

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF LANE

In re Judicial Dissolution of

Zadeh Kicks LLC dba Zadeh Kicks,
the Petitioner.

Case No.

ORDER APPOINTING RECEIVER

Based on the Petition for Voluntary Dissolution Under Court Supervision and Appointment of Receiver filed on May 19, 2022 (the "Petition") on behalf of the above-captioned Oregon entity subject to judicial dissolution by this Court ("the Petitioner"), by and through counsel appearing as well as testimony from Michael Malekzadeh before the Court on May 20, 2022, the Court makes such FINDINGS and orders the appointment of a receiver as provided herein:

FINDINGS

- A. After consideration of the Petition and based on the need for independent oversight and management over the assets of the Petitioner, and in light of the potential claims of the Petitioner's customers, creditors and investors to such assets, it is not reasonably practicable or possible for the Petitioner to carry on its business without judicial involvement.
- B. The judicial dissolution and wind-up of affairs by the Court of the Petitioner under ORS 63.661 and 63.637(3) is appropriate and warranted.
- C. The Court requires and finds cause for appointment of a receiver to manage and report on the wind-up and dissolution process of the Petitioner.

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1 D. Appointment of a receiver for such purposes is appropriate under ORS 63.664(3),
2 ORS 37.060(1) and based on this Court's inherent equitable powers, and as provided
3 under ORCP 80B.

4 E. The appointment of a receiver is reasonably necessary, based on the cause shown, and
5 other remedies either are not available or are inadequate.

6 F. David P. Stapleton (the "Receiver") is a professional fiduciary, is not interested in this
7 action or in the Petitioner, and is competent and qualified to act as a general receiver
8 for the Petitioner.

9 G. Good and sufficient grounds for appointment of a receiver exist pursuant to Oregon
10 law in order to (1) prevent dissipation of the assets of the Petitioner to the detriment
11 of the creditors, customers, and investors therein; (2) evaluate and report to the Court
12 and interested parties regarding the assets of the Petitioner and oversee an orderly
13 administration and liquidation of such assets to maximize return to the above; (3)
14 evaluate and report to the Court and interested parties regarding claims and interests
15 of, and then proposed distributions to, creditors, customers, and investors of the
16 Petitioner on an equitable basis; and (4) otherwise oversee the wind-up and dissolution
17 of the Petitioner in accordance with Oregon law, therefore it is hereby

18 H. Michael Malekzadeh having waived his right to hearing and consented to
the appointment.

19 **ORDERED** that the Petition is GRANTED.

20 It is further **ORDERED** as follows:

- 21 1. Appointment of Receiver. David P. Stapleton is appointed as a general receiver and
22 liquidating partner/member with respect to the Petitioner, including but not limited to
23 its business operations (the "**Operations**"), all leased real property, and all tangible
24 and intangible personal property, interest, claims, and other assets of any nature –
25 including rents, profits, and all other proceeds thereof (the "**Assets**") of the Petitioner.
26 The Assets so subject to the receivership of the Petitioner shall be collectively referred

1 to as the "**Receivership Estate.**"

2 2. Bond. This appointment of the Receiver is effective as of the date of this Order, and,
3 pursuant to ORS 37.090(3), the Court waives the posting of bond, and the Receiver
4 shall carry an insurance policy with coverage and limits determined by the Court in
5 lieu of a bond. Pursuant to ORS 37.090(4), the Receiver may charge the cost of any
6 such insurance policy required by the Court against the Receivership Estate.

7 3. Obligations of Related Parties. The Petitioner and its agents and representatives,
8 including but not limited to all members, stockholders, managers, partners, officers,
9 agents, employees, independent contractors, and their respective attorneys,
10 accountants, brokers, and other professionals (collectively, the "Related Parties")
11 hereby are directed to cooperate fully with the Receiver and other professionals
12 working with him in carrying out the Receiver's duties. Without limiting the generality
13 of the foregoing, the Related Parties who receive actual notice of this order are
14 required to do the following:

15 a. Comply with all orders of this Court.

