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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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SECURITIES AND EXCHANGE)
COMMISSION,)

PLAINTIFF,)

v.)

Civil Action No.: 3:17-cv-00420-L

PATRICK O. HOWARD;)
HOWARD CAPITAL HOLDINGS, LLC;)
AND OPTIMAL ECONOMICS CAPITAL)
PARTNERS, LLC,)

FILED UNDER SEAL

DEFENDANTS.)

**EX PARTE ORDER GRANTING TEMPORARY RESTRAINING ORDER, ASSET
FREEZE, AND OTHER EMERGENCY AND ANCILLARY RELIEF, AND SETTING
HEARING DATE ON PLAINTIFF'S PRELIMINARY-INJUNCTION MOTION**

This matter came before the Court this 14th day of February, 2017, on motion of the Securities and Exchange Commission ("SEC" or "Commission"), for the issuance of an order granting, *ex parte*, certain emergency and ancillary relief against Defendants Patrick O. Howard, Howard Capital Holdings, LLC ("Howard Capital"), and Optimal Economics Capital Partners, LLC ("OE Capital") (collectively "Defendants").

The Commission seeks orders: (1) freezing the assets of the Defendants, (2) temporarily restraining the Defendants from engaging in certain violative conduct, (3) prohibiting the Defendants from moving, altering, or destroying books, records, and accounts; (4), and requiring each Defendant to provide sworn accountings; (5) authorizing expedited discovery; and (6) providing for alternative service of pleadings and other papers. Having considered the Commission's Complaint, motion, supporting memorandum, declarations, and exhibits thereto, and the argument of counsel, the **COURT FINDS:**

1. This Court has jurisdiction over the subject matter of this action and over the Defendants, and the Commission is a proper party to bring this action seeking the relief sought in its Complaint and in its motion.

2. There is good cause to believe that each Defendant, has engaged, is engaged, and, unless enjoined, will continue to engage, in acts and practices that constitute and will constitute violations of the securities-registration and anti-fraud provisions of the federal securities laws, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

3. There is good cause to believe that investor money and assets obtained by the Defendants from the unlawful activities described in the Commission’s Complaint have been misappropriated and misapplied and will be hidden, wasted, depleted or otherwise used to the detriment of investors. Furthermore, there is good cause to believe that the Defendants do not have sufficient funds or assets to satisfy the relief that might be ordered in this action.

4. There is good cause to believe that Defendants used illegal means to obtain investor money and assets, including by operating and controlling three investment funds: (1) Insured Liquidity Partners CFG I, LLC (“CFG I”), (2) Insured Liquidity Partners CFG II, LLC (“CFG II”), and (3) OE Capital Ventures, LLC (“OE Fund”) (collectively, the “Funds”).

5. There is good cause to believe that requiring notice to the Defendants of the Commission’s motion for this Order would result in immediate and irreparable injury, loss, or damage to the Commission.

6. There is good cause to believe that it is necessary to preserve and maintain the

business records of the Defendants from destruction.

7. There is good cause to believe that it is necessary to identify quickly all assets in the Defendants' possession or control.

8. This proceeding is one in which the Commission seeks a preliminary injunction.

9. The timing restrictions of Fed. R. Civ. P. 26(d) and (f), 30(a)(2)(C) and 34 do not apply to this proceeding in light of the Commission's requested relief and its demonstration of good cause.

10. Expedited discovery and alternative service of pleadings and other papers is appropriate to permit a prompt and fair hearing on the Commission's Motion for Preliminary Injunction.

THEREFORE:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are temporarily restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Temporary Restraining Order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are temporarily restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
 - (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Temporary Restraining Order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are temporarily restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Temporary Restraining Order by personal service or otherwise: (a)

Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

IV.

Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them—including the Funds—who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including, specifically, by advances on any line of credit and any charges on any credit card), or effecting any sale, gift, hypothecation or other disposition of any asset, pending provision of sufficient proof to the Court of sufficient funds or assets to satisfy all claims alleged in the Commission's Complaint, or the posting of a bond or surety sufficient to assure payment of any such claim. Further, any bank, trust company, broker-dealer, depository institution, entity, or individual holding accounts or assets for or on behalf of any of the Defendants—including accounts in the name of each of the Funds—shall make no transactions in assets or securities (excepting liquidating necessary as to wasting assets) and no disbursement of assets or securities (including extensions of credit, or advances on existing lines of credit), including the honor of any negotiable instrument (including, specifically, any check, draft, or cashier's check) purchased by or for the Defendants, unless otherwise ordered by this Court.

V.

The Commission may cause a copy of this Order to be served on any bank, trust company, broker-dealer, depository institution, entity, or individual either by United States mail, email, or facsimile as if such service were personal service, to restrain and enjoin any such institution, entity, or individual from disbursing assets, directly or indirectly, to or on behalf of Defendants, or any

companies or persons or entities under their control, including the Funds.

VI.

Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or any documents relating in any manner to the matters set forth in the Commission's Complaint, or the books and records of any entities under their control, unless otherwise ordered by this Court.

VII.

Each Defendant is ordered to provide an interim accounting, under oath, detailing (a) all monies and other benefits received, directly and indirectly, including on behalf of the Funds, as a result of the activities alleged in the Complaint, (b) all assets in the possession, custody, or control of the Defendant, including assets of the Funds, wherever they may be located and by whomever they may be held, and (c) all accounts that the Defendant owned, controlled, or possessed, including accounts of the Funds, during the period from January 1, 2015, through the date of the accounting.

VIII.

A. Any party may notice and conduct depositions upon oral examination and may request production of documents or other things for inspection and or copying from parties prior to the expiration of thirty (30) days after service of the Complaint on the Defendants.

B. All parties shall comply with the provisions of Rule 45 of the Federal Rules of Civil Procedure regarding issuance and service of subpoenas unless the person designated to provide testimony or to produce documents or things agrees to provide the testimony or to produce the documents or things without the issuance of a subpoena and/or to do so at a place other than one at

which testimony or production can be compelled.

C. Any party may notice and conduct depositions upon oral examination subject to minimum notice of 72 hours.

D. All parties shall produce for inspection and copying all documents and things that are requested within 72 hours of service of a written request for those documents and things.

E. All parties shall serve written responses to any other party's request for discovery. The Defendants' responses, and the interim accounting to be provided by Defendants, shall be sent to the Plaintiff Commission addressed as follows:

United States Securities and Exchange Commission
Fort Worth Regional Office
Attention: Timothy S. McCole
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
McColeT@SEC.gov
Facsimile: (817) 978-4927

The Plaintiff Commission's responses shall be sent to the other parties at such address(es) as may be designated by them in writing. Such delivery shall be made by the most expeditious means available, including by email and facsimile machine.

IX.

The United States Marshal in any district in which any Defendant resides, transacts business, or may be found, is hereby authorized and directed to make service of process at the request of the Commission. Furthermore, the Commission is permitted to effect service of all pleadings and other papers, including the Summons, the Complaint, and court orders, by facsimile, by overnight courier, or by mail upon Defendants their agents or their attorneys or by an alternative provision for service permitted by Rule 4 of the Federal Rules of Civil Procedure, or as this Court may direct by further order.

X.

The hearing on the Commission's motion for a preliminary injunction shall take place at 9 o'clock A.m. on February 27, 2017, in Judge Lindsey's Courtroom, 1100 Commerce St., Dallas, TX 75242 or at such other time or place as counsel may be heard, and that the Defendants, and each of them, shall serve any papers in opposition to the Commission's motion so as to be received no later than five days before the time established in this Order for a hearing on the motion. Service shall be made by fax to Timothy S. McCole, Trial Counsel, at fax number (817) 978-4927, and by overnight delivery of the papers to the Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, Texas, 76102, to the attention of Timothy S. McCole, Trial Counsel, or such other place and person as counsel for the Commission may direct in writing.

Dated: February 14, 2017, at 3:15 p.m.


UNITED STATES DISTRICT JUDGE