Date and after any termination of this Agreement, the Confidentiality Agreement shall remain in full force and effect. After the Closing has occurred, the Confidentiality Agreement shall be terminated to the extent relating to the Purchased Assets and Assumed Liabilities, and shall, with respect to any of the Retained Assets and Retained Liabilities, remain in full force and effect.
- 7.2 Access.** On and after the Closing Date and until the Receivership Case is dismissed or closed, or any time during which the Receivership Case is opened or reopened, upon reasonable notice, Buyer will afford promptly to Sellers and their agents reasonable access during normal business hours to its properties, books, records, employees, auditors and counsel to the extent necessary for financial reporting and accounting matters, employee benefits matters, the preparation and filing of any Tax returns, reports or forms, the defense of any Tax audit, claim or assessment or the reconciliation of Claims in the Receivership Case or to permit Sellers to determine any matter relating to its rights and obligations hereunder or any other reasonable business purpose related to the Retained Assets or Retained Liabilities; *provided* that any such access by Sellers shall not unreasonably interfere with the conduct of the business by Buyer.
- 7.3 Insurance.** To the extent that any insurance policies of Sellers cover any Retained Liabilities or loss, liability, claim, damage or expense relating to any Purchased Assets and such insurance policies continue after the Closing Date to permit claims to be made thereunder with respect to events occurring prior to the Closing Date, Buyer shall cooperate with Sellers in submitting and pursuing such claims on behalf of Sellers, and any insurance recoveries resulting therefrom shall belong to Sellers.

SECTION 8 COVENANTS OF BUYER AND SELLERS

Buyer and Sellers agree that:

- 8.1 Efforts and Further Assurances.** Subject to the terms and conditions of this Agreement, Buyer and Sellers will use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement; *provided, however*, Sellers and Receiver shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties in the Receivership Case (including soliciting higher or better offers for the Purchased Assets). Sellers and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to vest in Buyer good title to the Purchased Assets or to evidence the assumption by the Buyer of the Assumed Liabilities.
- 8.2 Certain Filings.** Sellers and Buyer shall cooperate with one another (a) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approval or waivers are required to be obtained from parties to Assumed Contracts or Intellectual Property Rights, in connection with the consummation of the Transactions, and (b) in taking such actions or making such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.
- 8.3 Public Announcements.** Prior to the Closing, neither Buyer nor Sellers shall make any public announcements or statements concerning the Transactions without the prior written consent of all Parties hereto except to the extent required by applicable law, ordered or requested by the Superior Court, or otherwise reasonably necessary to the sale process. Buyer acknowledges and agrees that Sellers may provide copies of this Agreement to its employees and agents, to parties in interest in the Receivership Case, and those parties to whom Sellers determine it is necessary to provide copies in connection with soliciting higher and better bids for the Purchased Assets or as otherwise necessary in connection with the Receivership Case. Sellers also shall be entitled to file copies with the Superior Court or as otherwise required by law and shall be entitled to publish notice of the contemplated Transactions. Sellers acknowledge and agree that Buyer is entitled to provide copies of this Agreement to its Representatives, as that term is defined in the Confidentiality Agreement. After the Closing, Buyer may make any public announcement or statements concerning the Transactions without the prior written consent of Sellers.
- 8.4 Tax Matters.**
- (a) Tax Cooperation. Without limiting Section 7.2, Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including access to books and records) as is reasonably necessary for the preparation and filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

- (b) Property Taxes. All Property Taxes for a Tax period which includes (but does not end on) the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between Sellers, on the one hand, and Buyer, on the other hand, based on the number of days of such Tax period included in the Pre-Closing Tax Period and the number of days of such Tax period after the Closing Date (with respect to any such Tax period, the “**Post-Closing Tax Period**”). Sellers shall be liable for the proportionate amount of such Property Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Property Taxes that is attributable to the Post-Closing Tax Period. The Apportioned Obligations of Sellers shall be estimated based on property valuation and levy rates from the preceding Tax period (unless the valuation and levy rates for the current Tax period exists) and agreed to in good faith by the Parties as of the Closing Date. Sellers will adjust or credit Buyer at Closing with Sellers’ pro rata share of the estimated obligations, and Buyer shall bear the responsibility of paying the actual Property Tax liabilities for the current tax periods in full when billed, and Buyer shall be entitled to post-Closing adjustment payment from Seller to accurately prorate the Apportioned Obligations between Buyer and Sellers after the Property Tax liabilities are billed.

SECTION 9 CLOSING CONDITIONS

9.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

- (a) The Superior Court shall have entered the Sale Approval Order in the Receivership Case, authorizing the Transactions and approving this Agreement under RCW 7.60.260 and applicable law, and as of the Closing Date the Sale Approval Order shall be in full force and effect and shall not have been stayed, vacated or reversed. The Sale Approval Order shall be in a form acceptable to Buyer, and substantially in the form attached hereto as Exhibit 9.1.
- (b) The Sale Approval Order must not contain any language modifying or limiting Buyer’s status as a good faith purchaser, purchasing free and clear of all Liens, encumbrances and rights of redemption. The Sale Approval Order also must not impose any conditions or obligations on Buyer that are materially different or additional to Buyer’s obligations under this Agreement, including any monetary conditions to assumption and assignment of any executory contracts or leases, unless Buyer consents to being bound by such additional or different condition or obligation.
- (c) No injunction, stay or similar order or decree, issued by any court, tribunal or governmental entity, shall be in effect that restrains, enjoins, stays or prohibits consummation of the Transactions.

9.2 Conditions to Obligations of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction (or waiver by Buyer) of the following further conditions:

- (a) Sellers shall have performed in all material respects all of its obligations hereunder required to be performed by Sellers on or prior to the Closing Date;
- (b) All of the conditions set forth in this Section 9.2 shall be satisfied and Seller shall be ready, willing, and able to Close no later than [_____], 2017, unless Buyer and

Sellers expressly agree in writing that Closing may occur at a later date in accordance with Section 3.6;

- (c) The representations and warranties of Sellers contained in this Agreement shall be true and correct at and as of the Closing Date, as if made at and as of such date (or to the extent such representations and warranties speak as of an earlier date, they shall be true and correct as of such earlier date).
- (d) Buyer shall have received all documents it may reasonably request relating to the Closing (as set forth in Section 3.7).
- (e) There shall be no pending appeal, motion for reconsideration, motion for revision, or any similar challenge to any court order relating to this Agreement or the Transactions that might, if granted, have a Material Adverse Effect.
- (f) There shall be no stay of any court order relating to this Agreement or the Transactions.
- (g) Entry of a Sale Approval Order in accordance with Section 9.1 and Schedule 9.1.

9.3 Conditions to Obligations of Seller. The obligation of Sellers to consummate the Closing is subject to the satisfaction (or waiver by Sellers) of the following further conditions:

- (a) (i) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date, and (ii) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects at and as of the Closing Date with the same effect as though made at and as of the Closing Date (other than any representation or warranty that expressly relates to a specific date, which representations and warranties shall be true and correct in all respects on the date so specified).
- (b) Sellers shall have received all documents it may reasonably request relating to the existence of Buyer and the authority of Buyer for this Agreement, all in form and substance reasonably satisfactory to Sellers.

