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 OMNIBUS RESPONSE TO HOWARD'S, HORNE'S, AND SCHERER'S RESPONSES TO COURT'S SHOW CAUSE ORDER

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Receiver W. Craig Stokley ("Receiver") respectfully files this Omnibus Response to Patrick Howard's, Christine Horne's, and Ron Scherer's Responses (Dkt. Nos. 68-69) to this Court's Order to Show Cause (Dkt. No. 59), and, in support, would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

As early as February 26, 2017 – just twelve (12) days after this Court appointed Mr. Stokley as Receiver – Patrick Howard and his counsel had set into motion an unacceptable scheme to interfere with and harass the Receiver, which is evidenced by the following email:

> I would direct [the investors] to James Bell . . . . He is the one I recommended would be best to help protect the investor interest and hopefully lose/jettison the receiver in the future (after we get all the SEC stuff settled). **He is very very good in this area and can create havoc for the receiver** if need be. Just wanted to get that lined up for when the time comes. And **winter is coming for Mr. Stokley.**

See **Exhibit A** (Email from Brandon McCarthy, Esq. of Bracewell LLP to Patrick Howard and James Bell, Esq., dated February 26, 2017) [Rapp. 2] (emphasis added).[1]

Counsel's email to his client (which was subsequently forwarded without reservation to Respondent Dovile Soblinskas) and Patrick Howard's subsequent conduct in accordance with his counsel's shocking admonition **cannot be understated**. It is clear that Howard's and his counsel's intention all along was to interfere with this Court's Order Appointing Mr. Stokley as Receiver and to harass this Court's Receiver.

To make matters worse, none of the Respondents, including Patrick Howard, Christine Horne, and Ron Scherer, have satisfied their burden to "file a written brief showing cause why they are not in contempt of this Court's order as alleged, and documented, by the Receiver in docket entry numbers 56-58" as ordered by this Court. Order (Dkt. No. 59) at 2. Thus, not only is the contemptuous conduct of Respondents confirmed by recently-acquired facts and evidence, but none of the Respondents can refute such facts and evidence or provide this Court with a reason, or cause, why they should not be held in contempt.

Accordingly, for the reasons set forth in this Response, and in Receiver's Motion, the Court should enter an order (i) finding that Respondents have failed to show cause and that they are now in contempt of this Court's Order Appointing Receiver (Dkt. No. 10), (ii) ordering them each to pay a civil penalty of $5,000, (iii) ordering Howard, Horne, and Scherer to forfeit any investment they may have in the Receivership Entities, (iv) modifying the Order Appointing Receiver to restrain and enjoin Respondents each from communicating in any manner (written, oral, or otherwise) with any investor or third party, directly or indirectly,

[1] Exhibits to this Response brief are attached to the Appendix in Support of this Court's Order to Show Cause, which is filed concurrently herewith and incorporated by reference as if fully set forth herein.

about the Receivership Entities and/or the Receivership, (v) and, either (a) ordering Howard to appear at a hearing to show cause why he should not be held in criminal contempt, or (b) instructing Howard that should he violate this Court's orders in the future, he will be held in criminal contempt and placed into custody.

II. HOWARD'S CONTEMPTUOUS CONDUCT

A. Recently Discovered Evidence And Testimony Confirm Howard's Outrageous And Contemptuous Conduct.

As mentioned above, the Receiver recently discovered that Howard and his counsel of record decided as early as February 26, 2017 – a mere twelve (12) days after this Court appointed Mr. Stokley as Receiver – to interfere with and harass the Receiver by directing legitimate investors to attorneys who Howard and his counsel had "lined up" to "create havoc" for this Court's Receiver. Indeed, Howard's counsel, Brandon McCarthy of Bracewell LLP, sent the following email to Howard regarding their outrageous and contemptuous plans:

> I would direct them to James Bell. Cc'd above. He is the one I recommended would be best to help protect the investor interest and hopefully lose/jettison the receiver in the future (after we get all the SEC stuff settled). **He is very very good in this area and can create havoc for the receiver** if need be. Just wanted to get that lined up for when the time comes. And **winter is coming for Mr. Stokley.**

See **Exhibit A** (Email from Brandon McCarthy to Patrick Howard and James Bell, dated February 26, 2017 which Patrick Howard subsequently forwarded to Dovile Soblinskas) [Rapp. 2].

Howard's attorney's words are outrageous on several levels. First, it is unimaginable that an officer of the Court – just twelve (12) days after this Court appointed the Receiver – would intentionally set out to "create havoc" for the Receiver to "hopefully lose/jettison" him. Second, to make sinister statements like "winter is coming for Mr. Stokley" is simply unconscionable and cannot be tolerated. Although the Receiver did not have this particular

email when he filed his Motion, it does confirm that Howard through his counsel set out to "create havoc" for this Court's Receiver, and reinforces the need for a contempt order.[2]

Respondent Howard's Brief in Opposition to Receivers Motion to Show Cause (Dkt. No. 69) (hereinafter, "Howard's Response") would have the Court believe that the Receiver did not evaluate the "full factual picture" and "cherry-picked" facts to support a misguided theory of culpability on the part of Mr. Howard. *See, e.g.*, Howard's Response (Dkt. No. 69) at 6. Mr. McCarthy's email, however, more than encapsulates exactly what Howard and his counsel were setting out to do – and it is entirely consistent with the evidence put forth by the Receiver in his Motion. Indeed, in case there is any doubt about the true story (which already is expressed through Howard and his counsel's own words), Respondent Dovile Soblinskas has now provided sworn testimony confirming exactly what Howard and his counsel had planned all along. *See* **Exhibit B** (Affidavit of Dovile Soblinskas, dated May 30, 2017) [Rapp. 3-20] (the "Soblinskas Affidavit"). With regard to Howard's connection to the contemptuous actions carried out by Respondents, Soblinskas testifies as follows:

- "Patrick Howard's counsel, Barrett Howell [of Bracewell LLP], suggested to me that I could, and there was nothing prohibiting me from, attempting to band together investors to challenge the SEC's receivership of OE Capital Partners. Patrick Howard's counsel Barrett Howell told me that if I could get a majority of the investors to jointly challenge the Receivership, it could be successful in removing the Receivership." *Id.* at ¶ 2 [Rapp. 5].

