

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 3:17CV-420- L</b>
	)	
	)	
<b>PATRICK O. HOWARD;</b>	)	
<b>HOWARD CAPITAL HOLDINGS, LLC;</b>	)	
<b>AND OPTIMAL ECONOMICS CAPITAL</b>	)	
<b>PARTNERS, LLC,</b>	)	
	)	
<b>DEFENDANTS.</b>	)	

**RECEIVER’S INITIAL STATUS REPORT**

Pursuant to the *Order Appointing Receiver* (Dkt. 10), W. Craig Stokley, in his capacity as Receiver for Defendants Patrick O. Howard, Howard Capital Holdings, LLC and Optimal Economics Capital Partners, LLC, submits his Initial Status Report.

This Initial Status Report covers the period of time from inception of the receivership on February 14, 2017 through March 16, 2017 (the first thirty days).<sup>1</sup>

**I. CASE STATUS**

**A. INTRODUCTION**

Immediately upon appointment on February 14, 2017, the Receiver assumed control of Howard Capital Holdings, LLC (“Howard Capital”) and Optimal Economics Capital Partners, LLC (“OE Capital”) (collectively, the “Receivership Entities”). The Receiver also assumed control over the accounts and assets of Patrick O. Howard (“Howard”).

---

<sup>1</sup> Unless defined in the Initial Status Report, defined terms have the meaning assigned in the *Order Appointing Receiver*.

The Receivership Defendants solicited investor funds from approximately 119 investors over the period of approximately March 2015 through December 2016, raising approximately \$13,091,976 during that period. As of February 2017, investor funds received by the Receivership Defendants were deposited into the account of OE Capital Ventures, LLC (“OE Ventures”) and: (1) used to fund operations of the Receivership Defendants; (2) advanced to and expended on behalf of marketing and other activities for third-party companies referred to internally as “portfolio companies;” and (3) used to make equity investments into some of these portfolio companies. The respective rights and obligations between the Receivership Defendants and these portfolio companies vary and are described in more detail below. Generally, the Receivership Defendants entered into contracts with these portfolio companies that entitled the Receivership Defendants to receive a “royalty” interest in the gross receipts of the portfolio company in exchange the Receivership Defendants taking on various obligations including: (a) providing consulting services by employees of the Receivership Entities (referred to internally as “human capital”); (b) funding and coordinating marketing campaigns to promote the products developed by these portfolio companies; (c) funding inventory needs for the portfolio companies; and (d) in some cases, making equity investments into the portfolio companies, among other unique obligations.

Due to the unique nature of the relationships with each portfolio company, in order to maximize the value of the Receivership Estate for the benefit of the investors, it will be necessary to continue the existence of at least some of the Receivership Entities and related companies in order to accept periodic royalty revenue payments generated from these portfolio companies as well as the proceeds from any equity investments, sales of inventory owned directly by the Receivership Defendants, among other potential sources of revenue. The Receiver has engaged in

initial discussions with some of the portfolio companies to renegotiate the terms of these arrangements given the Receivership Defendants do not have the financial wherewithal to fund continued operations in support of these highly speculative investments. It should be noted that even if the Receivership Defendants did have funds sufficient to support these activities, the Receiver has concluded that it would not be prudent to spend investor funds in this highly speculative manner, which is inconsistent with representations that were made to investors when the Receivership Defendants sought these investment funds.

It appears that investors were provided account statements indicating insupportable values of their investments but were never provided K-1s as would be typical for a legitimate investment fund of this nature. As of the Receivership's date of inception, the Receivership Defendants could not pay the "minimum" quarterly distributions or meaningfully maintain the existing daily operations of the Receivership Entities without receipt and use of additional funds from new investors. As a result, the Receiver has determined that it is in the best interest of the Receivership Estate to discontinue operations and liquidate the Receivership Assets in a controlled manner over time to best maximum and preserve the value of the Receivership Estate for the benefit of the investors.