SECTION 10 SURVIVAL

The Parties agree that all representations and warranties contained in this Agreement or in any certificate or other writing delivered by Sellers or Buyer in connection herewith or covenants and agreements contained in this Agreement or in any certificate or other writing delivered by Sellers to Buyer in connection herewith that by their terms are to be performed before Closing, shall terminate upon Closing, and neither Sellers nor Buyer shall have any liability to the other for any alleged breach of such warranties and representations or pre-Closing covenants or agreements if the Closing occurs. The covenants and agreements contained in this Agreement or in any certificate or other writing delivered by Sellers or Buyer in connection herewith that by their terms are to be performed after Closing, shall terminate upon lapse of the applicable statute of limitations. Notwithstanding the foregoing, if any representation or warranty is later determined to be false and made by either Party with knowledge of such falsity, the aggrieved Party shall retain all rights and remedies that it would have under applicable law for such breach. The Parties hereto agree that the covenants and agreements contained in this Agreement to be performed at or after the Closing shall survive the

Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

SECTION 11 LIMITATION OF LIABILITY

Neither Party will be liable to the other Party under any cause of action, whether in contract, tort, or otherwise, for any indirect, special, incidental, consequential, or punitive damages, even if the Party has been advised of the possibility of such damages.

SECTION 12 TERMINATION

12.1 Termination. This Agreement will terminate upon the earliest to occur of the following:

- (a) upon the written agreement of Buyer and Sellers before the Closing;
- (b) unless waived by Buyer, upon notice by Buyer to Sellers before the Closing, if Sellers have breached any of its obligations under this Agreement, provided that if such breach is capable of being cured, Buyer shall have given Sellers not less than five (5) Business Days written notice to cure such breach and Sellers shall have failed to cure such breach within such period;
- (c) unless waived by Sellers, upon notice by Sellers to Buyer before the Closing, if Buyer has breached any of its obligations under this Agreement, provided that if such breach is capable of being cured, Sellers shall have given Buyer not less than five (5) Business Days written notice to cure such breach and Buyer shall have failed to cure such breach within such period; and
- (d) if the Closing has not occurred on or before [_____], 2017, or such later date as may be mutually agreed to by the parties, in writing.

12.2 Effect of Termination. If this Agreement is terminated under Section 12.1:

- (a) the provisions described in Section 10 will survive the termination of this Agreement (the “**Surviving Provisions**”);
- (b) Sellers shall promptly (and in no event later than five (5) Business Days from Buyer’s demand) refund to Buyer its Good Faith Deposit in its entirety; and
- (c) all other obligations of the parties under this Agreement will terminate, except that the obligations of the parties under the Surviving Provisions will survive the termination of this Agreement.

12.3 Sole and Exclusive Remedy. If this Agreement is terminated under Section 12.1, neither Party will be liable to the other Party for a breach of this Agreement or otherwise, except that the Parties will be liable for breaches of the Surviving Provisions, regardless of whether such breaches occur before or after the termination of this Agreement.

SECTION 13 EQUITABLE RELIEF

The Parties acknowledge that the remedies available at law for any breach of this Agreement will, by their nature, be inadequate. Accordingly, each party may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

SECTION 14 EXPENSES

Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transactions, including but not limited to the preparation, negotiation, signing, and performance of this Agreement and the other agreements and documents relating to the Transactions.

SECTION 15 GENERAL

- 15.1 Time of Essence.** Time is of the essence with respect to all dates and time periods in this Agreement.
- 15.2 Assignment.** Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not withhold unreasonably, *except that* Sellers acknowledge and agree that:
- (a) Buyer may form a new entity for purposes of acquiring the assets and consummating the Transactions contemplated hereunder; and
 - (b) Provided that such new entity is majority owned and controlled by Buyer, Buyer may assign this Agreement and all rights and obligations of Buyer hereunder to such newly-formed acquisition entity without any additional consent or permission of Sellers being required.
- 15.3 Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 15.4 Amendment.** This Agreement may be amended only by a written agreement signed by each party.
- 15.5 Notices.** All notices or other communications required or permitted by this Agreement:
- (a) must be in writing;
 - (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and
 - (c) are considered delivered:
 - (1) upon actual receipt if delivered personally, by fax, email, or by a nationally recognized overnight delivery service; or

- (2) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Buyer:

Fax: _____
Attn: _____
Email: _____

With a copy to:

Fax: _____
Attn: _____
Email: _____

To Seller:

Oswego Group LLC
PO Box 861
Lake Oswego, OR 97034
Fax: 503.922.1220
Attn: John L. Davidson
Email: jdavidson@inverness.us

With a copy to:

Alex Poust
Schwabe, Williamson & Wyatt, PC
1211 SW Fifth Avenue
Suites 1500-1900
Portland, OR 97204
Fax: 503.796.2900
Email: apoust@schwabe.com

- 15.6 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 15.7 Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 15.8 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 15.9 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 15.10 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement and are incorporated herein by reference.
- 15.11 Remedies.** Subject to the terms and conditions of this Agreement, the parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 15.12 Governing Law.** This Agreement is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- 15.13 Venue.** Any action or proceeding arising out of this Agreement will be litigated in courts located in King County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in King County, Washington.

- 15.14 Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 15.15 Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 15.16 Signatures.** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

[signature page to follow]

Dated effective: March ____, 2017.

BUYER:

[____NAME____], a [STATE] [ENTITY TYPE]

By: _____

Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability company

Its: General Receiver

By: John L. Davidson

Its: Managing Member

ONLINESHOES.COM INC., a Washington corporation

By: Oswego Group LLC, an Oregon limited liability company

Its: General Receiver

By: John L. Davidson

Its: Managing Member

APPENDIX A

Definitions

“Purchased Assets” means the assets described in Section 2.1.

“Assumed Liabilities” meaning the liabilities described in Section 2.3.

“Business Day” means a day other than Saturday, Sunday or other day on which commercial banks in Washington are authorized or required by law to close.

“Claim” means a “claim” as defined in Section 101 of the United States Bankruptcy Code (11 USC § 101 et seq. (as amended from time to time)), including any claim for successor liability.

“Closing” means the closing of the Transactions.

“Closing Date” means the date on which the Closing takes place.

“Code” means the Internal Revenue Code of 1986.

“Confidentiality Agreement” means the Confidentiality and Non-Disclosure Agreement dated _____, 2017, between Buyer and Seller.

