

**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 QUARTERLY 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 Quarterly Status Report.

This Quarterly Status Report covers the period of time from inception of the receivership on February 14, 2017 through March 31, 2017.<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,

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<sup>1</sup> Unless defined in the Quarterly Status Report, defined terms have the meaning assigned in the *Order Appointing Receiver*. Because the Receiver previously submitted a 30-day status report, covering the time period February 14, 2017 to March 16, 2017 (see Dkt. 40), this report is redundant in many respects. However, it also contains activities undertaken between March 17, 2017 to March 31, 2017, and sets for the information ordered to be included in the Receiver’s quarterly reports.

LLC (“OE Capital”) (collectively, the “Receivership Entities”). The Receiver also assumed control over the accounts and assets of Patrick O. Howard (“Howard”).

By way of background, 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. However, in general terms, 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 for 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 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 MATTERS**

**i. Employee Compensation**

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). As of the date of this Report, Paychex has been paid in full for payroll made through February 14, 2017, and there are currently no employees of the Receivership Entities.

**ii. Employee Related Tax Obligations**

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 for those tax payments that were pending for the period through February 14, 2017.

The Receiver has also paid federal unemployment.

The Receiver also anticipates paying Texas State unemployment taxes that the Receivership Entities failed to pay and is past due. For the current period and past due periods, the amounts appear to be \$2,573.21 for Howard Capital and \$7,595.24 for OE Capital according to the records of the Texas Workforce Commission. These amounts represent past due payments for the prior year during which the Receivership Entities failed to pay employment and other taxes when due and/or failed to properly submit required reports to the Texas taxing authorities.

The same was also true with respect to the State of Florida. As of the date of this Report, Florida State unemployment taxes have been paid in the amount of \$567.00 for the period through February 14, 2017.

The Receiver does not currently contemplate any additional tax liability related to the employees of the Receivership Entities after the payments described above.

**iii. Employee Benefits**

In addition, at inception of the Receivership, OE Capital was 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.

**iv. Termination of Employees**

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. Ms. Cason's contract ended on March 31, 2017 and has not been renewed. However, Ms. Cason has indicated a willingness to cooperate and provide and/or assist in identifying information needed by the Receiver in carrying out his duties.

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).

In summary, as of the date of this Report, there are no employees of the Receivership Entities, and the Receiver is operating the Receivership Entities along with his Retained Professionals.

**v. Employees' Personal Effects & Laptops**

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.

Patrick Howard was also provided supervised access to retrieve personal items on or about

March 27, 2017. On that date, Patrick Howard's counsel retrieved a decanter and personalized drinking glasses, as well as an award that was previously in Howard's office. These items were determined by the Receiver to have no value to the Receivership Estate.

**vi. Summary of Current Employee Expenses**

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 eliminated employee wages, taxes, and associated benefits incurred by OE Capital from more than \$121,674.50 per pay month as of the date of this Report.

**E. PHYSICAL ASSETS**

**i. Receivership Entities**

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, through counsel, retrieved personal effects from his office that the Receiver has concluded have no tangible value to the Receivership Estate.

On March 27, 2017, the Receiver liquidated the remaining assets contained in the office which generally consisted of a refrigerator, printer, office furniture, wall decorations and a dry-erase board. Prior to selecting a liquidator, 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 at no additional cost to the Receivership. The Receiver liquidated those assets and vacated the leased space as of March 31, 2017.

**ii. Patrick Howard**

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. The Receiver intends to liquidate the wrist watches for the benefit of the Receivership Estate.

**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 winding up the affairs OE Capital, which primarily consists of insuring payments due from the portfolio companies as described below, and the Receivership Entities remain open in order to receive the proceeds it is contractually entitled to receive from these portfolio companies.

**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. 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 list the mailing address as the former address of OE Capital, at 1700 Pacific, Suite 3680, Dallas, Texas. TU has been managed by OE Capital, which

is its sole member.

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/>.

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 are currently 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 seeking to resolve the payments claimed due by Galaxy and to find a purchaser for the TU™ FLO bottles so that the Receivership Estate can receive the revenue from the bottles and discontinue fees related to storage. Galaxy has agreed to continue warehousing this inventory so long as any warehouse fees incurred from the date of the appointment of the receiver (February 14, 2017) are paid, and once any sale occurs, the Galaxy will be paid the past due warehousing fees from the proceeds of that sale. Although Howard indicated that OE Capital had engaged and paid 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, and an obvious buyer has not surfaced. Therefore, 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 had discussions with Jim Nalley, CEO of WHRZT!, about repayment of amounts advanced and exchange of existing debt for equity in WHRZT!. Following initial discussions, Darryl Cleaveland, a former employee and General Counsel of OE Capital, appeared as counsel for WHRZT! and requested that further communications take place through him. The Receiver engaged in further discussions through WHRZT!'s counsel, which resulted in the

proposed terms of agreement made the subject of the Receiver's Unopposed Motion to Approve WHRTZ, Inc.'s Offer (Dkt. 44) and the Court's Order Approving WHRTZ, Inc.'s Offer (Dkt. 45). Pursuant to the offer, WHRTZ was obligated to pay the Receivership \$60,000 by the close of business on Thursday, March 24, 2017, representing payment of a portion of the past due revenue amounts.

