

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

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

RECEIVER'S BRIEF IN SUPPORT OF MOTION TO SHOW CAUSE

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RECEIVER’S BRIEF IN SUPPORT OF MOTION TO SHOW CAUSE

Receiver W. Craig Stokley (“Receiver”) respectfully files this Brief in Support his Motion to Show Cause (the “Motion”), requesting that the Court order Patrick O. Howard (“Howard”), Dovile Soblinskas (“Soblinskas”), Ron Scherer (“Scherer”), and Christine Horne (“Horne”) (collectively “Respondents”) to show cause as to why they should not be held in civil contempt for violating the Court’s February 14, 2017 Order Appointing Receiver (Dkt. No. 10) (the “Order”) and, in support, would respectfully show the Court as follows:

I. Summary of Motion

This is a securities fraud case where judgment has been entered against Defendants. Respondents are Defendants’ former employees¹ who carried out the securities fraud by making false and misleading statements to investors in connection with seeking their investment. The Court placed Defendants into receivership on February 14, 2017 by entering

¹ Howard is also a Defendant.

its Order (Dkt. No. 10). An agreed judgment was entered shortly thereafter.

On April 8, 2017, Respondents began engaging, and continue to engage, in a new series of egregious acts to defraud the same victims Respondents perpetrated their fraud against in the underlying case. In summary, Respondents sent emails, text messages, set up conference calls, and sent voicemails pretending to be fellow legitimate investors (and not perpetrators of the fraud against these victims) in an effort to raise money from these victims to pay for a legal team who would advance Respondents' personal interests under the guise of a legitimate investor group. The amount of fraudulent content dispensed by Respondents since April 8, 2017 is incredible, has interfered with the Receivership, was sent against the direct instructions of the Receiver, and demonstrates a conscious disregard for the Court's Order. By way of illustration, Respondents communicated to these victims (representing that they were similarly situated legitimate investors and not the perpetrators of the fraud) that the Ponzi Scheme was just a "clerical error" that "can easily be remedied," that the Receiver "is happy with getting 5% of our money back," and legal documents show the SEC "cleared OE Capital Partners of all fraud charges and any accusations that OE Capital Partners was a Ponzi scheme" – all outright false statements. What is most egregious is that these communications purport to come from fellow investors when they were organized by the perpetrators of the fraud.

After getting many of these legitimate investors upset with the United States Securities and Exchange Commission (the "SEC"), the Receiver, and even the Court, Respondents asked each legitimate investor "for a pledge of \$500 to cover legal fees" and explained that "the attorneys will meet with 2-3 investors to ease communication in order to keep legal costs as low as possible." These "2-3 investors" were really the perpetrators of the fraud who, by their own admissions, intended to use this group to advance their own personal objectives.

The damage Respondents have caused to the Receivership since April 8, 2017, cannot be undone. However, the relief sought by this Motion will hold Respondents accountable for their actions, is aimed at making Respondents pay for the harm these actions have caused the Receivership Estate, will communicate to the investors the truth about this fake “investor group”, and hopefully will deter future conduct of this nature.

II. Factual Background²

A. Summary of The SEC Complaint

On February 14, 2017, the SEC filed its Complaint against Howard, Howard Capital Holdings, LLC (“HCH”), and Optimal Economics Capital Partners, LLC (“OE Capital”) (collectively, “Defendants”), alleging two Fraud claims and a Securities Registration claim (violations of Section 5(a), 5(c), 10(b) and 17(a) of the Securities Act) (hereinafter, the “SEC Complaint”). The SEC Complaint states, in part:

3. [T]he Defendants have perpetrated an egregious fraud on the Funds’ investors. They have misappropriated and misapplied offering proceeds. They have issued investors phony account statements showing returns, which in fact did not exist. And they have disseminated written offering materials containing numerous untrue and misleading statements as to material facts, including the following:

- 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.
- 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%.
- 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.
- That OE Fund would pay no sales commissions. In reality, OE Fund paid at least \$175,000 in sales commissions.

² This Motion and Brief are supported by the affidavit testimony, documents, and evidence that are set forth in the Receiver’s Appendix in Support of Motion to Show Cause (the “Appendix”), which is filed concurrently herewith, and incorporated as if fully set forth herein. Specifically, the Appendix contains the Affidavit of W. Craig Stokley (the “Stokley Aff.”), with accompanying exhibits, and the Affidavit of Andrea Venezia (the “Venezio Aff.”) with accompanying exhibits. Hereinafter, references to the documents contained in the Appendix will begin as “App.”, immediately followed by its pin citation.

- That Howard was a Registered Investment Adviser (“RIA”). In reality Howard was never an RIA.

The above conduct is hereinafter referred to as “the Fraud Scheme.”

B. Dovile Soblinskas’ Involvement In The Fraud Scheme

The SEC also submitted a brief and appendix containing evidence in support of its application. (Dkt. 6, 8). This evidence demonstrates that the Receivership Entities’ Director of Business Development – Soblinskas – played a primary role in the Fraud Scheme. She made numerous false and misleading statements to victims of the Fraud Scheme. By way of example, the SEC’s evidence contains the transcript of an undercover investigator’s conversations with Soblinskas where she made false statements about the returns the Funds have achieved. Specifically, Soblinskas stated: “We contract a 12 percent return. So, that is a minimum return on your investment annually” (Dkt. 8 at App. 0910.c), and “this year, currently the growth rate is at about a 16.4 return” (*Id.* App. 0910.d). The truth is that these funds that had raised in excess of \$12 million dollars only generated \$33,334 in revenue and most of the principle was depleted. By way of further example, Soblinskas also approved the following radio advertisement for the fund:

For over a year now you have been hearing me talk about my guys at C4 Benefits Group. How they can help you with pretty much any financial or insurance situation, how they never charge for their service, and how they teach their clients to retire early without paying taxes. After sitting down with Jackson from C4 a few weeks ago, my mind has been completely blown. C4 now has the ability to get you and your financial future into the adult pool. No more kid toys like mutual funds or 401k’s. What if your money could make a minimum of 12% a year. Yes you heard me correctly, **the worse your account can do is make 12%** oh, and it can go up from there. Do I have your attention now? Quit tinkering around with kids cd’s and investments, let C4 Benefits Group promote your future to the big dinner table with the adults. Give them a call right now . . .