“Employee Benefit Plan” means any “employee benefit plan” under Section 3(3) of ERISA and any other bonus, deferred compensation, incentive, profit sharing, stock option, stock appreciation rights, employee stock ownership, pension, retirement, severance, savings, salary continuation, supplemental unemployment, welfare, health, disability, life insurance, fringe benefit, vacation, sick leave, holiday, or benefit plan, policy, practice, or agreement:

- (a) to which Seller or any ERISA Affiliate has contributed during the 6-year period before the date of this Agreement;
- (b) to which Seller or any ERISA Affiliate has been a party during the 6-year period before the date of this Agreement;
- (c) under which Seller or any ERISA Affiliate may have had any liability or obligation during the 6-year period before the date of this Agreement; or
- (d) that provided benefits or described policies applicable to any director, employee, or independent contractor of Seller or any ERISA Affiliate during the 6-year period before the date of this Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any person that during the 6-year period before the date of this Agreement:

- (a) has been under “common control” with Seller under Section 4001(a)(14) of ERISA or Section 4001(b) of ERISA; or
- (b) has been treated as a single employer with Seller under Section 414 of the Code.

“Governmental Authority” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Knowledge” means:

- (a) with respect to Seller, the actual knowledge of John L. Davidson, Managing Member of the Receiver, and any knowledge that he would have obtained if he had conducted a reasonably comprehensive investigation of the relevant matter;
- (b) with respect to Buyer, the actual knowledge of _____, and any knowledge that [he/she/they] would have obtained if [he/she/they] had conducted a reasonably comprehensive investigation of the relevant matter.

“Lien” means any statutory lien claims, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust agreement, right of setoff, recoupment or warranty, transfer restriction under any shareholder or similar agreement or encumbrance of any other right of a third party in respect of an asset.

“Material Adverse Effect” means a material adverse change in or effect on the Business, the Purchased Assets or financial condition of the Business, taken as a whole, excluding any such change or effect to the extent resulting from or arising in connection with (i) the Transactions or the public announcement thereof, (ii) changes or condition affecting the industries generally in which Seller operates, or (iii) in economic, regulatory or political conditions generally.

“Property Taxes” means all real property Taxes, personal property Taxes, and similar ad valorem obligations levied with respect to the Purchased Assets for any Tax period.

“Receiver” means Oswego Group LLC, an Oregon limited liability company, doing business as Inverness Group.

“Retained Assets” means the assets described in Section 2.2.

“Retained Liabilities” means the liabilities described in Section 2.4.

“Sale Approval Order” means that certain order, in form mutually acceptable to Seller and Buyer, to be entered in the Receivership Case approving of the Agreement and the Transactions.

“Taxes” means (i) any and all federal, state, local and foreign taxes, assessments, and any other governmental charges, fees, duties or other like assessment or charges of any kind whatsoever (including withholding on amounts paid to or by any person and taxes based upon or measured by gross receipts, income, profits, sales, use and occupation and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes), together with all interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a **“Taxing Authority”**) responsible for the imposition of any such tax (domestic or foreign), and (ii) any liability for the payment of any amounts or the type described in clause (i) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including without limitation any liability under Treasury Regulation section 1.15026 or any comparable provision of foreign, state or local law); or (iii) liability for the payment of any amounts of the type described in (i) or (ii) as a result of being party to any agreement or any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts.

“Transactions” means the purchase and sale of the Purchased Assets and the assignment and assumption of the Assumed Liabilities provided for in this Agreement.

EXHIBIT 3.7

Bill of Sale

This Bill of Sale is made and given in connection with that certain King County, Washington Superior Court Order (Case No. 17-2-02462-7SEA) dated _____, 2017, and that certain Asset Purchase and Sale Agreement ("**Agreement**") by and between Shoes.com, Inc., and Onlineshoes.com Inc., by and through Oswego Group LLC, their duly appointed General Receiver (together, "**Sellers**"), and [_____], or its assign ("**Buyer**")

1. **Transfer.** Sellers hereby transfer and assign to Buyer ("**Buyer**") Sellers' entire interest in the Purchased Assets, as that term is defined in the Agreement.
2. **No Warranties.** Buyer acknowledges that Sellers make no representation or warranty with respect to the Purchased Assets, except as specifically set forth in the Agreement, and Buyer accepts the Purchased Assets subject to, without limitation, Section 4 of the Agreement.
3. **Attachments.** Any exhibits, schedules, or other attachments attached to or referenced in this Bill of Sale are part of this Bill of Sale.
4. **Governing Law.** This Bill of Sale is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Bill of Sale.
5. **Venue.** Any action, suit, or proceeding arising out of the subject matter of this Bill of Sale will be litigated in courts located in King County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in King County, Washington.
6. **Attorney's Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Bill of Sale, or otherwise in connection with the subject matter of this Bill of Sale, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

[Remainder of Page Blank]

7. **Buyer's Acceptance.** Buyer accepts the Purchased Assets subject to the terms and conditions in this Bill of Sale.

Dated effective: _____, 2017.

BUYER:

[____NAME____], a [STATE] [ENTITY TYPE]

By: _____
Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability
company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

ONLINESHOES.COM INC., a Washington
corporation

By: Oswego Group LLC, an Oregon limited liability
company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

SCHEDULE 2.1(b)

Intellectual Property Rights

Buyer shall purchase all of Sellers' Intellectual Property Assets, including, without limitation, all Intellectual Property listed on Exhibit 2.1(b) hereto.

For purposes of this Schedule 2.1(b), the following terms shall have the meanings set forth below:

"Intellectual Property Assets" means all Intellectual Property that is owned by Sellers and used in or necessary for the conduct of the Business as currently conducted. Intellectual Property Assets does not include either the domain name "www.shoes.com" or the tradename "shoes.com".

"Intellectual Property" means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; (e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications; and (f) all legal and equitable remedies, including rights to enjoin future infringement and all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

EXHIBIT 2.1(b)

Intellectual Property

SCHEDULE 2.1(c)

Assumed Contracts

SCHEDULE 2.1(d)

Licenses and Permits

SCHEDULE 3.5

Allocation

Buyer and Sellers agree this that the allocation of the Purchase Price for the Purchased Assets is as follows:

BUYER:

[____NAME____], a [STATE] [ENTITY TYPE]

By: _____
Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability
company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

ONLINESHOES.COM INC., a Washington
corporation

By: Oswego Group LLC, an Oregon limited liability
company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

EXHIBIT 9.1

Sale Approval Order

(Not Attached)

EXHIBIT 2

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking
association,

Petitioner,

vs.

ONLINESHOES.COM INC., a Washington
corporation; SHOES.COM, INC., a Delaware
corporation,

Respondents.

No. 17-2-02462-7SEA

ORDER (1) SCHEDULING SALE
APPROVAL HEARING, (2)
APPROVING BID AND AUCTION
PROCEDURES, AND (3) GRANTING
RELATED RELIEF

THIS MATTER came on for hearing on the Receiver's Motion for Orders: (1)
Approving the Sale of Assets Free and Clear of Liens, Claim, Encumbrances and Interests;
(2) Approving Bid and Auction Procedures; (3) Scheduling Hearing to Approve Sale of
Assets; and (4) Approving Assumption and Assignment of Executory Contracts (the
"Motion").