## **B. PROCEDURAL HISTORY**

The Securities and Exchange Commission ("SEC") filed this case as an emergency action on February 14, 2017. That same day, the Court entered the Order Appointing Receiver, appointing W. Craig Stokley as receiver over the estates of Defendants Howard, Howard Capital and OE Capital, and freezing the accounts of the Receivership Defendants. (Dkt. 9, 10). The *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* (Dkt. 9)

and *Order Appointing Receiver* (Dkt. 10) are referred to as the “Orders” throughout.

By its Complaint, the SEC alleged as follows:

1. Since February 2015, Howard Capital and OE Capital, which are owned and controlled by Howard, raised more than thirteen million dollars by selling securities in the form of membership units (“Units”) in three Texas limited liability companies: (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”). Howard operated each company as an investment fund. He offered and sold Units in the funds personally and through sales agents he employed at OE Capital. He also retained two other firms—C4 Benefits Group, Inc. (“C4 Benefits”), and Trajan Income, Inc. (“Trajan Income”)—paying them a 5% commission to sell the Units.

2. Howard used offering proceeds to fund a radio-advertising campaign to attract investors. The advertisements, along with numerous written offering materials, contained representations that investors would earn a 12% annual return at a minimum. The Funds purportedly generated this return over a three-year investment period by investing in third-party portfolio companies in exchange of a share of the companies’ revenue. Howard Capital, OE Capital, Howard, C4 Benefits, and Trajan Income and sales agents they employed offered and sold the Units in investment seminars, in personal meetings and by telephone and email.

3. In reality, the Receivership Defendants issued investors phony account statements showing returns, which in fact did not exist, and they disseminated written offering materials containing numerous untrue and misleading statements as to material facts, including the following:

a. That investors would receive a minimum return of 12%, paid quarterly. In

reality, quarterly cash payments to investors were mostly Ponzi payments—taken from other investors’ contributions.

- b. That the Funds achieved average growth of 20%. In reality, the Funds have earned just \$33,334 since inception, a growth rate of only 0.25%.
- c. That, for CFG II, “the Company is backing the minimum preferred yield and principal with insurance based assets.” In reality, CFG II never purchased any such insurance-based assets.
- d. That the OE Fund would pay no sales commissions. In reality, OE Fund paid at least \$175,000 in sales commissions.
- e. That Howard was a Registered Investment Adviser (“RIA”). In reality Howard was never an RIA.

4. Shortly after the first fund’s inception in early 2015, CFG I’s private-placement memorandum (“PPM”) represented that it would invest 89% of the offering proceeds in third-party companies. In reality, CFG I raised \$833,993, but it invested only \$50,000 in one portfolio company. Howard used the remaining proceeds to pay himself and expenses unrelated to CFG I’s stated objectives.

The Receiver reviewed the allegations by the SEC and the evidence presented. Based on the evidence presented by the SEC and his own independent analysis which included, among other things, interviews of Howard and OE Capital personnel, and review of agreements and records of OE Capital, the Receiver determined that there was no meaningful basis to contest liability, and it was in the best interest of the Investors and the Receivership Entities to agree to the SEC’s proposed interlocutory judgment and permanent injunction as opposed to incurring expenses in a futile effort to defend the case. Accordingly, the *Order* and *Final Judgment* were entered against

the Receivership Entities on March 7, 2017 (Dkt. 34 and 36, respectively).

### **C. INITIAL ACTION BY RECEIVER**

Upon appointment, it was the Receiver's objectives to: (a) first identify and preserve any and all assets of the Receivership Estate; (b) then identify any continuing financial obligations and make an assessment of those needs and discontinue incurring any new financial obligations that would not maximize the value of the Receivership Estate; (c) conduct an independent review of the SEC's application for permanent injunction, brief in support, and make a determination as to whether there was any basis to contest liability and, if so, whether spending Receivership Funds to do so would be in the best interest of the Receivership Estate; and (d) investigate the contractual arrangements with third-parties and options related to same.