Id. at App. 0799. Soblinskas’ response was “everything looks great with the scripts . . .” *Id.* App. 0798. Moreover, the SEC’s evidence demonstrates that the marketing materials are replete with false and misleading statements. (Dkt. 8). As the Director of Business Development, Soblinskas

was responsible for the representations made in those materials.

C. Order Appointing Receiver

On February 14, 2017, the Court entered its Order Appointing Receiver (the “Order”) (Dkt. 10), and Ex Parte Order Granting Temporary Restraining Order, Asset Freeze, and Other Emergency and Ancillary Relief (“TRO”) (Dkt. 12), dismissing all trustees, directors, officers, managers, employees, investment advisors, accountants, attorney and other agents of the Receivership Defendants. The Order further stated that such persons and entities were to have no power or authority with respect to the Defendants’ operations, assets, etc.

Under the sub-heading “Injunction against Interference with Receiver,” the Order further entered an injunction against Interference with the Receiver as follows:

29. The Receivership Defendants and **all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:**

- A. Interfere with the Receiver’s efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachments, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. **Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties**, such prohibited actions include but are not limited to, concealing, destroying, or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement, or other agreement executed by any Receivership Defendant or which

otherwise affects any Receivership Property; or

- D. **Interfere with or harass the Receiver**, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate.

30. The Receivership Defendants shall cooperate with and assist the Receiver in the performance of his duties.

See Order ¶¶ 29, 30 (emphasis added) (“Injunction Against Interference with Receiver”).

D. Initial Actions By Receiver

The activities undertaken by the Receiver during the first thirty (30) days are set forth in the Receiver’s Initial Status Report. *See* Dkt. 40. The Receiver determined that no further business development would be appropriate and terminated all employees involved in business development. The Receiver served a copy of the Order on each of those employees along with termination letters. *See* Stokley Aff., ¶ 2 [App. 23] (**Exs. B-1 - B-4**) [App. 31-38]. On February 14, 2017, the Receiver provided a hard copy of the Order to Soblinskas on the day it was entered. *See id.* at ¶ 3 [App. 24]. Howard was served with the Order on February 22, 2017. Dkt. 24. The Receiver also spoke to Soblinskas and Horne on March 21, 2017, about the Order and advised them that making false statements to investors would be interfering with the Receiver in violation of the Order. *See id.* at ¶ 3 [App. 24]. Further, on April 11, 2017, the Receiver provided a Notice of Violation of the Order to Soblinskas, Howard, Horne, and Scherer. *See id.* at ¶ 12 [App. 27].

E. Involvement Of Former Employees Implicated By This Motion

On the day that the Court entered the Order, the Receivership Entities employed approximately fifteen (15) people. *See id.* at ¶ 4 [App. 24]. Howard was in charge and Soblinskas was the Director of Business Development. Scherer and Horne raised substantial amounts of money from investors in connection with the Fraud Scheme. Each was credited with raising the following amounts from investors (“OE Investors”) – the victims of the Fraud Scheme:

Former Employee	Amount Raised Through Scheme
Ron Scherer	\$4,224,345
Christine Horne	\$1,491,500
Patrick Howard	\$1,127,164
Dovile Soblinskas ³	\$706,500

F. Judgment Entered Against Defendants

Howard did not contest liability and judgment was entered against him as to liability on the SEC claims. Dkt. No. 35. The same is true for the other defendants. Dkt. Nos. 36, 37.

III. Facts Giving Rise To Contempt

A. March 21, 2017 Meeting

On March 21, 2017, Soblinskas and Horne attended a meeting with the Receiver at the Receiver's office. Stokley Aff., ¶ 6 [App. 25] During that meeting, the Receiver informed them that he was looking into tax information that needed to be sent to the investors and working on setting up a website to facilitate communications with the investors. *Id* [App. 25]. The Receiver advised them that his communication to the investors likely would be sent during the week of April 10-14 because the Receiver wanted to get information to them before the tax deadline. *Id* [App. 25]. Horne expressed some concern about what the communication to the investors would say because she wanted to protect her reputation. *Id* [App. 25]. She asked if the Receiver would work with her so that the communication would not harm her reputation with her clients – the victims of the Fraud Scheme. *Id* [App. 25]. The Receiver was perplexed by Horne's request and informed her that not only would it be entirely inappropriate for the Receiver to craft a communication to

³ With the exception of Howard, Soblinskas was director of all other employees who raised money under the Fraud Scheme.

the investors in this manner, it would directly violate the Order. *Id* [App. 25]. The Receiver sternly admonished Horne that she was not authorized to send any communications that were not truthful to any investors and that any truthful communication related to the Receivership or Fraud Scheme had very little chance of not harming her reputation with her investment client. *Id* [App. 25]. Soblinskas was likewise admonished that any untruthful communications with the investors would be in direct violation of the Order. *Id* [App. 25].

After the meeting, the Receiver proceeded with his duties as stated in the meeting that included: (a) creating a website that went live on or around March 27, 2017; (b) confirming with the accounting consultants that extensions were filed for the 2016 tax returns and that the Form K-1s showing a substantial loss would need to be issued for 2016 as well as an amendment for 2015 that would include issuing Form K-1s to investors; (c) identifying and preparing an investor email distribution list; and (d) drafting correspondence to the investors to be sent. *Id.* ¶ 7 [App. 25].