16 b. Cooperate fully with and reasonably assist the Receiver in the discharge of the
17 Receiver's duties, and in the management and administration of the Operations
18 and the Assets.

19 c. Use their best efforts to supply the Receiver with all information which is
20 available, or which can be obtained through reasonable efforts, and which the
21 Receiver reasonably deems necessary or appropriate to enable the Receiver to
22 identify the Assets and liabilities and investors of the Petitioner and to complete
23 any schedules and accountings that the Receiver may be required to file, and
24 otherwise reasonably assist the Receiver in the completion of any such
25 schedules and accountings.

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- 1 d. Deliver to the Receiver all of the Petitioner's Assets in the Related Party's
2 possession, custody, or control – including but not limited to all funds, accounts,
3 books, papers, spreadsheets, records, and other documents (whether in hard
4 copy or electronic format) including but not limited to the following: financial
5 and banking records, leases, licenses, permits, insurance policies, email,
6 computerized records, account numbers, passwords, keys, access codes, and
7 certificates of title.
- 8 e. Use their best efforts to promptly provide the Receiver with any information or
9 materials requested by the Receiver concerning the Operations, the Assets and
10 the acts, conduct, property, liabilities and financial condition of the Petitioner
11 or the claims of creditors or investors therein, or any matter relating to the
12 Receiver's administration of the Operations and Assets or claims, to the extent
13 information is available or can be obtained through reasonable efforts.

14 **4. Prohibitions of Related Parties, Third Parties, and Interested Parties.** Any
15 Related Parties, Third Parties, and Interested Parties are hereby prohibited from:

- 16 a. Interfering with the Receiver, directly or indirectly, in the management and
17 operation of the Operations and Assets, or otherwise directly or indirectly
18 taking any actions or causing any such action to be taken which would in
19 any manner interfere with the Operations or dissipate the Assets.
- 20 b. Expending, disbursing, transferring, assigning, selling, conveying,
21 devising, pledging, mortgaging, creating a security interest in or in any
22 manner disposing of or conveying the whole, any part of or any interest of
23 any nature whatsoever in, the Operations or the Assets, or the proceeds
24 thereof.
- 25 c. Doing any act which will, or which would tend to, directly or indirectly,
26 impair, defeat, prevent, or prejudice the preservation of the Operations or

Assets.

5. **Notice to the Court re Related Parties' Failure to cooperate.** The Receiver shall promptly notify the Court of any failure or apparent failure of any Related Party to comply in any way with the terms of this Order.
6. **Scope of Receivership.** The Receiver shall be a general receiver with exclusive and complete authority and control over the Receivership Estate—including the Operations, the Assets and the business of the Petitioner—with the power, authority, and duty to operate the business of the Petitioner and to preserve, protect, and liquidate the Assets during the pendency of this case. The Receiver shall have exclusive possession and control over all Operations and Assets, with the power and authority to preserve, protect, and liquidate the Assets and to distribute the proceeds thereof to the party or parties legally entitled thereto.
7. **Powers of Receiver.** The Receiver shall have all powers conferred by or enumerated within ORS 37.110. In addition, the Receiver hereby is vested with all powers afforded a receiver under the laws of the State of Oregon, including, but not limited to, the power and authority to do the following, all without notice to any party to this action except as specifically noted:
 - A. To incur expenses, and to use the Petitioner's cash to pay expenses, incidental to the Receiver's operations and to the preservation and management of the Assets, and otherwise in the performance of the Receiver's duties.
 - B. To do all things that the Petitioner might do in the ordinary course of business of the Operations as a going concern, or in managing the Assets – including but not limited to incurring and paying expenses in the ordinary course of business.