During the first week of the Receivership, the Receiver took the following initial actions:

- (1) Immediately confirmed that all financial institutions known to hold any Receivership Assets were notified and the assets held with those institutions were frozen;
- (2) Once the financial institution holds were in place, took physical possession of the premises where the Receivership Defendants headquarters were located at 1700 Pacific Avenue in Dallas, Texas, by notifying building management of the Orders, and having the locks changed to the office and U.S. mail boxes;
- (3) Accompanied the process server hired by the SEC to serve the Orders and made introductions to the Receivership Defendants' staff;
- (4) Conducted initial interviews of Patrick Howard, Dovile Soblinskas, Tracy Alexander, and Cristina Cason – who comprise the Receivership Defendants' entire management team; and

- (5) Conducted meetings with and interviews of OE Capital employees to determine the scope, job responsibilities and daily job functions of the employees.

**D. PERSONNEL**

As of his appointment, the Receivership Entities employed sixteen employees and three interns. The employees were paid on February 14, 2017, for the period of February 1, 2017 through February 14, 2017, by OE Capital's payroll company, Paychex, Inc. ("Paychex"). Although Paychex made payment to the employees, the funds transfer initiated to Paychex from OE Capital was not ultimately transferred because of the order freezing those funds. Accordingly, Paychex requested reimbursement from the Receiver for the amounts Paychex had paid to OE Capital employees in the net amount of \$38,237.62 (which excludes state and federal taxes which were originally included in the original transfer in the total amount of \$51,642.87).

Paychex did not in fact pay those state and federal withholding taxes incurred for the February 14, 2017 pay period (which accounts for the difference between the \$51,642.87 originally attempted to be transferred and the amount of \$38,237.62 actually paid, with credit for amounts held by Paychex in escrow at the time). As a result, the Receiver made direct payment of tax obligations or those tax payments are pending for the period through February 14, 2017. The Receiver has paid federal unemployment in the amount of \$507.98. Upon confirmation of the amounts due by the Texas Workforce Commission, the Receiver anticipates paying Texas State unemployment in the amount of approximately \$1,761.16 and the Texas State surcharge in the amount of approximately \$67.73. Florida State unemployment taxes will be paid upon the filing of the April quarterly report with the Florida Secretary of State.

In addition, OE Capital was also incurring approximately \$18,388.76 per month for health insurance benefits through BlueCross BlueShield, and OE Capital was also paying premiums

associated with life insurance benefits for its management team. In order to immediately reduce expenses and avoid further expenditure of funds, the Receiver terminated the health plan and life insurance policies through the date paid of February 28, 2017. The reduction results in savings of approximately \$20,000 per month as of March 1, 2017. The Receivership Entities will not incur any new expenses associated with health insurance benefits after the inception of the Receivership.

Further, from February 15, 2017, through February 26, 2017, upon the Receiver's determination that the majority of OE Capital's personnel were not necessary based on the operations of OE Capital going forward, the Receiver terminated all of the employees of OE Capital except for Cristina Cason, Chief Financial Officer. Ms. Cason was retained as an independent contractor beginning on February 15, 2017. As of February 28, 2017, Ms. Cason's compensation was reduced to one-half of her previous pay, and her engagement was as a part-time contractor providing 20-25 hours of work per week.

The three interns were not paid through payroll. Instead, they were paid \$500.00 per month by check from OE Capital. The three interns were terminated as of February 14, 2017, and paid their final pay of \$500.00 each, as reflected in and approved by the Court in its Order dated March 2, 2017 (Dkt. 26).

Upon their termination, the Receiver took possession of the employees' laptops and all records and files of the Receivership Entities in their possession. The employees were given access to the OE Capital space to retrieve personal belongings and completed an inventory and provided a sworn statement for any items removed by which they confirmed that the items were their personal property and not part of the Receivership Estate. Howard has not been provided access to retrieve any personal items as of this date, but the Receiver intends to provide him supervised access to remove his personal items for which the Receiver has determined that there is no value.