B. April 8, 2017 Email Preempting The Receiver’s Official Communication

On Saturday, April 8, 2017 – the weekend preceding the week the Receiver informed Soblinskas and Horne he intended to send information to the investors – Soblinskas and Horne, among others, were responsible for sending a mass email to the investors (whom they defrauded in connection with the Fraud Scheme) from the following anonymous email address:

occapitalpartnersinvestors@gmail.com

Exhibits A-1; B-5 [App. 4-8; App. 39-44]. The six-page email is false and misleading on its face.

The April 8, 2017 email was organized and sent by Soblinskas. The email opens by stating “We are reaching out to you as a fellow investor in OE Capital Partners” and the entire email is written in a way to convey to the recipient that the writer is a similarly situated investor like them – not the very people who had defrauded them in connection with their investment. Soblinskas was behind the anonymous email. Shortly after the email was sent, Andrea Venezia – a legitimate

investor and victim of the Fraud Scheme – forwarded the April 8, 2017 Email to the Receiver as well as a text message exchange between herself and Howard. Stokley Aff. ¶ 9 [App. 26]. It states:

Ms. Venezia: Hey U! Haven't heard from you in forever & I got this email today that was odd...

Patrick Howard: Yeah....that's why...investors are mobilizing to get receiver removed, so I had to be absent until now because obviously that would be good for me...but haven't forgotten about you...putting my plans together...you up for a drink this week?

Ms. Venezia: Ahh... I'm always up for a drink ;)

Patrick Howard: Cool... let me know when

Ms. Venezia: So, the email is from you? Or what's happening w all this

Patrick Howard: No... **Dovile is organizing it all**, but it's from a group of investors... **I told Dovile to include you in the initial group, but it moved so fast that she didn't get a chance to**

Ms. Venezia: Ahhh I see

Patrick Howard: Cool

Ms. Venezia: U free the whole week?

Patrick Howard: Yep

Ms. Venezia: Cool. I'll let you know Should I call Dovile to see what's up w/ the email? Or what do I need to do?

Patrick Howard: I think **there is a email or number on that letter...reply to that and she'll get back with you**

Ms. Venezia: Ok Cool.

Exhibit A-7 (emphasis added) [App. 19-22]. Howard's statements in the message demonstrate that: (1) Soblinskas organized the email ("Dovile is organizing it all" and "reply to that [email] and she'll [referring to Dovile] get back with you"); and that (2) Howard was involved ("I told Dovile to include you in the initial group"; "there is an email or number on that letter"; and "I had

to be absent until now because that [removing the receiver] would be good for me”).

On April 13, 2017, Soblinskas sent her own text message to Andrea Venezia removing any doubt about her connection to this anonymous email address:

Soblinskas: Events are moving forward . . . give me a call back or let me know to oeccapitalpartnersinvestors@gmail.com

Exhibit. A-5 [App. 17].

The amount of false information contained in the email is incredible. Some of the more egregious false or misleading statements (in the context that they are coming from former employees and perpetrators of the Fraud Scheme rather than fellow legitimate investors) are:

Misleading Statement	Reasons It is Misleading
OE Capital Partners has been working and cooperating with the SEC for over a year to be transparent about their business practices and investments.	Howard made countless false statements to the SEC including that the investments were backed by insurance contracts, among many others. The statement is inconsistent with something an investor would have knowledge about.
Due to the nontraditional revenue based financing model, communication error, and some formation document inconsistencies and incorrect disclosures the SEC’s receiver has decided to take action to shut down OE Capital Partners.	The Receiver did not shut down OE Capital. The Receiver discontinued all fraudulent fund raising efforts, terminated all unnecessary employees, and is keeping OE Capital in place to receive any proceeds from investments that may exist. Any decisions by the Receiver were not based upon communication error, formation document inconsistencies, incorrect disclosures, or the financing model. This statement glosses over the real facts – that this was a Fraud Scheme.
OE has been charged with certain violations of the law, and with not being fully compliant in their original PPM (private placement memorandum). OE is also charged with statement fraud, which refers to noncompliant disclosures, that the SEC views, make us the investors perceive information in a fraudulent way.	The charges are securities fraud. The investors were defrauded. This entire statement is misleading. The statement is written from an investor’s perspective when it was really written and organized by the employees responsible for the fraud.
The OE Capital team has become fully aware of mistakes in the reporting	The Fraud Scheme was not a clerical error.

<p>materials. However, this is a clerical error, and while it cannot be remedied for past reports, can easily be remedied for all future reports.</p>	<p>The Fraud Scheme cannot be remedied for all future reports because for OE Capital to pay these investors what they are owed, they would have to make Ponzi payments, among countless other reasons.</p>
<p>The SEC . . . is liquidating the investment fund.</p>	<p>The SEC is not doing anything with the fund. The Receiver is taking action to maximize the value of the Receivership Estate including selling inventory, or keeping the Receivership open to allow existing contracts to run their course or renegotiate those contracts (with Court approval) in a favorable way for the Receivership Estate.</p>
<p>I am writing to you to let you know that [the Receiver] fired OE Capital attorneys so we (OE Capital Investors) went in front of a judge without representation.</p>	<p>The use of “I” at the beginning, and “we” along with the parenthetical is misleading and probative of the fact that Soblinskas wrote this email.</p> <p>The OE Capital Investors did not go in front of the Judge without representation.</p>
<p>The contracts [the Receiver] has been trying to renegotiate are harming all investors, clearly revealing his lack of understanding in the investment arena. He has refused any input from Patrick Howard (OE’s founding President and CEO) in these renegotiations.</p>	<p>The contract renegotiations refer to a single contract where the Receiver sought input from countless people. The negotiation culminated in an offer that the Receiver sought Court approval to accept that was unopposed by the SEC and Howard’s counsel.</p> <p>Howard is no longer the CEO.</p> <p>The record reveals that Howard did not oppose the Receiver’s motion for approval related to this renegotiation.</p> <p>The Receiver also obtained input from Soblinskas in connection with this renegotiation.</p>
<p>A settlement offer has been presented to Patrick Howard with no admission of guilt, no bar from the industry and a fine amount (not yet determined). This settlement included OE Capital Ventures investors UNTIL the receiver fired our representing firm, Bracewell, and did not continue settlement talks and pled guilty in front of the court to a permanent injunction without any voice from the investors.</p>	<p>This is a civil matter that did not include anyone pleading guilty to anything.</p> <p>The Receiver and Howard agreed to similar, if not identical, judgments that did not contest liability.</p>
<p>The SEC is supposed to protect the common investor. However, in our case they have ripped everyone who knows</p>	<p>The Receiver is not happy getting 5% of the money back. The Receiver is endeavoring to maximize the value of the Receivership Estate by reducing costs</p>