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- 1 C. To assert any rights, claims, or interests of the Petitioner or the Receiver,
2 including but not limited to instituting actions or proceedings to collect
3 outstanding accounts or notes; to disgorge or impose a constructive trust on
4 assets of the Receivership Estate held by third parties; to protect the Assets,
5 including removal from any real property of persons not entitled to entry or
6 occupancy; and/or to obtain possession and/or recover judgment with
7 respect to persons or entities that received assets or funds traceable to funds
8 of the Petitioner.
- 9 D. To intervene in any action in which a claim is asserted against the Petitioner
10 for the purpose of prosecuting or defending the claim, and/or for the purpose
11 of requesting the transfer of venue of such action to this Court.
- 12 E. To open bank accounts or other depository accounts in the name of the
13 Receiver or the Petitioner, maintaining separate accounts for Assets of the
14 Petitioner, to the extent any funds exist.
- 15 F. To prepare, with assistance of an accountant, any and all tax returns for the
16 Petitioner.
- 17 G. To employ any person or firm to collect, manage, lease, maintain, or operate
18 the Assets.
- 19 H. To continue in effect in the Receiver's business judgment any contracts
20 presently existing relating to the Assets.
- 21 I. To obtain appraisals of the value of the Assets; provided, however, the
22 Receiver shall not be obligated to seek any appraisal of the Assets, or any
23 of them.
- 24 J. To sell Assets, but only after such notice and opportunity for hearing as is
25 appropriate under the circumstances.

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1 K. To incur unsecured debt in the ordinary course of the Operations, which
2 shall be treated as an administrative expense of the Receiver, without order
3 of this Court.

4 L. To obtain secured credit, or other credit not in the ordinary course of
5 Operations, but only after such notice and opportunity for hearing as is
6 appropriate under the circumstances.

7 M. To acquire, renew or amend all governmental licenses, permits or other
8 authorizations pertaining to the Operations, the Assets, or any business
9 associated therewith.

10 N. To seek and obtain advice or instruction from this Court with respect to any
11 course of action with respect to which the Receiver is uncertain in the
12 exercise of the Receiver's powers or the discharge of the Receiver's duties.

13 8. **Control of Accounts.** All financial institutions, credit card processors, insurance
14 agents or underwriters, utility providers, vendors, suppliers, tradesmen, materialmen,
15 service providers, franchisors, taxing agencies, and all government agencies and
16 departments are hereby ordered to take direction from the Receiver as it relates to the
17 accounts of the Petitioner, including accounts that may contain any proceeds derived
18 from the Assets, and to surrender any and all funds held on deposit or apply said funds
19 as directed by the Receiver. Any such party that receives actual notice of this Order
20 shall freeze and turn over such accounts, funds, or assets at the instruction of the
21 Receiver. The Receiver shall maintain all such assets of any the Petitioner in
22 segregated accounts, under sole and exclusive control of the Receiver. The Receiver's
23 standard service and technology fee, as would ordinarily be applied by the Receiver's
24 bank to the funds in such fiduciary accounts, is hereby disallowed and barred.

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- 1 9. **Initial Report of Receiver.** Within 60 days following the entry of this Order, the
2 Receiver shall, pursuant to ORS 37.200(1), file the initial report with the Court in
3 compliance with and the subject(s) identified in ORS 37.200(2).
- 4 10. **Bi-monthly Receivership Reports.** The Receiver shall thereafter file with the Court
5 and serve on all interested parties a bi-monthly (*i.e.*, approx. 60-day) report with
6 respect to the receivership – summarizing the activities of the Receiver and the
7 Operations, the Assets, and the financial affairs of the Petitioner. Each such report
8 shall be due by the 20th day of the month following the two-month-period reported
9 on.
- 10 11. **General Employment by Receiver.** Subject to the qualifications regarding the
11 employment of professionals, the Receiver in the performance of the Receiver's duties
12 may contract with independent contractors and/or employ such persons or entities as
13 the Receiver deems appropriate. All such persons or entities shall be subject to the
14 management and direction of the Receiver in connection with the performance of any
15 duties associated with such employment by the Receiver. The Receiver shall be free
16 at all times to terminate the employment of any such person or entity.
- 17 12. **Employment of Professionals By Receiver.** Oren Bitan of Buchalter is hereby
18 authorized and appointed to act as general counsel for the Receiver, respectively, at
19 their firm's regular hourly rates. The Receiver may employ further attorneys,
20 accountants, or other professionals that the Receiver believes to be necessary or
21 appropriate in connection with the proper performance of the Receiver's duties
22 hereunder, but only after such notice and opportunity for hearing as is appropriate
23 under the circumstances.