In summary, on a monthly basis, the Receivership Entities were incurring approximately \$121,674.50 per month on employee wages and health benefits. The Receiver has reduced employee wages, taxes, and associated benefits incurred by OE Capital from more than \$121,674.50 per pay month to \$2,333.34 per pay period as of the date of this Initial Status Report.

#### **E. PHYSICAL ASSETS**

As described above, the Receiver took possession of the employees' laptops. The employees were given access to the OE Capital space to retrieve personal belongings and completed an inventory and provided a sworn statement for any items removed by which they confirmed that the items were their personal property and not part of the Receivership Estate.

Howard currently has some personal effects in the office that the Receiver has concluded have no tangible value to the Receivership Estate. Once Mr. Howard removes these personal effects, the Receiver intends to liquidate the remaining assets contained in the office which generally consist of a refrigerator, printer, office furniture, wall decorations and a dry-erase board. The Receiver contacted three potential liquidators to obtain bids. Only one liquidator had interest in the assets and offered to pay the Receivership Estate the amount of \$1,500.00 for all of the items in the office as well as provide all of the moving services to entirely vacate the office space. The Receiver intends to move forward to liquidate the remaining items in OE Capital's office and then deliver possession of the leased premises to the landlord as soon as possible.

In addition, on Wednesday, February 15, 2017, the Receiver conducted a physical inspection of Patrick Howard's apartment. Howard, along with his counsel, provided a tour of the apartment and explanation of the assets contained within the apartment. The apartment had furnishings and other typical household items. The Receiver took possession of several designer wrist watches which are being held in a safety deposit box in the name of the Receiver.

## **F. OPERATIONS**

The Receiver has investigated the investments made by the Receivership Entities and determined that the Receivership Entities cannot fund their current operations without infusion of additional investor capital. As a result, the Receiver, after careful examination of each of the businesses in which the Receivership Entities were engaged, has discontinued all future funding and marketing activities of the Receivership Entities. As described above, the personnel engaged by the Receivership are no longer essential to the operations, and the Receiver is in the process of liquidating the assets of OE Capital, which primarily consists of payments due from the portfolio companies described below.

### **i. TU- PERFORM, LLC**

TU-Perform, LLC (“TU”) is a Florida limited liability company, with its principal place of business listed as 2100 East Bay Drive, Suite 13, Largo, Florida 33771. TU’s website indicates that it “was founded in an effort to improve the exercise experience at any level, enhancing workouts to help people achieve their fitness goals.” TU sells the TU™ FLO bottles, which it claims are “ergonomically designed to work with the body’s natural mechanical movement and promote balance both while running or walking.” See <https://www.tuperform.com/>.

According to the Florida Secretary of State, TU was created on April 12, 2016, with Patrick Howard and Cristina Cason as its managers. The Articles of Organization do not identify the members of TU, but the mailing address is listed as that of OE Capital, at 1700 Pacific, Suite 3680, Dallas, Texas.

The Receivership Entities used investor funds to purchase inventory for sale by TU – the TU™ FLO bottles. Specifically, OE Capital paid for approximately 50,000 TU™ FLO bottles which were purchased directly by OE Capital. Approximately 35,000 of the bottles were stored

in a warehouse in Florida by OE Capital, which is incurring \$1,620.00 per month in storage fees to Galaxy Global Logistics LLC (“Galaxy”) pursuant to a Warehouse Service Agreement dated September 13, 2016. At the time of institution of the receivership, storage and other fees had never been paid by OE Capital, and Galaxy currently claimed past due storage and related fees in the amount of \$8,465.40 as of March 7, 2017.