THE COURT, having held a hearing on the Motion on March 8, 2017 (the "Bid and
Auction Procedures Hearing"), and having considered the Motion, the Declarations of John
L. Davidson filed in support of the Motion, the arguments of counsel, and the files and
records herein, and being fully advised,

THE COURT FINDS as follows:

ORDER (1) SCHEDULING SALE APPROVAL HEARING, (2) APPROVING
BID AND AUCTION PROCEDURES, and (3) GRANTING RELATED
RELIEF - 1

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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981

1 A. Oswego Group LLC, doing business as Inverness Group ("Receiver"), gave
2 appropriate notice of the Motion and the Bid and Auction Procedures Hearing. No other or
3 further notice in connection with the entry of this Order is or shall be required.

4 B. The Bid and Auction Procedures were proposed by the Receiver in good faith
5 with the goal of maximizing the value of all or substantially all of the assets of
6 Onlineshoes.com Inc. and Shoes.com, Inc. (the "Assets") for the benefit of the receivership
7 estate and its creditors. The Bid and Auction Procedures provide for a competitive bidding
8 process, including an auction if qualified bids are received from multiple bidders for the
9 same assets.

10 D. The Bid and Auction Procedures are fair and reasonable, were proposed in the
11 exercise of the Receiver's reasonable business judgment, and are in the best interests of the
12 receivership estate, its creditors, and other parties in interest.

13 E. Any objections to the Motion with respect to the Bid and Auction Procedures,
14 if not previously withdrawn, are hereby overruled.

15 NOW THEREFORE, IT IS HEREBY ORDERED THAT:

- 16 1. The Receiver's Motion is GRANTED to the extent set forth in this Order.
17 2. The following Bid and Auction Procedures are hereby approved and shall
18 apply in connection with the proposed sale of Assets.

19 A. **Bid Procedures.**

- 20 (1) Due Diligence. Shoes.com, Inc. and Onlineshoes.com Inc. (together,
21 "Sellers"), by and through the Receiver, has afforded and, except as otherwise
22 provided in these Bid and Auction Procedures, will continue to afford
23 potential purchasers due diligence access and information as may be
24 reasonably requested and, in their business judgment, as Sellers determine to
25 be reasonable and appropriate. Sellers will coordinate all reasonable requests
26 for additional information and due diligence access from potential purchasers.
Unless otherwise determined by Sellers in their discretion, the availability of
additional due diligence to a Qualified Bidder (defined below) will cease from
and after the Bid Deadline (defined below).

- (2) Qualified Bid. A bid received by the Bid Deadline that meets the requirements in Sections A and B of these Bid and Auction Procedures is considered a “Qualified Bid.” A party submitting a Qualified Bid is a “Qualified Bidder.” Sellers reserve the right to waive noncompliance with any one or more of these requirements and deem any otherwise non-qualifying bid to be a Qualified Bid. A Qualified Bid will be evaluated based upon factors that include, but are not limited to, the following: (a) the purported amount of the Qualified Bid; (b) the fair, net value to be provided to the Sellers under the Qualified Bid; (c) the ability to close or the likelihood of closing the proposed sale transaction without delay; and (d) any other factors that the Sellers may deem relevant, in their sole discretion.
- (3) Non-Qualified Bidders. Any potential bidder that is not designated as a Qualified Bidder in accordance with the foregoing shall be disqualified from further participation in the bidding process (“Non-Qualified Bidder”). A Non-Qualified Bidder will not be permitted to conduct due diligence, make a bid for some or all of the Assets under these Bid and Auction Procedures or participate in the Auction (defined below).
- (4) Purchase and Sale Agreement. A form of Asset Purchase and Sale Agreement (“PSA” or “Purchase and Sale Agreement”) is attached to this Order and is also available for download from the Receiver’s website: <http://inverness.us/receivership-shoes-com-onlineshoes-com>. All bids must include **both** (a) a marked up PSA, compared against the attached form PSA, **and** (b) a clean, duly executed version of the PSA.
- (5) Bid Deadlines.
- (a) **Bid Deadline:** All bids must be submitted by **12:00 Noon Pacific Time, on March 17, 2017 (the “Bid Deadline”).**
- (b) **Method of Submitting a Bid:** A potential purchaser that desires to make a Qualified Bid shall either (i) deliver written copies of its bid to John L. Davidson, Oswego Group LLC, c/o Schwabe, Williamson & Wyatt, PC, Attn: Alex Poust, 1211 SW Fifth Avenue, Suite 1500, Portland, Oregon 97204 (FAX 503.796.2900) or (ii) e-mail an electronic copy of its bid to both jdavidson@inverness.us and apoust@schwabe.com.

B. Bid Requirements.

- (1) Assets. Qualified Bidders may make a bid for all of the Assets or some subset thereof. Sellers reserve the right, in their discretion, to consider bids for all of the Assets or any combination of the Assets, but are not required to do so.

1 (2) Form and Content of Bid. A bid must include:

2 (a) a signed PSA from a Qualified Bidder stating that:

- 3 (i) The Qualified Bidder offers to purchase the Assets for cash.
4 The PSA must clearly delineate all components of the
5 proposed purchase price and whether any or all of the Assets
6 will be purchased subject to liens relating to assumed
7 obligations, if any;
- 8 (ii) The Qualified Bidder's offer is open and irrevocable through
9 the conclusion of the Sale Approval Hearing unless (A)
10 extended by agreement of the parties or the terms of these Bid
11 and Auction Procedures, or (B) the Qualified Bid is designated
12 a Back-Up Bid, which shall then remain open until twenty (20)
13 calendar days following the date that the Sale Approval Order
14 becomes a final, non-appealable order;
- 15 (iii) The Qualified Bidder's offer is not subject to any additional
16 due diligence, board approval or financing contingency and
17 does not contain any other material conditions to closing; and
- 18 (iv) If the Qualified Bidder's offer includes the assumption and
19 assignment of any unexpired leases or executory contracts
20 (each, an "Assumed Contract"), the PSA must identify which
21 Assumed Contract(s) the Qualified Bidder wishes to assume,
22 and that the Qualified Bidder shall be responsible for paying
23 for any and all costs to cure such Assumed Contract at closing
24 or pursuant to any agreement reached between the Qualified
25 Bidder and the counterparty to the relevant Assumed Contract.

19 (b) To the extent not previously provided to Seller, be accompanied by
20 evidence satisfactory to Seller, in its sole discretion, that the purchaser
21 is willing, authorized, capable and qualified financially, legally and
22 otherwise, of unconditionally performing all obligations under its PSA
23 in the event that it submits the Prevailing Bid (defined below) at the
24 Auction.

23 (c) Identify the proponent of the Qualified Bid and an officer or
24 representative who is duly authorized in all respects to appear, act on
25 behalf of, and legally bind such proponent (an "Authorized
26 Representative").

26 (3) Required Good Faith Deposit. By the Bid Deadline, a Qualified Bidder must

1 deposit with the Receiver a good faith deposit (the "Good Faith Deposit") in
2 the amount of 10% of the cash component of its bid. The Good Faith Deposit
3 must be made by **either** (i) certified check, payable to "Oswego Group LLC,
4 Receiver", and delivered to Schwabe Williamson & Wyatt, PC, 1211 SW
5 Fifth Avenue, Suite 1500, Portland, Oregon 97204, Attn: Alex Poust, **or** (ii)
6 by wire transfer (wiring instructions are available upon request). The Good
7 Faith Deposit will be held by the Receiver subject to Section E (below).