In addition, WHRTZ agreed to transfer 1,640,000 shares of WHRZT stock (representing 16.4% of the total equity of WHRZT) to the Receivership Estate. Within thirty days of the agreement and following transfer of the shares, WHRZT was to pay the Receivership \$100,000 in exchange for release/transfer of 200,000 shares (representing 2% of the total equity of WHRTZ) back to WHRZT. The offer also provided for, within 120 days, the additional payment of \$240,000 by WHRTZ in exchange for release/transfer of an additional 480,00 shares (representing 4.8% of the total equity in WHRZT).

Following those payments, WHRZT would have the option to pay \$500,000 for in exchange for a release of liability arising from any contracts that may have existed upon appointment of the Receiver as well as a transfer by the Receiver of 240,000 shares (representing 2.4% of the total equity of WHRZT) of WHRZT stock back to WHRZT provided, however, that (a) WHRZT shall have complied with all payment obligations described above, and (b) any royalty payments due under the current agreement between the Receivership Defendants and WHRZT were made timely. The additional terms of the offer are included in Exhibit A to the Motion (Dkt. 44-1).

Following the Court's approval of the offer, WHRZT failed to make the initial payment of \$60,000 due. As of the date of this Report, WHRZT has not made any payments due under the offer or pursuant to its contractual obligations with OE Capital. As such, there has been no change

in the contractual relationship between the Receivership Entities and WHRZT. The Receiver is currently determining the appropriate course of action to seek recovery of amounts due by WHRZT as of the date of this Report.

**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®, Acceleron® 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.

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. The Receiver is currently determining the value of the shares of Unequal and the availability of recovery through possible sale of the shares to a third-party, buy-

out of the shares by Unequal, or to retain the shares until Unequal experiences a liquidation event.

As part of its marketing expenditures, OE Capital also advanced approximately \$415,000.00 to Optimedia. OE Capital advised the Receiver that Optimedia had \$157,000.00 remaining in funds of OE Capital, which had not been spent. Accordingly, the Receiver made demand for return of those funds. However, those funds have not been returned as of the date of this Report, and Optimedia has responded, through counsel, that it does not have any such funds. The Receiver is currently seeking an accounting related to the funds provided to Optimedia to determine whether there are funds available for recovery by the Receivership.

**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.

Following the agreement being signed, and notice to the respective parties as to the lack of authority of OE Capital to enter into the agreement, the agreements were terminated/rescinded. As of February 14, 2017, OE Wellness was in its inception phase with no ability to generate positive revenue without substantial additional investment. Because continued operations of OE Wellness would cost investor money and any prospect of obtaining returns would be highly speculative, the Receiver has terminated all remaining operations of OE Wellness.

#### **G. CASH AND CASH EQUIVALENTS**

As of March 31, 2017, the Receivership Estate had cash on hand of \$416,531.61. 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 funds in the amount of \$552,632.48 and disbursed \$136,100.87, as evidenced by the accounting statement attached as **Exhibit A**. Aside from small payments for administrative expenses (e.g., subscription fees), the disbursements by the estate related primarily to personnel (with the substantial amount going to Paychex as described above), Receiver and other professional fees, and tax liability payments that were unpaid by the Receivership Entities prior to the inception of the Receivership.

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.

As described above, the Receiver has accrued amounts for federal and state payroll taxes for past due periods and through 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 for the Receivership Entities.

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 as of March 7, 2017.

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.

The Receiver reached an agreement with OE Capital's landlord to terminate the lease as of March 31, 2017, as reflected in the Lease Termination Agreement filed with the Motion to Approve Lease Termination Agreement (Dkt. 46, 46-1). The Court approved the Lease Termination Agreement (Dkt. 47), and OE Capital vacated the leased space as of March 31, 2017. This resulted in cost savings of more than \$6,000 per month to the Receivership Estate and avoidance of the obligation through the original term in 2018.

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.

The Receiver and his team have identified numerous other potential claims against the Receivership Estate. The Receiver has received notice of several past due invoices for varying services including marketing events, legal services, and past-due commission payments, among other potential categories. 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. The Receiver will implement a claims process to determine the existence and extent of creditor claims during the second quarter of 2017.

## **I. INVESTOR COMMUNICATIONS**

The Receiver has communicated with multiple investors regarding the Receivership (not

including employees who may have invested or have contacted the Receiver on behalf of investors). During those 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.

On or about March 27, 2017, the Receiver's informational website went live to allow the investors to review the filings in this case and receive updated information about the Receivership Estate ([www.companyreceiver.com](http://www.companyreceiver.com)). The Receiver also anticipates using the website to allow investors to make inquiries and/or claims through a claims process.

#### **J. 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.

**K. MIDLAND IRA**

The Receiver received notice of fees being charged to investors for administrative services. Therefore, the Receiver contacted Midland to place a freeze on the accounts and cease any fees from being charged to the accounts. The Receiver is working to resolve the matter with Midland as of this date.

**II. CONCLUSION**

This Quarterly Report is for the period since inception of the Receivership on February 14, 2017 through March 31, 2017. The Receiver anticipates filing similar reports on a quarterly basis in accordance with the Court's Order Appointing Receiver.

Respectfully submitted,

*/s/ Kimberly M. J. Sims*

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**ATTORNEYS FOR RECEIVER**

**CERTIFICATE OF SERVICE**

On May 1, 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/ Kimberly M. J. Sims*

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**KIMBERLY M. J. SIMS**