In addition to the 35,000 TU™ FLO bottles in storage, the Receiver has received information that an additional 15,000 of the TU™ FLO bottles are being held by a third-party. The Receiver is currently in the process of seeking a buyer for the TU™ FLO bottles so that the Receivership Estate can receive the revenue from the bottles and discontinue fees related to storage. Although Howard indicated that OE Capital had engaged a representative to engage Sam’s’ Club related to the possible purchase of the TU™ FLO bottles, the Receiver confirmed that Sam’s Club is not interested in purchasing the TU™ FLO bottles.

As of the date of this Report, the Receiver has not located a buyer. However, the Receiver intends to engage a broker to assist in sale of the TU™ FLO bottles.

**ii. WHRZT!, INC.**

WHRZT!, Inc. is a Texas corporation, located at 2418 Marsh Lane, Carrollton, Texas 75006, which provides GPS tracking devices primarily for vehicles and trailers. James (Jim) Nalley is CEO of WHRZT! WHRZT! states on its website that it has “designed a family of GPS tracking devices built to be hidden in plain sight on utility, box, gooseneck, livestock, and recreational trailers. The easy-to-install device is accompanied by an even easier to navigate tracking portal. Receive a text and/or email notification if your trailer begins to move or if a Geo Fence boundary is breached.”

OE Capital advanced WHRZT! two-million dollars from 2015 through February 2016.

The last advance was a “bridge loan” in the amount of \$150,000.00 pursuant to a Memorandum of Understanding between WHRZT! and OE Capital dated January 24, 2017. In exchange, WHRZT! was required to pay 10% of net revenue to OE Capital. At the time of the inception of the Receivership, WHRZT! was approximately \$160,000.00 behind in revenue payments and was seeking an equity contribution of \$3.5M from a third-party group. The Receiver has had discussions with Jim Nalley, CEO of WHRZT!, about repayment of amounts advanced and exchange of existing debt for equity in WHRZT!. Those discussions are ongoing and dependent on the status of the pending funds being advanced to WHRZT!

**iii. UNEQUAL TECHNOLOGIES COMPANY, INC.**

Unequal Technologies Company, Inc. (“Unequal”) is a Pennsylvania corporation located at 10 LaCrue Ave, Glen Mills, Pennsylvania, 19342, with Kyle Cunningham as its principal. Unequal® states that it makes “tested battlefield body armor that uses cutting edge materials like Kevlar®, Accelaron® and Tridur™ to disperse impact to the head and body,” effectively reducing concussions and head injuries.

OE Capital and Unequal entered into a Marketing and Ancillary Support Agreement effective July 1, 2016, by which OE Capital agreed to provide certain marketing services and advance capital to Unequal. OE Capital made equity investments of \$500,000.00 in Unequal in April 2016, and an additional \$500,000.00 investment in May of 2016. OE Capital also paid approximately two million dollars in marketing for Unequal, which appears to be the maximum amount of support to be provided pursuant to the Agreement. Related to such marketing, OE Capital directly paid approximately \$700,000.00 to an ad agency, \$400,000.00 for video production, \$75,000.00 for technical video and \$50,000.00 for video assets. OE Capital also advanced approximately \$415,000.00 to Optimedia. OE Capital advised the Receiver that

Optimedia has \$157,000.00 remaining in funds of OE Capital, which have not been spent to date. Accordingly, the Receiver has made demand for return of those funds. However, those funds have not been returned as of the date of this Report.

In exchange for funding and marketing, OE received 666,667 shares of Unequal (a \$1.50/share price) with a 2-1 preferred return on May 20, 2016, and the July 1, 2016 agreement by Unequal to pay royalties of 10% of the pre-net revenues of the company, excluding military sales, licensed sales, wholesales, dealer sales, and 5% of the pre-net revenues of the company resulting from wholesale and dealer sales.

**iv. OE WELLNESS, LLC**

OE Capital also advanced approximately \$325,000.00 related to selling services performed by MeMD, Inc. MEMD, Inc. asserted that it developed a system that permits the delivery of personalized medical services by phone and over the Internet (the “MeMD-branded Product”). After advancing the funds, OE Capital determined that the company responsible for daily operations – Ducourt Consulting, Inc. dba RivaCare (“Ducourt”) – was not able to perform. As a result, OE Capital acquired 69% of the stock of Ducourt and took over operations. The operations were then transferred to a newly-formed Texas limited liability company called OE Wellness, LLC, which was created by the Receivership Defendants on February 7, 2017.