<p>anything about the investments out of the picture and have placed an attorney in charge that has very limited knowledge about private equity investments and is happy with getting 5% of our money back.</p>	<p>and maximizing revenue sources; however, the Fraud Scheme has left very little sources of value.</p>
<p>I am here to ask for your help in contacting the judge and the SEC . . .</p>	<p>The use of the word “T” is telling.</p>
<p>If you will help in communicating this message to the Judge and SEC, please reach out to the contact info below. Your questions can be answered, and correct contact information for the Judge and SEC provided.</p> <p>Please send emails to: OEcapitalpartnersinvestors@gmail.com</p> <p>Call: 469-850-3035</p> <p>Please LEAVE a message, and you will receive a call-back.</p>	<p>This is an effort to conceal the true sender of the email and the person responsible for the effort.</p>
<p>We have banded together and are going to be retaining legal counsel to move this case along, after you have a chance to understand this information we ask for your help in retaining counsel and for your involvement and participation if you are able.</p> <p>OE Captial Partners Investors:</p> <p>Charles Alberson Mary Ellen & Greg Alexander Shawn Armstrong Callie Davis Christine Horne Karen Maxy Ronald Miears Eric Stahl Walter Toler Huong Truong Christina & Michael Underwood Larry Wheeler</p>	<p>Leaving out the name of the person who organized this email is deceptive especially given the fact that she was heavily involved in the Fraud Scheme.</p> <p>Asking investors for “help in retaining counsel” (i.e. for money) is unconscionable given the request is really coming from a former employee.</p> <p>Horne, while possibly an investor, was really an employee who raised money from investors under false pretenses. To omit this fact makes her inclusion as simply and “investor” fraudulent.</p> <p>These investors include all of the investors brought to the fund by former employee Chad Alberson which demonstrates Chad Alberson’s involvement in organizing this effort.</p>

<p>The contract [the Receiver] has been negotiating with our portfolio company WHRZT is stopping WHRZT from raising money from which OE was supposed to get payments from.</p>	<p>The sender is accusing the Receiver of getting in the way of a potential future Ponzi payment. The Receiver did not do anything that would prohibit WHRZT from getting additional investment.</p>
<p>Disclaimer: This is a collective email address and was created to streamline communications during the receivership. Items stated within this communication is true to the collective knowledge of the investor based and may change as events develop. Communications sent via this email are not a reflection of a single author but a collective response to the best of the ability of OE Capital Investor Pool and may not reflect the opinion of all investors individually.</p>	<p>Given this was organized by the former business development manager who ran the Fraud Scheme, this entire statement is misleading.</p>

C. The Receiver Sent Notice Of Violation To Former Employees

As soon as the Receiver learned of the April 8, 2017, fraudulent email, and that it was organized by Soblinskas with whom Howard, Horne, and Scherer were involved to varying degrees, the Receiver sent notices to each of them that they were in direct violation of the Order and filed a notice with the Court. Dkt. 54. When Soblinskas received her Notice, she immediately responded with another false statement to the Receiver, stating: “Mr. Stokley, with all due respect that letter was organized by OE Captial Investors who signed the letter.” As demonstrated above, this was false; Soblinskas had, in fact, organized the April 8, 2017 Email.

D. April 11, 2017 Email Attaching An “Investment Return Generation Plan For OE Capital”

On April 11, 2017 at 3:38 p.m., after the Receiver’s notices of violation were sent, the anonymous email sent another false and misleading email. **Exhibit A-3** [App. 11-14]. The email contained a bogus attachment titled “Investment Return Generation Plan for OE Capital Partners.” It contained numerous false statements, including:

- [Unequal Technology's] current valuation -- \$150M
- Payback is 1.5x within 18 months, or 2x within 36 months
- [WHRZT's] current valuation is approximately \$12M based on most recent round A financing that WHRZT is in which WHRZT is currently engaged. OE has invested 2.1M in WHRZT with a 3x multiple on the return in 3 years.
- This round has been halted because of the receivership and trying to strike a cheaper, that is less advantageous to OE investors for a shorter term gain.
- Countless false statements about the OE Wellness portfolio company which no opportunity to generate any revenue for various reasons.