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1 13. **Receiver's Compensation.** Unless otherwise ordered by the Court, the Receiver shall
2 be compensated at the rate of \$495.00 per hour, plus costs. The Receiver shall have a
3 first priority lien against the Assets, to secure the payment of any of the Receiver's
4 costs, expenses and professional fees and costs, as approved by the Court or otherwise
5 pursuant to this Order.

6 14. **Payments of Compensation.** The Receiver is authorized to make payment for his
7 fees and costs and for the fees and costs of his professionals on a periodic basis, but
8 in no event more than monthly without further order of the Court in accordance with
9 ORS 37.310 and as follows:

10 a. The Receiver shall file a Notice of Compensation of Professional, which shall
11 describe the time spent, and the billing rates of the Receiver and any other
12 professional person who performed work to be compensated, a description of the
13 services performed, and a detailed list of expenses with a statement of the amounts
14 requested. The Notice shall indicate that unless objections to the proposed
15 compensation are filed with the Court within 10 days, the Receiver may make the
16 payments requested in the compensation notice. If an objection is filed to the
17 proposed compensation, the Receiver or professional whose compensation is
18 affected may request the Court to hold a hearing on the objection on five days'
19 notice to each person or entity that filed an objection thereto.

20 b. If no party in interest objects to such payments or portions of such payments within
21 ten (10) calendar days following the date of Notice, the fees and costs shall be
22 deemed approved as being fully and finally earned without further order or leave
23 of Court and the Receiver shall pay himself and all other professionals per the
24 Notice. If an objection is filed to the proposed compensation, the Receiver or
25 professional whose compensation is affected may request the Court to hold a
26 hearing on the objection on five days' notice to each person or entity that filed an

1 objection thereto.

2 c. If any party wishes to object to such payment or portion thereof as disclosed in the
3 Notice, such party shall notify the Receiver and the above-referenced parties of
4 the nature of the objection within the objection period stated above. If the Receiver
5 or affected professionals cannot consensually resolve the dispute or if the dispute
6 is not resolved within thirty (30) days of the date of such objection, the objecting
7 party may file a motion with the Court to resolve the objection.

8 15. **Limitation of Liability of Receiver.** Subject to ORS 37.290 and ORS 37.300, no
9 obligation or liability incurred by Receiver in the good faith performance by him of
10 the Receiver's duties in accordance with the order this Court, whether pursuant to any
11 contract, by reason of any tort, or otherwise, shall be Receiver's personal obligation
12 except to the extent such obligation or liability is found to have resulted from the
13 Receiver's gross negligence, recklessness, willful misconduct or fraudulent behavior.
14 Any loss, cost, damage, or expense suffered or incurred by the Receiver as a result of
15 any claim, suit, action or other demand or proceeding brought against Receiver or any
16 of its employees in connection with its performance as Receiver which is not caused
17 by Receiver's gross negligence, recklessness, willful misconduct or fraudulent
18 behavior will be solely an expense of the Receivership Estate and not of the Receiver.

19 16. **Initial Notice to Creditors and Other Interested Persons.** Pursuant to ORS 37.330,
20 the Receiver shall issue an initial notice to creditors and other interested persons
21 within 30 days after the Receiver's appointment.

22 17. **Control of Mail.** The Receiver may issue demand upon the U.S. Postal service to
23 grant the Receiver exclusive possession and control of mail including postal boxes as
24 may have been used by the Petitioner and may direct that certain mail related to the
25 Petitioner, the Operations, the Assets, or in any manner relating to any of the
26 foregoing, be redirected to the Receiver.