8 (4) Rejection of Bid. Notwithstanding the foregoing, Sellers shall have authority
9 to reject any bid if such bid:

- 10 (a) is on terms that are materially more burdensome or conditional than
11 those set out in these Bid and Auction Procedures and the form PSA,
12 (b) requires any indemnification of such Qualified Bidder in its PSA,
13 (c) is not received by the Bid Deadline,
14 (d) includes a non-cash instrument or similar consideration,
15 (e) requires any regulatory or other approval that would delay the closing,
16 (f) contains any material conditions to closing (other than entry of the
17 Sale Approval Order in the Receivership Case).

18 If any bid is rejected, it will not be considered a Qualified Bid.

19 (5) Secured Creditors as Qualified Bidders; Credit Bids. Subject to the last
20 sentence of this Section B(5), secured creditors whose claims are either (i) not
21 disputed by the Receiver, or (ii) have been allowed by order of the Superior
22 Court prior to the start of the Auction, shall be entitled to participate in the
23 Auction and credit bid the amount of their allowed secured claims with
24 respect to the assets that secure such claims (a "Credit Bid"). Such a creditor
25 is a Qualified Bidder for purposes of these Bid and Auction Procedures.
26 Notwithstanding the foregoing, in order to participate in the Auction the
holder of such an allowed secured claim must deliver a letter to the Receiver
by the Bid Deadline stating the amount of its Credit Bid, and the particular
Assets that are the subject of the Credit Bid.

27 **C. Pre-Auction and Auction Procedures.**

28 (1) Bid Negotiations. Upon the receipt of Qualified Bids Sellers may, at their
29 discretion, negotiate with one or more Qualified Bidders regarding the terms
30 of the applicable Qualified Bids.

31 (2) Pre-Auction Notice of Highest and Best Bid(s).

- 1
- 2 (a) After the Bid Deadline passes the Sellers shall identify the prevailing
- 3 highest and best Qualified Bid(s) (each a "Highest Pre-Auction
- 4 Qualified Bid"). On or before March 24, 2017, the Receiver shall give
- 5 notice of the Highest Pre-Auction Qualified Bid(s) and whether there
- 6 will be an Auction (i) to all Qualified Bidders, and (ii) counsel for
- 7 Petitioner Wells Fargo Bank, NA.
- 8
- 9 (b) If more than one Qualified Bid is received for the same set of Assets,
- 10 then Sellers shall conduct an auction, as set out below (the "Auction").
- 11 If the Receiver receives only one Qualified Bid for a set of Assets then
- 12 the Receiver shall not hold an Auction, and such Qualified Bidder
- 13 shall be the Final Buyer for such set of Assets, and the Receiver shall
- 14 seek entry of a Sale Approval Order in accordance with these Bid and
- 15 Auction Procedures.
- 16
- 17 (3) Auction. The Auction, if any, will start on March 28, 2017, at 9:00 a.m.
- 18 Pacific time at the offices of Schwabe, Williamson & Wyatt, PC, 1420 Fifth
- 19 Avenue, Suite 3400, Seattle, Washington 98101, or at such other time and
- 20 location as may be designated by Sellers. The following procedures shall
- 21 apply to the conduct of the Auction:
- 22
- 23 (a) Qualified Participants. Unless otherwise ordered by the Superior
- 24 Court overseeing Sellers' receivership case (the "Receivership Case"),
- 25 for cause shown, only Qualified Bidders (and their counsel) are
- 26 eligible to attend and participate in the Auction (each a "Qualified
- 27 Participant"). Prior to the start of the Auction the Authorized
- 28 Representative of each Qualified Participant shall certify, in writing or
- 29 on the record, as follows:
- 30
- 31 (i) Each bid it makes at the Auction shall, if accepted by the
- 32 Receiver, constitute a binding and legally enforceable contract
- 33 of the bidder to timely close a purchase of the Assets according
- 34 to the terms of the bid in the event an order of the Court is
- 35 entered approving a sale based upon such bid.
- 36
- 37 (ii) No bids made, whether before or during the Auction, shall be
- 38 subject to any conditions or contingencies related to due
- 39 diligence, financing, or any other further approval other than
- 40 the Authorized Representative present at the Auction.
- 41
- 42 (iii) The Authorized Representative present for the Qualified
- 43 Participant at the Auction has the full power and authority to
- 44 act on behalf of and to legally bind the Qualified Participant

1 for any bids made, and any agreements entered into at or in
2 connection with the Auction.

3 (iv) Each Qualified Participant that participates in the Auction shall
4 authorize the Receiver to conditionally accept such bidder's
5 second-highest bid at the Auction as a back—up to the
6 Prevailing Bid, which shall become binding upon and
7 enforceable against such bidder in the event that the Prevailing
8 Bid is approved by the Court, but such Prevailing Bidder fails
9 or otherwise refuses to close its purchase of the Assets for any
10 reason other than a material failure of performance by the
11 Sellers.

12 (v) That the Qualified Participant has at all times proceeded in
13 good faith in submitting its bids, and has not engaged in any
14 collusion with any other person or bidder with respect to the
15 Auction and related proceedings.

16 (vi) Each Qualified Participant must disclose at or before the
17 Auction, (A) whether the bidder is bidding on its own behalf or
18 on behalf of others, or on behalf of itself and others, (B) if the
19 bidder is bidding other than on its own behalf, the identity of
20 each entity on whose behalf the bidder is acting, and
21 (C) whether the bidder is a party to any agreement limiting the
22 bidders at the auction.

23 (b) Only Qualified Participants, including through their counsel, shall be
24 permitted to make any additional bids ("Subsequent Bids") at the
25 Auction.

26 (c) All Qualified Participants that desire to participate in the Auction shall
have their Authorized Representatives physically present for all
bidding, each with the understanding that the true identity of each
Qualified Participant shall be fully disclosed to all other Qualified
Participants and that all material terms, including but not limited to the
amount, of each bid will be fully disclosed to all other bidders
throughout the entire Auction.

(4) The Receiver shall have reasonable discretion with respect to the conduct of
the Auction. Among other things, the Receiver may announce at the Auction
additional procedural rules that he determines to be reasonable under the
circumstances (e.g. the amount of time allotted to make subsequent
alternative bids) for conducting the Auction so long as such additional rules
are not materially inconsistent with these Bid and Auction Procedures and

1 the terms, deadlines, and intent of the Purchase and Sale Agreement(s).