E. April 11, 2017 Investor Call Organized By Soblinskas

On the evening of April 10, 2017, the anonymous email address sent out another mass communication to the Fraud Scheme's victims scheduling a conference call hosted by Soblinskas. It states the anonymous sender's desire to "hopefully ... agree to seek legal counsel as a group." Between the email scheduling the call, and the time of the call, Soblinskas received the Receiver's notice of violation of the Order. She was delayed 15 minutes in calling in. During the delay, several of the people who called in were speaking, and the following statements were made: in a prior call Soblinskas was asking the investors to "gather their funds to hire legal representation to remove the Receiver;" Scherer spoke and said that he had legal documents that showed the SEC had cleared OE Capital of all fraud charges and any accusations that OE Capital was a Ponzi scheme, and there was no reason to have a receiver involved in light of these findings by the SEC. *See Venezio Aff.*, ¶ 3 [App. 2]. Scherer did not state that he was a former employee of OE Capital Partners in light of these findings by the SEC, much less that he was credited with directly raising more money in the Fraud Scheme than any other single person. *Id* [App. 2]. When the host of the call arrived, it was Soblinskas. *Id* [App. 2]. Soblinskas explained that she had received the Receiver's notice that she was in contempt of Court, she was considering how to proceed, and stated that she was only involved because she is an investor. *Id* [App. 2]. She went on to state that

she strongly advises the call participants to review the document she forwarded from the occapitalpartnersinvestors@gmail.com address regarding the “true” valuations of the Receivership Entities. *Id* [App. 2].

While technically it is true that, in addition to being the director of business development over this Fraud Scheme, Soblinskas may also be an “investor,” it is also misleading given her “investment” is nominal. Indeed, being a nominal investor furthers the Fraud Scheme because it allowed her to tell investors that she too was is an “investor.” Soblinskas “investment” is only \$4,000 far less than the stated “minimum” investment which the Defendants regularly stated was \$25,000 or \$50,000 (depending on who they were speaking with at the time) and the smallest investment of any investor. *Stokley Aff.* ¶ 14 [App. 27]; **Exhibit B-9** [App. 59-61].

F. Improper Request For Pledge Of \$500 From Each Investor

On April 12, 2017, another mass email was sent to the victims of the Fraud Scheme from the anonymous address by Soblinskas. In addition to false statements, it stated:

- All investors that say “yes to retaining counsel” will be represented.
- We ask for a pledge of \$500 to cover legal fees that can be sent directly to law firm.
- The law firm will provide a portal where all documents and actions will be listed but the attorneys will meet with 2-3 investors to ease communication in order to keep legal costs as low as possible. We will set up a new email to communicate with those to choose to be represented.
- Currently a majority of investors have signed up to be represented by counsel.

By sending this email, Soblinskas is attempting to have her own victims pay for her legal counsel where she (and likely the other former employees working with her) would serve as the “2-3 investors to ease communication.” This conduct is unconscionable and, by itself, is sanctionable.⁴

⁴ It is highly unlikely that “a majority of investors have signed up.” If they had, it occurred under false pretenses and this counsel cannot represent Soblinskas along with her own victims regardless of whether she is a nominal investor or not.

G. Soblinskas' Continued Inappropriate Actions To Get Investors To Join Her Efforts

On April 12, 2017, Soblinskas sent another email from the anonymous email account to Pete Heinzelman, an investor who never spoke or responded to Soblinskas and/or the anonymous email account. Stokley Aff. ¶ 16 [App. 27-28]; **Exhibit B-11** [App. 67-69]. The email placed an affirmative burden on this investor to opt out of legal representation; otherwise, the investor automatically would be included in the group. *Id* [App. 67-69]. The email states: "Receiving this email means you are marked YES for representation as an OE Investor in this case. . . . Please reply this email if this is incorrect." *Id* [App. 67-69].

H. Soblinskas Continued Harassment Of Investors To Join Her Legal Representation

On April 13, 2017, Soblinskas sent a text message to investors. *See* Venezio Aff., ¶ 6 [App. 2] (**Exhibit A-5**) [App. 17]. The text stated: "Events are moving forward with getting legal representation for the investors trying to see if you've gotten all the communication of the last five days and I need to see if you agree it [sic] being represented by counsel **give me a call back or let me know to ocapitalpartnersinvestors@gmail.com**." *Id.* [App. 17] Soblinskas' own words remove any doubt whatsoever about who is sending and receiving communications from the anonymous email account. Further, Soblinskas also left a voicemail messages with investors seeking to get them to join her efforts. *See* Venezio Aff., ¶ 6 [App. 2] (**Es. A-6**) [App. 18] (containing transcript of voicemail which states "if you haven't seen any communication, look at your spam for ocapitalpartnersinvestors@gmail.com. I look forward to hearing from you"). *Id* [App. 18].

I. Howard Text Message

On April 13, 2014, in response to Soblinskas' harassment to join her "investor" group, Ms. Venezio sent a text message to Howard regarding Soblinskas. Howard stated that "She's [referring to Soblinskas] leading the effort for investors. I can't be involved in that effort...but she's working

with my attorneys.” As such, by Howard’s own admission, he knows not to be directly involved, but he acknowledges being indirectly involved in this effort through his attorneys’ involvement.

IV. Arguments & Authorities

To prove respondents should be held in civil contempt, Movant “must establish by clear and convincing evidence that (1) a court order was in effect, (2) the order required specified conduct by the respondent, and (3) the respondent failed to comply with the court’s order.” *United States v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004). “The contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court’s order.” *Am. Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 581 (5th Cir. 2000) (citing *NLRB v. Trailways, Inc.*, 729 F.2d 1013, 1017 (5th Cir.1984)). “[I]n civil contempt proceedings the question is not one of intent but whether the alleged contemnors have complied with the court’s order.” *Jim Walter Res., Inc. v. Int’l Union, United Mine Workers of Am.*, 609 F.2d 165, 168 (5th Cir. 1980) (quoting *United States v. Ross*, 243 F.Supp. 496, 499 (S.D.N.Y. 1965)). “Good faith is not a defense to a civil contempt; the question is whether the alleged contemnor complied with the court’s order.” *Chao v. Transocean Offshore, Inc.*, 276 F.3d 725, 728 (5th Cir. 2002). Those with actual notice of the court’s order who knowingly aid and abet another in violating the court’s order also may be held in contempt. See *NLRB v. Laborers’ Int’l Union of N. Am., AFL-CIO*, 882 F.2d 949, 954 (5th Cir. 1989); *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985).