OE Wellness has its office listed as 1700 Pacific Avenue, Suite 3680 – the offices of OE Capital. According to the Texas Secretary of State, the managers of OE Wellness are Howard, Tracy Alexander, Cristina Cason and Doville Soblinskas.

At inception of the Receivership, OE Wellness was in discussions to provide marketing and administrative services to employer groups, brokers and related organizations. However, the pending agreement had not been signed as of that date. The Receiver determined that meeting the

obligations under the proposed agreement would require expansion of the operations of OE Wellness, and that no funds outside of investor funds, were available to fund such operations. As a result, the Receiver directed that the Receivership Defendants and OE Wellness personnel not sign the agreement. In direct violation of the Receiver's directive, Tracy Alexander, at the direction of Howard, signed the agreement on February 16, 2017. The Receiver is in the process of terminating the agreements and the operations of OE Wellness.

**G. CASH AND CASH EQUIVALENTS**

As of March 16, 2017, the Receivership Estate had cash on hand of \$492,853.67. The Receivership Estate captured, on February 14, 2017, those funds frozen from the accounts of the Receivership Defendants, in the amount of \$553,035.67. The Receiver actually received \$552,632.48 of the funds frozen, which reflects offsets by Chase described above and the addition of accrued interest.

During the Report Period, the Receivership Estate received no additional funds and disbursed \$59,778.81, as evidenced by the accounting statement attached as **Exhibit A**. Aside from small payments for administrative expenses (e.g., unemployment taxes and subscription fees), the disbursements by the estate related primarily to personnel, with the majority of the funds going to Paychex to pay for payroll funded by Paychex for the period through February 14, 2017.

To date, the Receivership Estate has accrued administrative expenses to the following vendors and Retained Professionals: Howard LLP and Jasmine DiLucci related to tax and accounting; Net Vida related to the receivership website and investor communications; and the Receiver's fees and fees of the Receiver's counsel, Palter Stokley Sims PLLC.

The Receiver anticipates that the Receivership Estate will need to accrue amounts for federal and state payroll taxes relating to the first quarter of 2017. Although the Receiver

terminated all employees as of February 14, 2017, the employees had been paid earlier in the quarter. The Receiver's accountants are in the process of preparing final payroll tax returns.

In addition, the Estate will be required to file amended and corrected 2015 tax returns, as well as 2016 returns. The Receivership Entities and Funds have filed extensions for 2016 tax deadlines as of the date of this Report.

#### **H. CREDITOR'S CLAIMS**

In most instances, the Receiverships Defendants were behind on their financial obligations. By way of example, as described above, OE Capital had never paid for storage of the TU<sup>TM</sup> FLO bottles, for which the warehouse claims \$8,465.40 currently past due.

In addition, the Receivership Defendants had not paid their outside accountants, Jasmine DiLucci/Masters of Taxation, Inc., at least \$6,754.04, a portion of which is over 90 days past due. Jasmine DiLucci/Masters of Taxation, Inc. ("Masters"), is continuing to assist the Receiver by addressing a pending 941 tax issue that was already in progress at inception of the Receivership and by assisting the Receiver's tax professionals. As a result, the Receiver has requested Masters to provide a 50% discount of their past due invoice and agreement to resolve the pending 941 tax issue on behalf of the Receiver. Masters has agreed, and the Receiver intends to pay \$3,377.02 to Masters, as well as any costs incurred in connection with resolving the 941 tax issue.

In summary, the Receivership Defendants were generally paying at least 60 days late on account payables and incurring credit card debt for recurring monthly expenses. As of this date, the Receiver understands that OE Capital has incurred at least \$20,000 of credit card charges which remain outstanding.