- 2 (a) At the Auction, bidding shall begin with the Highest Pre-Auction
3 Qualified Bid(s). Any Subsequent Bids must be in increments to be
4 established by the Receiver at the Auction, and each such increment
5 must be payable in cash.
- 6 (b) The Auction, at the discretion of the Receiver, shall be recorded by
7 stenographer or other reliable means of preserving the record of the
8 Auction proceedings, and shall continue in one or more rounds of
9 "open cry," or publicly announced bidding and shall conclude after
10 each participating bidder has had the opportunity, within any time
11 period specified by the Receiver, to submit an additional Subsequent
12 Bid with full knowledge of the then-existing highest bid.
- 13 (c) For the purpose of evaluating the value of the consideration provided
14 by each Subsequent Bid, the value shall be the net consideration
15 payable to the Sellers.
- 16 (d) At the conclusion of the bidding, the Receiver shall announce his
17 determination (pursuant to the following paragraph) as to the bidder(s)
18 (the "Prevailing Bidder(s)") submitting the highest and best bid(s) (the
19 "Prevailing Bid(s)"), which shall be submitted to the Court for
20 approval at the Sale Approval Hearing.
- 21 (e) In determining the Prevailing Bid(s) to submit to the Court for
22 approval, the Receiver, in his sole discretion and in consultation with
23 his professionals, shall determine whether a Subsequent Bid
24 constitutes a higher and better offer than the Pre-Auction Highest Bid.
25 In making that determination, the Receiver may consider any and all
26 factors associated with all Qualified Bids and Qualified Bidders,
including but not limited to factors such as the likelihood and ability of
the proposed buyer(s) to immediately consummate and close the
proposed transactions, other timing issues, overall value of the
Qualified Bids, and any other material factors.
- (f) If, following the entry of the Sale Approval Order approving a sale or
sales to the Successful Bidder(s), such Successful Bidder(s) fails or
otherwise refuses to consummate such sale, then the next highest or
best bid shall be deemed as the back-up bid (the "Back-Up Bid" and,
such bidder, the "Back-Up Bidder") and the Sellers will be obligated
to effectuate a sale to the Back-Up Bidder subject to the terms of the
Back-Up Bid without further order of the Court. The Back-Up Bid
shall remain open until twenty (20) calendar days following the date

1 that the Sale Approval Order becomes a final, non-appealable order.
2 All Qualified Bids (other than the Successful Bid and the Back-Up
3 Bid) shall be deemed rejected by the Receiver on and as of the date of
entry of the Sale Approval Order by the Court.

- 4 (5) The "Final Buyer(s)" shall be the party or parties that submit the Prevailing
5 Bid(s) at the Auction. No bids may be received after the announced
conclusion of the Auction.
- 6 (6) Prevailing Bid Notice. At the conclusion of the Auction, Sellers shall file
7 with the Superior Court and serve (via email on the parties to the Receivership
8 Case, persons who have filed a notice of appearance in the Receivership Case,
9 and parties to executory contracts or unexpired leases that are to be assumed
10 and assigned pursuant to the sale(s)) a notice identifying the Final Buyer(s),
11 and the amount and other material terms of the Prevailing Bid(s), if any (the
12 "Prevailing Bid Notice"). Sellers shall also include in the Prevailing Bid
13 Notice disclosure of the Back-Up Bids, as may be applicable. Such Back-Up
14 Bid(s) will be submitted for Court approval in case the Final Buyer(s) fails to
15 close. The Prevailing Bid Notice and Sale Approval Order will provide that,
16 if for any reason the Final Buyer(s) fails to consummate the transaction
17 contemplated by its Prevailing Bid, the Back-Up Bidder will automatically be
18 deemed to be a Final Buyer and will be obligated to consummate the
19 transaction proposed in its Back-Up Bid, without further notice or order of the
20 Superior Court. If no Prevailing Bids are generated, the Seller shall file a
21 notice with the Court indicating the inability to obtain a Prevailing Bid at the
22 Auction.

23 **D. Superior Court Approval and Jurisdiction.**

- 24 (1) Sellers and the Final Buyer(s) shall each use their commercially reasonable
25 efforts, and shall cooperate, assist and consult with each other, to secure the
26 entry of an order (the "Sale Approval Order"), which is reasonably acceptable
to Sellers and the Final Buyer(s), of the Superior Court in the Receivership
Case (a) approving the applicable PSA, (b) authorizing the sale of the Assets
pursuant to RCW 7.60.260, free and clear of all liens, claims, interests and
encumbrances ("Liens"), (c) relieving the Final Buyer(s) of any claim of
successor liability, (d) authorizing the assumption and assignment of the
Assumed Contracts pursuant to RCW 7.60.130, and (e) other appropriate
relief. Sellers and the Final Buyer(s) shall consult with one another regarding
pleadings that either of them intends to file or positions either of them intends
to take, with the Superior Court in connection with, or that reasonably affect,
the Superior Court's entry of the Sale Approval Order. The Sale Approval
Order shall further provide that if for any reason a Final Buyer is unable or
unwilling to consummate an approved sale because of breach or failure,
without legal excuse, to perform on the part of the Final Buyer(s) (y) it will

1 forfeit its Good Faith Deposit to Sellers and Sellers may pursue any and all of
2 its options at law and in equity with respect to such breach, and (z) the
3 Qualified Bidder making the Back-Up Bid shall be deemed to be the Final
4 Buyer, the purchase price shall be the amount of such Back-Up Bid, and
5 Seller shall be authorized to effectuate the sale(s) without further notice or
6 order of the Superior Court.

7 (2) Sale Approval Hearing and Objection Deadline.

8 (a) A hearing to consider the proposed sale will take place on April 3,
9 2017, at 10:30 a.m., in the Superior Court for King County, Seattle,
10 Washington (or at another date and time established by the Superior
11 Court) (the "Sale Approval Hearing"). If any Final Buyer is selected
12 by Sellers, Sellers shall seek the entry of a Sale Approval Order from
13 the Superior Court at the Sale Approval Hearing, authorizing the
14 proposed sale to the Final Buyer(s) on terms and conditions
15 substantially consistent with and in accordance with these Bid and
16 Auction Procedures.

17 (b) Objection Deadline.

18 (i) Objections to approval of any proposed sale(s) and entry of the
19 Sale Approval Order(s) (including but not limited to any
20 objection based on any alleged irregularities in the conduct of
21 the Auction) must be both filed with the Court and served on
22 (A) Schwabe Williamson & Wyatt, PC, 1211 SW Fifth
23 Avenue, Suite 1500, Portland, Oregon 97204, Attn: Alex Poust
24 (email: apoust@schwabe.com); (B) Lane Powell, PC, 1420
25 Fifth Avenue, Suite 4100, Seattle, Washington 98101, Attn:
26 Greg Fox (email: foxg@lanepowell.com), (C) all Prevailing
Bidders and their counsel (if any), and (D) All other parties
who have filed a notice of appearance, by not later than 12:00
noon Pacific Time, on March 30, 2017.

(ii) The failure of any party to file and serve an objection as
provided herein shall be deemed the consent of such a party to
the granting of the Motion and the sale and transfer of the
Assets to the Final Buyer(s) (including the assumption and the
assignment of Assumed Contracts).

(3) Jurisdiction. All potential and Qualified Bidders are deemed to have
submitted to the jurisdiction of this Court with respect to all matters related to
their bids, the Motion, or the Auction.