In the contempt context, “clear and convincing evidence” is “that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to truth of the allegations sought to be established, evidence so clear, direct, weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.” *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (internal quotation marks omitted)

(adopting in contempt context definition of clear and convincing evidence used in attorney disbarment proceeding) (quoting *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992)).

As demonstrated above, the Order was signed and entered into the record on February 14, 2017. (Dkt. 10). The Order provides that “all persons receiving actual notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking or causing any action to be taken, without the express written agreement of the Receiver, which would . . . hinder, obstruct or otherwise interfere with the Receiver.” The Order remains in full force and effect during all times relevant to this motion.

A. Dovile Soblinskas

Soblinskas was a person receiving actual notice of the Order and therefore was restrained and enjoined from directly or indirectly taking or causing any action to be taken, without the express written agreement of the Receiver, which would . . . “hinder, obstruct or otherwise interfere with the Receiver.”⁵ Soblinskas did not comply with the Court’s Order. As detailed above, Soblinskas took the following actions in direct violation of the Order:

- After learning from the Receiver that he was going to send communications to the investors during the week of April 11-14, Soblinskas organized and effort to preempt that communication with the April 8, 2017 Email.
- Soblinskas sent the April 8, 2017 Email that contained countless demonstrable false and misleading statements to the investors including representing the senders as “investors” when Soblinskas was really the person organizing the fraudulent

⁵ Soblinskas was hand-delivered a copy of the Order on the evening of February 14, 2017. *See* Stokley Aff., ¶ 12 [App. 26]. Soblinskas was present when the process server served the Order on the Receivership Defendants and was one of the officers receiving it. *Id* [App. 26]. The Receiver met with Soblinskas on February 15, 2017 and discussed the Order. *Id* [App. 26]. On February 26, 2017, the Receiver’s counsel sent correspondence from the Receiver to Soblinskas by email terminating her employment, confirming the fact that “The Honorable Sam Lindsay entered his Order over the Defendants in the action, appointing W. Craig Stokley as Receiver” and enclosing a copy of the Order. *Id* [App. 27]. From February 14, 2017 to March 21, 2017, the Receiver has had several in-person conversations with Soblinskas regarding the Order. *Id* [App. 27]. When the Receiver learned of the fraudulent April 8, 2017 Email, he immediately sent Soblinskas notice of her violation on April 11, 2017 enclosing the Order again. Soblinskas acknowledged receipt of the email when she brazenly lied to the Receiver by stating “that letter was organized by OE Capital Investors who signed the letter.”

communications.

- Soblinskas' own text messages (let me know to oeapitalpartnersinvestors@gmail.com), voicemail messages (“if you haven’t seen any communication, look at your spam for oeapitalpartnersinvestors@gmail.com. I look forward to hearing from you.”), and actions hosting the calls set up by the anonymous email account demonstrate her role in connection with making the false statements in the April 8, 2017 Email. Howard’s text messages sum it up pretty well: “Dovile is organizing it all.”
- Soblinskas responded to the Receiver’s correspondence notifying her of her violation of the Order with additional false statements: “that letter was organized by OE Capital Investors who signed the letter” which, as evidenced herein, is demonstrably false.
- Soblinskas continued to violate the Order when she sent the April 11, 2017 email containing the “Investment Return Generation Plan for OE Capital Partner” brochure that contained false statements such as “[Unequal Technology’s] current valuation -- \$150M,” “Payback is 1.5x within 18 months, or 2x within 36 months”, “[WHRZT’s] current valuation is approximately \$12M,” “OE has invested 2.1M in WHRZT with a 3x multiplier on the return in 3 years,” among several other false statements contained in the brochure.
- Soblinskas continued to violate the Order when she hosted the call with investors on April 11, 2017 and told them she was merely participating as an investor, and asked them to “gather their funds to hire legal representation” which would advance Soblinskas, Howard, and the other former employees personal interests.
- Soblinskas continued to violate the Order when she sent another mass email from the “anonymous” email address asking the victims of her Fraud Scheme “for a pledge of \$500 to cover legal fees that can be sent directly to law firm” and “the attorneys will meet with 2-3 investors to ease communication in order to keep legal costs as low as possible.” Given the great weight of the evidence demonstrating Soblinskas motives, these “2-3 investors” would certainly be Soblinskas and another former employee who would further Soblinskas, Howard, and the other former employees’ interests.
- Soblinskas continued to violate the Order when she sent another communication from the anonymous email account that advised legitimate investors that she was including them in the list of investors to be represented unless she heard otherwise – “Receiving this email means you are marked YES for representation as an OE Investor in this case. Please reply this email if this is incorrect.”
- Soblinskas continued to violate the Order by continuing to call and harass legitimate investors to join her “investor group” to pay for her legal expenses to advance her personal interests along with Howard’s interests and the other former employees involved.

The evidence, set forth in further detail above and in the attached appendix, establishes by clear and convincing evidence that Soblinskas, directly or indirectly, took actions and caused actions to be taken, not only without the express written agreement of the Receiver but against the express direction of the Receiver, which hindered, obstructed, and otherwise interfered with the Receiver.