1 18. **Insurance Coverage.** The Receiver shall determine upon taking possession of the
2 Assets whether in the Receiver's judgment, there is sufficient insurance coverage.
3 With respect to any insurance coverage in existence or obtained, the Receiver shall be
4 named as an additional insured on the policies for the period of the receivership. If
5 sufficient insurance coverage does not exist, the Receiver shall procure sufficient all-
6 risk and liability insurance on the Assets, provided, however, that if the Receiver does
7 not have sufficient funds to do so, the Receiver shall seek instructions from the Court
8 with regard to adequately insuring any such Assets. The Receiver shall not be
9 responsible for claims arising from the lack of procurement or inability to obtain
10 insurance.

11 19. **Litigation and Settlement of Claims.** The Receiver is authorized but not required to
12 respond to and defend any actions brought against the Petitioner relating to the
13 Receivership Estate. Additionally, the Receiver is authorized but not required to take
14 all actions necessary to protect the Petitioner's interests or rights or to collect any
15 debts owed to or claims held by the Petitioner relating to the Receivership Estate,
16 including, if necessary, commencing any legal proceeding, arbitration or mediation,
17 to protect such interests or recover such funds or claims, including, without limitation,
18 collection, claim and delivery, fraudulent transfer, or breach of contract actions. The
19 Receiver is authorized but not required to settle or compromise any such claims, if
20 such settlement or compromise is, in the Receiver's business judgment, in the best
21 interests of the Receivership Estate. Any settlement shall be noticed as set forth in
22 ORCP 80, indicating that unless objections to the proposed settlement are filed with
23 the Court within 20 days, the Receiver may settle the claim as proposed, without
24 further notice or hearing.

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1 20. **Termination.** The receivership shall not be terminated, and the rights and obligations
2 of the parties subject to this Order shall remain in full force, until this Court approves
3 the Receiver's final report or until the Court enters an order terminating the
4 receivership, after such notice and opportunity for a hearing as this Court finds to be
5 appropriate under the circumstances.

6 21. **Best Efforts/Further Construction.** The Court and all parties to this Order
7 acknowledge the Receiver's ability to perform his duties under this Order may be
8 limited by various factors, including but not limited to Receiver's limited access to
9 information. The Court therefore requires only Receiver's best efforts to comply with
10 the duties set forth in this Order, and the Receiver may at any time apply to this Court
11 for further or other instructions, or for a modification of this Order, or for further
12 powers necessary to enable the Receiver properly to perform his duties, or for a
13 termination of the Receiver's appointment.

14 22. **Discharge/Final Report.** Upon distribution or disposition of all property of the
15 Receivership Estate, or the completion of the Receiver's duties with respect to the
16 Assets, the Receiver shall move the Court to be discharged. As provided in ORS
17 37.410, the Receiver shall file a final report of the Receivership Estate, which shall be
18 annexed to the petition for discharge and filed with the Court. Upon approval of the
19 final report, after such notice and opportunity for a hearing as this Court finds to be
20 appropriate under the circumstances, the Court shall discharge the Receiver. The
21 Receiver's discharge releases the Receiver from any further duties and responsibilities
22 as receiver under Oregon law.

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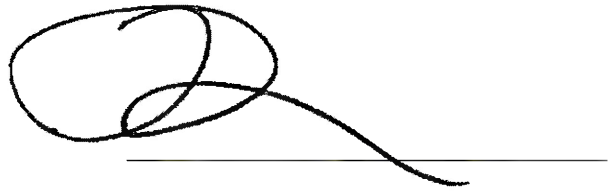
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23. **Further Orders As Needed.** The Receiver or any party may at any time apply to the Court for any further or other instructions or orders and for further powers necessary to enable or require the Receiver to perform his duties, including but not limited to application by the Receiver for power to sell, transfer or convey the Assets, in whole or in part.

5/20/2022 9:32:51 AM

Dated _____



Debra E. Velure, Circuit Court Judge

Submitted on May 19th, 2022.

SLINDE NELSON

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