1 **E. Return of Good Faith Deposit.**

2 The Good Faith Deposit, together with all interest accrued thereon, if any, shall be
3 returned to any bidder whose bid was not the Prevailing Bid or the Back-up Bid
4 within five (5) business days of the Auction. The Good Faith Deposit submitted by
5 the Final Buyer, together with all interest thereon, if any, shall be applied against the
6 payment of the purchase price, as defined in the relevant PSA, at the closing of the
7 sale to the Final Buyer. Upon closing of the Prevailing Bid, the deposit of the Back-
8 up Bid will be returned, or if the Final Buyer fails to consummate the Prevailing Bid
9 in accordance with the terms of the PSA, the Sellers will retain the Good Faith
10 Deposit of the Final Buyer as liquidated damages, and the Back-up Bidder will
11 become the Final Buyer.

12 **F. Executory Contracts and Unexpired Leases.**

- 13 (1) Information Available Upon Request. Upon request, Seller will provide on a
14 confidential basis to each counterparty to a proposed Assumed Contract or
15 executory contract (each, an “Assumed Contract Creditor”) the identity of (a)
16 the relevant Qualified Bidder, and (b) the Seller’s calculation of the cure
17 amount applicable to the relevant Assumed Contract to be assumed and
18 assigned pursuant to RCW 7.60.130 (the “Cure Amount”).
- 19 (2) Treatment of Objections. If an objection is raised by an Assumed Contract
20 Creditor solely regarding the Cure Amount, and such dispute cannot be
21 resolved by the parties prior to the Sale Approval Hearing, Sellers may seek to
22 assume such Assumed Contract and assign it to the Final Buyer, provided that
23 both (a) the undisputed portion of the Cure Amount must be immediately paid
24 by the Final Buyer to the Assumed Contract Creditor upon assumption and
25 assignment, and (b) the disputed portion of the Cure Amount must
26 simultaneously be paid by the Final Buyer to Sellers. Sellers shall hold the
27 disputed portion of the Cure Amount pending resolution of the dispute by the
28 Superior Court or mutual consent of the parties. Upon resolution, the
29 previously disputed portion of the Cure Amount shall be distributed to the
30 Final Buyer and/or Assumed Contract Creditor in accordance with their
31 agreement or the order of the Superior Court.

32 3. As set forth in paragraphs 2(C)(4)(f) and 2(D)(1) above, the Sale Approval
33 Order shall seek, among other things, the following relief, (a) approval of the applicable
34 PSA’s, (b) authority for the Sellers to sell the Assets pursuant to RCW 7.60.260, free and
35 clear of all Liens, (c) relief for the Final Buyer(s) from any claim of successor liability, (d)

1 authority for the Receiver to assume and assign Assumed Contracts pursuant to RCW
2 7.60.130, and (e) approval of the Back-Up Bid and the Back-Up Bidder.

3 4. As set forth in the Bid and Auction Procedures, the Sale Approval Hearing is
4 hereby scheduled for April 3, 2017, at 10:30 a.m. Pacific Time, in this Court.

5 5. As set forth above, objections, if any, to the relief requested by Receiver in
6 the Motion (other than changes to the proposed form of the Sale Approval Order filed by the
7 Receiver herein on February 28, 2017), including approval of any Prevailing Bid and Back-
8 Up Bid, sale of any or all of the Assets to the Final Buyer(s), or any proposed assumption
9 and assignment of executory contracts and unexpired leases, must be (a) made in writing; (b)
10 filed with this Court by **not later than 12:00 Noon Pacific Time on March 30, 2017 (the**
11 **“Objection Deadline”**); and (c) served so as to be received by the Objection Deadline by (i)
12 Schwabe Williamson & Wyatt, PC, 1211 SW Fifth Avenue, Suite 1500, Portland, Oregon
13 97204, Attn: Alex Poust (email: apoust@schwabe.com); (ii) Lane Powell, PC, 1420 Fifth
14 Avenue, Suite 4100, Seattle, Washington 98101, Attn: Greg Fox (Email:
15 foxg@lanepowell.com); (iii) all Prevailing Bidders and their counsel (if any); and (iv) All
16 other parties who have filed a notice of appearance. Any party filing an objection to the
17 Motion must attend the Sale Approval Hearing and advocate its objection at such hearing.
18 Service of any objection under this paragraph 5 to the above-listed counsel may be made
19 solely by e-mail using the addresses set forth above. Service of any response to an objection
20 served by e-mail may also be served solely by e-mail to the objecting party or its counsel.

6. Any objection not filed, served, and/or advocated in accordance with this Order shall be deemed waived and be forever barred.

Dated this ____ day of _____, 2017.

By:

COMMISSIONER

Presented by:

SCHWABE WILLIAMSON & WYATT, P.C.

/s/ Claire L. Rootjes

Alex Poust, WSBA #22660

Claire L. Rootjes, WSBA #42178

1211 SW 5th Avenue, Suite 1900

Portland, OR 97204

Telephone: (503) 222-9981

EXHIBIT 3

EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking
association,

Petitioner,

vs.

ONLINESHOES.COM INC., a Washington
corporation; SHOES.COM, INC., a Delaware
corporation,

Respondents.

No. 17-2-02462-7SEA

ORDER (1) APPROVING SALE OF
ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES
AND INTERESTS, (2) APPROVING
ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS, and
(3) GRANTING RELATED RELIEF

THIS MATTER came on for hearing on the Receiver's Motion for Orders: (1)
Approving the Sale of Assets Free and Clear of Liens, Claim, Encumbrances and Interests;
(2) Approving Bid and Auction Procedures; (3) Scheduling Hearing to Approve Sale of
Assets; and (4) Approving Assumption and Assignment of Executory Contracts (the
"Motion").

THE COURT, having held the Sale Approval Hearing¹ on April 3, 2017 (the "Sale
Approval Hearing"), and having considered the Motion, the Declaration of John L. Davidson

¹ Capitalized terms not otherwise defined in this Order have the meaning ascribed to them in the Motion.

1 filed in support of the Motion, the arguments of counsel, and the files and records herein, and
2 being fully advised,

3 THE COURT FINDS as follows:

4 A. Oswego Group LLC, doing business as Inverness Group ("Receiver"), gave
5 appropriate notice of the Motion and the Sale Approval Hearing. No other or further notice
6 in connection with the entry of this Order is or shall be required.