B. Patrick Howard

Howard was a person receiving actual notice of the Order by personal service and therefore Howard was restrained and enjoined from directly or indirectly taking or causing any action to be taken, without the express written agreement of the Receiver, which would . . . “hinder, obstruct or otherwise interfere with the Receiver.”⁶ Howard did not comply with the Court’s Order. While Howard was very careful to not acknowledge any direct involvement, the evidence establishes that he was indirectly involved at a minimum, and likely directly involved. As detailed above, in carrying out fraudulent communications, Howard interfered with the Receivership as follows:

- Howard demonstrated that he was involved in the fraudulent April 8, 2017 email communication when he stated “I told Dovile to include you in the initial group” showing that Howard was involved in who should be included in the initial group and planning efforts, at a minimum.
- Howard demonstrated that he was involved in the fraudulent April 8, 2017 email communication when he stated “there is a email or number on that letter” demonstrating that he was familiar with the contents of the letter, at a minimum.
- Howard demonstrated that the fraudulent April 8, 2017 email communication advanced his personal interests when he stated “I had to be absent until now because

⁶ Howard was served with a summons in this Lawsuit on February 22, 2017. (Dkt. No. 24). Howard is represented by counsel and is aware of the Order. The Receiver met with Howard and his counsel on or around February 15, 2017 and discussed the Order. *See* Stokley Aff., ¶ 18 [App. 28]. On February 17, 2017, the Receiver’s counsel sent correspondence from the Receiver to Howard’s counsel by email terminating his employment, confirming the fact that “The Honorable Sam Lindsay entered his Order over the Defendants in the action, appointing W. Craig Stokley as Receiver” and enclosing a copy of the Order. *Id* [App. 28]. When the Receiver learned of the fraudulent April 8, 2017 Email, and of Howard’s admissions regarding his involvement contained in his text messages, the Receiver immediately sent Howard’s counsel a notice of his violation enclosing the Order again. Howard’s counsel acknowledged receipt of the notice.

that [referring to removing the receiver] would be good for me.”

- Howard continued to take actions in violation of the Order after the Receiver provided his counsel written notice on April 11, 2017 that his involvement in these efforts violated the Order.
- As late as April 13, 2017, Howard further acknowledge that he was indirectly involved in the Soblinskas efforts by stating in a text message that “She’s [referring to Dovile] leading the effort for investors. I can’t be involved in that effort...but she’s working with my attorneys.” If Howard’s attorneys are working with Dovile in connection with this effort, then Howard is indirectly working with this effort that is hindering, obstructing or otherwise interfering with the Receiver and harassing the Receiver.

Moreover, this is not the first instance in which Howard has violated the Order. On at least four prior occasions,⁷ Howard directly violated the Order:

- 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.
- 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.

The evidence, set forth in more detail above and in the attached appendix, establishes by clear and convincing evidence that Howard directly and/or indirectly took actions and caused actions to be taken, without the express written agreement of the Receiver and actually against the Receiver’s express direction, that hindered, obstructed, and otherwise interfered with the Receiver.

⁷ Two of which have been remedied – failure to turn over new BMW 7 series he leased a couple months before the Receivership, and failure to timely file an accounting.

C. Ron Scherer

Scherer was the former employee credited with raising the most money (\$4,224,345) from investors in the Fraud Scheme. Scherer was a person receiving actual notice of the Order and was restrained and enjoined from directly or indirectly taking or causing any action to be taken, without the express written agreement of the Receiver, which would . . . “hinder, obstruct or otherwise interfere with the Receiver.”⁸ Scherer did not comply with the Court’s Order. As detailed above, Scherer spoke and said that he had legal documents that showed the SEC had cleared OE Capital of all fraud charges and any accusations that OE Capital was a Ponzi scheme, and there was no reason to have a receiver involved in light of these findings by the SEC. *See* Venezia Aff., ¶ 3 [App. 2]. Scherer did not state that he was a former employee of OE Capital Partners in light of these findings by the SEC, much less that he was credited with directly raising more money in the Fraud Scheme than any other single person. *Id* [App. 2]. The evidence, set forth in more detail above and in the attached appendix, establishes by clear and convincing evidence that Scherer directly or indirectly took actions and caused actions to be taken, not only without the express written agreement of the Receiver but against the express direction of the Receiver, that hindered, obstructed, and otherwise interfered with the Receiver.

D. Christine Horne

⁸ On February 17, 2017, the Receiver’s counsel sent correspondence from the Receiver to Scherer by email terminating his employment, confirming the fact that “The Honorable Sam Lindsay entered his Order over the Defendants in the action, appointing W. Craig Stokley as Receiver” and enclosing a copy of the Order. *See* Stokley Aff., ¶ 19 [App. 29]. The Receiver has had several telephone conferences with Scherer regarding the Order. *Id* [App. 29]. When the Receiver learned of the fraudulent April 8, 2017 Email, and that Scherer attended the call the following day, he immediately sent Scherer a notice of his violation on April 11, 2017 and again on April 12, 2017 enclosing the Order again. Mr. Scherer acknowledged receipt of the correspondence and further harassed the Receiver’s paralegal. *Id.* [App. 29] (**Exhibit B-13**) [App. 73-75].

Horne was a person receiving actual notice of the Order and was restrained and enjoined from directly or indirectly taking or causing any action to be taken, without the express written agreement of the Receiver, which would . . . “hinder, obstruct or otherwise interfere with the Receiver.”⁹ Horne did not comply with the Court’s Order. Horne included her name as one of the people in the investor group sending the fraudulent April 8, 2017 Email. However, Horne knew that Soblinskas likewise was organizing the email and did not include her name. Further, Horne knew the statements in the email were false. Her actions and involvement in sending the fraudulent April 8, 2017 email were consistent with her stated desire to communicate with the investors in a way that would help her preserve her reputation among the victims of the Fraud Scheme. Horne was directly instructed by the Receiver not to make false statements to the investors and she did so in direct violation of the Order. The evidence, set forth in more detail above and in the attached appendix, establishes by clear and convincing evidence that Horne directly or indirectly took actions and caused actions to be taken, not only without the express written agreement of the Receiver but against the express direction of the Receiver, that hindered, obstructed, and otherwise interfered with the Receiver.