In addition, OE Capital's lease remains in place. The Receiver has sought to terminate the

lease by agreement with the landlord, Lincoln Property Management. As of this date, the Receiver has offered to pay rent through March 31, 2017, and forfeit the deposit, which represents one additional month of rent. These discussions are ongoing, but as of this date, the lease continues through 2018.

The Receiver and his team have identified numerous other potential claims against the Receivership Estate. At this point, the Receiver has not determined the validity of any particular claim. For example, the Receiver has questions about the validity and priority of certain debt. Similarly, the Receiver does not know whether equity investors who purchased prior to February 14, 2017, should be considered creditors or merely equity holders.

## **I. INVESTOR COMMUNICATIONS**

The Receiver has been contacted by at least two investors regarding the Receivership (not including employees who may have invested or have contacted the Receiver on behalf of investors). During both of these conversations, the investors advised the Receiver that it was their understanding that the investments were backed by real estate holdings and insurance, there was a minimum 3% quarterly distribution, and that they would be entitled to a return of their investment after 3 years. They were not aware of the truth regarding the financial affairs of the Receivership Estate. The Receiver intends to set up an informational website and to send written communication to the investors directing them to that website as well as providing additional information. Specifically, the Receiver has engaged Net Vida to create an informational website for investors. The Receiver also anticipates using the website to allow investors to make inquiries and/or claims through a claims process.



## **J. NOTICE OF VIOLATIONS OF ORDERS**

The Receivership Order provides that the Receiver shall “promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.” See *Order Appointing Receiver*, ¶ 31. Pursuant to his duties, the Receiver provides the following notice:

### **i. Patrick Howard**

As documented in the attached **Exhibit B**, Patrick Howard did the following in violation of the Orders:

1. On February 14, 2017, the Receiver assumed control of the Receivership Entities. Since that date, Howard, after notice and service of the Orders, took action on behalf of OE Capital. Specifically, Mr. Howard directed an employee of OE Capital to execute a contract on February 17, 2017, three days after the Orders were entered, both in violation of the Order and contrary to the express directive of the Receiver.

2. Howard continued to make false representations to employees with the apparent intent that the communications be transmitted to investors. The representations included Howard’s statement that the SEC admits that it moved too fast and/or was wrong in its allegations against Defendants; that agreement was made that Howard would pay a fine and then take back control of the investment funds at issue; and that the investors will get all of their money back. Each of the representations is in contrast to the prohibitions in the Orders.

3. The Order Appointing Receiver requires that within 10 days of the entry of the Order, the Receivership Defendants shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys,

accountants and any other agents or contractors of the Receivership Defendants; and (c) the names, addresses and amounts of claims of all known creditors of the Receivership Defendants. This information was due by Howard to the Receiver on Friday, February 24, 2017, but was not received. As a result, the Receiver requested that the information be provided no later than March 1, 2017, but only partial information was received in response.

4. The Receiver also gave notice that the Receiver intended to terminate the lease for Howard's leased vehicle effective as of February 28, 2017, and requested that Mr. Howard provide a copy of the lease, which obligates OE Capital to make the monthly lease payments. Specifically, during the Receiver's initial meeting with Howard, the Receiver learned that OE Capital leased a vehicle for Howard. Howard originally stated that the monthly lease amount was \$1,500.00 per month; however, the Receiver learned later that the monthly lease amount was actually \$1,705.16 per month and that the lease payment had not been made for February 2017. The Receiver advised Howard that he must return the leased vehicle or contract with a third-party to take over the lease such that the Receivership Defendants no longer have any liability for the lease. Howard did not return the leased vehicle and instead stated that since he was personally on the lease he would continue to make those payments.