7 B. The relief requested by the Motion is appropriate.

8 C. On or about March 8, 2017, the Court entered that certain Order (1)
9 Scheduling Sale Approval Hearing, (2) Approving Bid and Auction Procedures, and (3)
10 Granting Related Relief (the "Bid and Auction Procedures Order"). Pursuant to the Bid and
11 Auction Procedures Order, the Court authorized the Receiver to accept bids and, if necessary,
12 hold an auction for the sale of Sellers' Assets, all on the terms described therein;

13 D. On March 8, 2017, the Bid and Auction Procedures Order was duly served on
14 the parties and all persons entitled to notice thereof;

15 E. The Receiver received multiple Qualified Bids by on or before the Bid
16 Deadline. On March 24, 2017, the Receiver gave appropriate notice of the Highest Pre-
17 Auction Qualified Bid to the persons entitled to notice under Section 2(C)(2)(a) of the Bid
18 and Auction Procedures Order;

19 F. The Receiver conducted an Auction on March 28, 2017. The Prevailing Bid
20 at the Auction was submitted by _____ ("Buyer"). The Prevailing Bid was for
21 \$ _____. The Assets that are the subject of the Prevailing Bid are substantially all of
22 the assets of Sellers, excluding certain Retained Assets (as that term is defined in the PSA).
23 The sale process and Auction were conducted in accordance with the Bid and Auction
24 Procedures Order and in good faith;

1 G. The Asset Purchase and Sale Agreement ("PSA"), a copy of which is attached
2 to this Order as Exhibit A, by and between Buyer and Sellers, by and through the Receiver,
3 for the Purchased Assets (as that term is defined in the PSA), and the consideration to be
4 received from Buyer is fair and reasonable and does not unfairly benefit Sellers' insiders, a
5 proprietary purchaser, or any creditor or class of creditors.

6 H. Buyer and the Backup-Up Bidder are Qualified Bidders.

7 I. Notice was provided in accordance with the Bid and Auction Procedures
8 Order, the Stipulated Order Appointing General Receiver entered on February 2, 2017, 2013,
9 and RCW 7.60.190.

10 J. The consummation of the sale of the Purchased Assets pursuant to the PSA
11 (the "Sale") is in the best interests of the receivership estate ("Receivership Estate"), its
12 creditors and other parties in interest. And,

13 K. Buyer is a good faith purchaser, entitled to the protections afforded by RCW
14 7.60.260 and any other protections available on account thereof.

15 NOW THEREFORE, IT IS HEREBY ORDERED THAT:

16 1. The Receiver's Motion is GRANTED in its entirety.

17 2. Any responses or objections to the Motion that have not already been
18 withdrawn or consensually resolved between the affected parties are hereby overruled.

19 3. Sellers are authorized to sell the Purchased Assets to Buyer free and clear of
20 all Liens and rights of redemption pursuant to RCW 7.60, including without limitation RCW
21 7.60.260, and on the terms set forth in the PSA, as may be amended, provided that any such
22 amendment is immaterial. This Sale and PSA are hereby approved and confirmed.

23 4. Upon and after the Closing Date (as defined in the PSA), Buyer shall not be
24 deemed or considered: (a) to be a successor to Sellers; or (b) to be a continuation or
25 substantial continuation of the Receivership Estate or the enterprise of Sellers.
26

1 5. This Order authorizes Buyer and the Receiver, on behalf of Sellers, to enforce
2 the PSA, as may be amended, and to consummate the Transactions (as defined in the PSA)
3 contemplated thereby, and the Sellers' and Buyer's execution, delivery and performance of
4 the documents related to the Transactions are approved.

5 6. Except as provided in Section 2.5 of the PSA, the Sellers are authorized to
6 assume and assign the Assumed Contracts the Intellectual Property Rights (as defined in the
7 PSA) pursuant to RCW 7.60, notwithstanding any provisions that restrict the assignability
8 thereof.

9 7. Pursuant to RCW 7.60.260(2), upon and after the Closing Date, claims arising
10 out of any security interests and other Liens shall be released as against the Purchased
11 Assets, and shall attach to the net proceeds of the Sale to the same extent, validity and
12 priority as such security interests and other Liens attached to the Purchased Assets prior to
13 the Sale.

14 8. Pursuant to RCW 7.60.260(5), Buyer shall be entitled to the rights of a buyer
15 in good faith and the reversal or modification on appeal of this order does not affect the
16 validity of the Sale, whether or not Buyer knew of the pendency of the appeal, unless the
17 authorization and Sale were stayed pending the appeal.

18 9. The Receiver is hereby authorized to execute, deliver, file, or record such
19 contracts, instruments, releases and other agreements or documents and take such other
20 actions as may be necessary or appropriate to effectuate and further evidence the terms and
21 conditions of this Order.

22 10. [] is hereby approved as the Back-Up Bidder, and its Qualified Bid
23 (as modified at the Auction) is hereby approved as the Back-Up Bid. If for any reason Buyer
24 fails to consummate the transaction contemplated by its Prevailing Bid, the Back-Up Bidder
25 shall (a) automatically be deemed to be the Final Buyer without further notice or order of this
26 Court, (b) be obligated and authorized to consummate the transactions provided in its Back-

1 Up Bid on the terms thereof, and (c) be entitled to the buyer protections described in this
2 Order and under applicable law.

3 11. Any stay that may be applicable to this Order is waived.

4 Dated this ____ day of _____, 2017.

5 By: _____

6 COMMISSIONER

7 Presented by:

8
9 SCHWABE WILLIAMSON & WYATT, P.C.

10
11 /s/ Claire L. Rootjes

12 Alex Poust, WSBA #22660

13 Claire L. Rootjes, WSBA #42178

14 1211 SW 5th Avenue, Suite 1900

15 Portland, OR 97204

16 Telephone: (503) 222-9981

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 28th day of February, 2017, I arranged for service of the foregoing
*RECEIVER'S MOTION FOR ORDERS: (1) APPROVING THE SALE OF ASSETS FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (2) APPROVING
BID AND AUCTION PROCEDURES; (3) SCHEDULING HEARING TO APPROVE SALE
OF ASSETS and (4) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS* to the parties to this action as follows:

<p>Bruce W. Leaverton, Esq., WSBA #15329 leavertonb@lanepowell.com Greg Fox, Esq., WSBA #30559 foxg@lanepowell.com Lane Powell, P.C. 1420 Fifth Avenue, Suite 4100 Seattle, WA 98101-2338 Telephone: 206.223.7000 Facsimile: 206.223.7107 <i>Counsel for Wells Fargo Bank National Association</i></p> <p><i>Via email and U.S. Mail</i></p>	<p>John R. Rizzardi, Esq., WSBA #9388 jrizzardi@cairncross.com Cairncross & Hempelmann P.S. 524 Second Avenue, Suite 500 Seattle, WA 98104-2323 Telephone: 206.587.0700 Facsimile: 206.587.2308 <i>Counsel for Onlineshoes.com, Inc. and Shoes.com, Inc.</i></p> <p><i>Via email and U.S. Mail</i></p>
<p>George S. Treperinas, Esq., WSBA #15434 gtreperinas@karrtuttle.com Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 Telephone: 206.223.1313 Facsimile: 206.682.7100 <i>Counsel for Caleres Investments Co., An interested party</i></p> <p><i>Via email and U.S. Mail</i></p>	<p>Lorne W. Segal, Esq. lorne.segal@gowlingwlg.com Gowling WLG (Canada) LLP 160 Elgin Street, Suite 2600 Ottawa, ON K1P 1C3 CANADA Telephone: 613.233.1781 Facsimile: 613.563.9869 <i>Counsel for Caleres Investments Co., an interested party</i></p> <p><i>Via email and U.S. Mail</i></p>

CERTIFICATE OF SERVICE - 1

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Rayanne E. Sherwood, Legal Assistant

CERTIFICATE OF SERVICE - 2

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