E. Respondents’ Conduct Has Hindered, Obstructed And Interfered With The Receiver.

Respondents’ conduct in preempting the Receiver’s communications to the investors with false and misleading information has hindered, obstructed, and interfered with the Receiver’s

⁹ On February 17, 2017, the Receiver’s counsel sent correspondence from the Receiver to Horne by email terminating her employment, confirming the fact that “The Honorable Sam Lindsay entered his Order over the Defendants in the action, appointing W. Craig Stokley as Receiver” and enclosing a copy of the Order. *See Stokley Aff.*, ¶ 20 [App. 29]. On March 21, 2017, the Receiver met in person with Horne and Soblinskas at his office in Dallas, Texas and they discussed the Order and the requirements that communications to investors must be truthful. During that meeting, the Receiver directly advised Horne that she was not authorized to send any communications that were not truthful to any investors. *Id* [App. 29]. When the Receiver learned of the fraudulent April 8, 2017 Email that included Horne’s name, he immediately sent Horne notice of her violation on April 13, 2017 enclosing the Order again.

ability to carry out his duties. Respondents fraudulent and misleading conduct has confused the investors and made the Receiver's already difficult task of administering an investor claims process, and providing information to investors related to the Fraud Scheme and how it will impact those investors unnecessarily more difficult and time consuming. It has cost the Receivership Estate money because the Receiver has spent, and will continue to spend, additional time explaining and clearing up the confusing information provided to them since April 8, 2017. Moreover, to the extent any of these investors have been misled to believe they need to take action in order to obtain their equitable share of the Receivership Estate, the costs will continue to increase. Moreover, the nature of the misleading conduct by Respondents has caused some of the investors to be lulled into thinking the Receiver, SEC and Court are not trustworthy and there is money and value in the Receivership Estate that does not exist. Moreover, the Respondents used the Receivership Estate's information – specifically the investors list and contact information – to carry out their continued fraud on their victims.

What is especially troubling here is that the Receiver speaks with investors almost every single day who are devastated by the Fraud Scheme perpetrated by Respondents. Almost all of the legitimate investors who have spoken to the Receiver are shocked by the true facts they have learned and that are contained in the Court documents. These investors range from having put a small amount of their savings into this Fraud Scheme to investors who are elderly and placed their entire life savings into this Fraud Scheme. Investors have told the Receiver that they are considering suicide because they have lost their life savings, are too old to start over, and cannot afford healthcare. As heartbreaking as it is to have these conversations, it is the Receiver's job to make truthful communications to the investors. And, in this case, that is exactly what the Receiver was doing when these former employees preempted him with lies and deception by Respondents.

Respondents cannot be permitted to continue to victimize these investors. Respondents should be held accountable for their egregious behavior described herein. As such, the Receiver is requesting certain contempt orders that will attempt to remedy and deter Respondents misconduct.

V. Relief Requested

The Receiver respectfully requests that the Court order Soblinskas, Howard, Scherer and Horne to show cause why they should not be held in contempt of Court, and when they fail to do so, find them in contempt of Court as follows:

1. Enter an Order holding Soblinskas, Howard, Scherer, and Horne jointly and severally liable for all expenses incurred by the Receivership in addressing the aforementioned conduct and, accordingly, order Soblinskas, Howard, Scherer, and Horne to jointly and severally pay directly to the Receivership the amount equal to the amount of expense the Receivership has incurred addressing the conduct described herein.
2. Order Soblinskas, after notice and hearing, to be placed in custody of the United States Marshal Service until such time as, in the determination of the Court, she has purged her contempt, or alternatively, instruct Soblinskas that should she violate the orders in the future, she will be placed in custody until she has purged her contempt.
3. Order Howard, after notice and hearing, to be placed in custody of the United States Marshal Service until such time as, in the determination of the Court, he has purged his contempt, or alternatively, instruct Howard that should he violate the orders in the future, he will be placed in custody until he has purged his contempt.
4. In addition or the alternative, order Soblinskas, Howard, Scherer, and Horne to forfeit any investment they may have in the Receivership Entities in favor of their victims.
5. Modify the Order to restrain and enjoin Soblinskas, Howard, Scherer, and Horne from communicating in any manner written, oral or otherwise, with any investor or third party, directly or indirectly, about the Receivership Entities and/or the Receivership.
6. Order that any lawyer, law firm, or other person, who received money from investors in connection with Respondents fraudulent scheme to raise money, shall return said funds within 7 days of entry of the order.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests that the Court grant this Motion for Order Requiring Patrick O. Howard and Dovile Soblinskas, Ron Scherer, and Christine Horne to show cause, if any, why they should not be held in civil contempt

for the violation of this Court's February 14, 2017, Orders. Receiver further requests this Court to grant such other and further relief as this Court deems just and proper.

Dated: April 19, 2017.

Respectfully submitted,

A handwritten signature in black ink that reads "Kimberly Sims". The signature is written in a cursive style with a large, looped "S" at the end.

KIMBERLY M. J. SIMS

State Bar No. 24046167

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ATTORNEY FOR RECEIVER

W. CRAIG STOKLEY

CERTIFICATE OF SERVICE

On April 19, 2017, I electronically filed the Receiver's Motion to Show Cause, Brief in Support, and Appendix 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. I further certify that this Receiver's Motion to Show Cause, Brief in Support, and Appendix will be served on Dovile Soblinskas (through counsel), Christine Horne, and Ron Scherer.

A handwritten signature in black ink that reads "Kimberly Sims". The signature is written in a cursive style with a large, stylized "S" at the end.

KIMBERLY M.J. SIMS