Aside from violation of the Receiver's directive, this begs the question – where is Howard going to get the funds to make these payments? Given that Howard's assets are subject to the Receivership, it is implausible that the leasing company will release OE Capital from its obligations on the vehicle lease. Accordingly, the Receiver made oral demand upon Howard's counsel, on Thursday, March 2, 2017, that Howard cooperate with the Receiver to have the leased vehicle returned. Howard has not complied. It is anticipated that in the event Mr. Howard fails to promptly return the vehicle to the dealership (with involvement of the Receiver), or to the Receiver

such that the Receiver can return the vehicle to the dealership, the Receiver will seek sanctions from the Court and request that the Court hold Howard in contempt until he turns over the newly leased 2017 BMW 7-Series vehicle.

**ii. Tracy Alexander**

In addition, as documented in Exhibit C, Tracy Alexander signed the agreement referenced above, in violation of the Orders and the Receiver's express instructions on two occasions that she should only communicate to third-parties that they should contact the Receiver regarding their inquiries or say nothing in response to their communications.

**iii. JP Morgan Chase Bank**

Further, JP Morgan Chase Bank ("Chase") was the financial institution holding some of the Receivership funds. Those accounts were immediately frozen on February 14, 2017. However, in direct violation of Section IV of the *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* (Dkt. 9), and paragraphs 3 and 17 of the *Order Appointing Receiver* (Dkt. 10), Chase continued to charge insufficient funds fees for automatic ACH withdrawal requests because the funds were frozen. The total amount taken from the Receivership accounts is \$409.00. Upon request, Chase has failed to credit these amounts to date. However, the accounts have now been closed and no continued charges should be incurred.

**iv. Third Parties**

Finally, as described above, Unequal and WHRZT! have not made payments to the Receiver which are past due based on their agreements with the Receivership Defendants. In addition, the third-party holding the 15,000 TU™ FLO bottles has not transferred the TU™ FLO bottles to the Estate. Finally, despite demand, Optimedia has failed to return the amount of

\$157,000 in its possession.

## **K. TAX MATTERS**

The Receiver conducted an investigation into the taxes that have been filed to date for the Receivership Entities. Based upon interviews with Masters as well as employees of the Receivership Entities, it does not appear that Masters was provided sufficient information to accurately reflect reality in the tax returns. By way of example, Masters was not aware of the fund structures sufficient for them to make a determination that a partnership return was required with K-1s to investors as opposed to issuing 1099s.

With the Court's approval, the Receiver retained Howard LLP to assist with filing the appropriate amended tax returns and tax returns for 2016. The Receiver has filed extensions for the following entities for 2016 returns: Howard Capital, OE Capital and the Funds. It is anticipated that amended tax returns will be filed for 2015, and K-1s will be issued to all investors that will reflect a loss. However, the Receiver is continuing to consider the appropriate way to remedy these issues.

## **II. CONCLUSION**

This Initial Report is for the period since inception of the Receivership on February 14, 2017 through March 16, 2017. The Receiver anticipates filing an additional date following the closing of the first quarter with additional information about action that has been taken by the Receiver through March 31, 2017, and then similar reports on a quarterly basis thereafter.

Respectfully submitted,

/s/ W. Craig Stokley

---

**W. CRAIG STOKLEY**

State Bar No. 24051392

cstokley@palterlaw.com

**KIMBERLY M. J. SIMS**

State Bar No. 24046167

ksims@palterlaw.com

**PALTER STOKLEY SIMS PLLC**

8115 Preston Road, Suite 600

Dallas, Texas 75225-8009

Tel: 214-888-3106

Fax: 214-888-3109

**ATTORNEYS FOR RECEIVER**

**CERTIFICATE OF SERVICE**

On March 16, 2017, I electronically filed the Receiver's Initial Status Report via the Court's CM/ECF filing system, which will send a notice of electronic filing to all CM/ECF participants. I further certify that I served a true and correct copy of the foregoing document and the notice of electronic filing via UPS and electronic mail on all non-CM/ECF parties and/or their counsel.

/s/ W. Craig Stokley

---

**W. CRAIG STOKLEY**