- "Patrick Howard's counsel Barrett Howell referred me to an attorney who could represent this group of investors" *Id.* at ¶ 3 [Rapp. 5].

[2] While the Receiver initially endeavored to give Patrick Howard's attorneys the benefit of the doubt that they were not behind Howard's campaign of interference, this email (as well as Howard's text messages that his counsel was communicating with Soblinskas regarding this contemptuous conduct, and Soblinskas' affidavit setting out that Howard's counsel advised her to embark on her contemptuous plan) makes clear that they have assisted their client in engaging in underhanded activities in direct violation of this Court's Orders.

- "After receiving this information from Patrick Howard's counsel Barrett Howell, I then endeavored to identify an initial core group of investors who would participate with me in our effort to remove the Receivership." *Id.* at ¶ 4 [Rapp. 5].

- "Patrick Howard helped me identify some people who could be included in the initial core group of investors. Patrick Howard attended meetings and telephone conference calls with myself and investors where the investors involvement in the effort to retain counsel to remove the Receivership was discussed." *Id.* at ¶ 5 [Rapp. 5].

- "Patrick Howard attended a conference call with investor Eric Stahl and myself where coordinating an effort to band investors together to hire counsel to remove the Receivership was discussed." *Id.* at ¶ 6 [Rapp. 5].

- "Patrick Howard attended a meeting with myself and investors Walter Toler and Shawn Armstrong at Café Express in Plano, Texas. During this meeting, coordinating an effort to band investors together to hire counsel to remove the Receivership was discussed." *Id.* at ¶ 7 [Rapp. 5].

- "Patrick Howard attended a meeting with myself and investors Mary Ellen Alexander and Greg Alexander at a restaurant in the Galleria Mall in Dallas, Texas. During this meeting, coordinating an effort to band investors together to hire counsel to remove the Receivership was discussed." *Id.* at ¶ 8[Rapp. 5-6].

- "Patrick Howard and myself met with Christina Underwood at Steiner Ranch in Austin, Texas. During this meeting, coordinating an effort to band investors together to hire counsel to remove the Receivership was discussed. Patrick Howard and myself drove down to Austin together." *Id.* at ¶ 9 [Rapp. 6].

- "The information communicated in the April 8, 2017 email is the same information that was discussed in the in-person meetings with Walter Toler, Shawn Armstrong, Mary Ellen Alexander, Greg Alexander, and Christina Underwood, and teleconference with Eric Stahl." *Id.* at ¶ 18 [Rapp. 7].

- "On April 11, 2017, at 3:38 p.m. I sent the attached email to all of the investor emails that I had for the OE Capital Partners LLC investors which I understand to include most, if not all, of the investors. This email contained an attachment titled 'Investment Return Generation Plan for OE Capital Partners'. On March 13, 2017, Patrick Howard provided revisions to this document to me." *Id.* at ¶ 23 [Rapp. 7-8].

- "In connection with our efforts to band investors together to remove the Receivership, financial pledges from investors were sought in order to pay the attorney that Patrick Howard's counsel Barrett Howell had referred." *Id.* at ¶ 24 [Rapp. 8].

Moreover, the evidence shows that Howard prepared the initial draft of the "Investment Return Generation Plan for OE Capital Partners" that contained numerous false statements illustrated in the Receiver's Motion, and circulated that document to Soblinskas, a form of which was subsequently sent to the investors. *See* **Exhibit C** (Email from Howard to Soblinskas, dated March 13, 2017, enclosing link to Google Doc "OE Investment Validation and Return Strategy.docx") [Rapp. 22].

Based on the affidavit of Dovile Soblinskas and the recently-acquired evidence, this Court should enter an order finding Howard in contempt of this Court's Order Appointing Receiver (Dkt. No. 10).

B. Howard's Unsubstantiated Brief Does Not Satisfy His Burden To Show Cause Why He Should Not Be Held In Contempt.

On April 28, 2017, the Court ordered Patrick Howard to "file a written brief showing cause why [he is] not in contempt of this Court's order as alleged, and documented, by the Receiver in docket entry numbers 56-58". Order (Dkt. No. 59) at 2. However, Howard wholly failed to do what the Court ordered him to do – to show cause. Instead, Howard filed a paltry brief mischaracterizing the Receiver's Motion to Show Cause, and attempting to marginalize the evidence submitted by the Receiver to the Court. Glaringly absent is any sworn statement by Howard himself that he did not violate this Court's orders.

As set forth in Receiver's Motion, the Court's Order Appointing Receiver (Dkt. No. 10) provides that Howard is "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: . . . hinder, obstruct, or otherwise interfere with the Receiver in the performance of his duties . . . or interfere with or harass the Receiver." Order Appointing Receiver, dated February 14, 2017 (Dkt. No. 10) at 11. Howard's Response attempts to play

fast and loose with Court's Order and would have this Court entirely overlook Howard's indirect involvement in violations of the Court's Order and the extent to which he has caused actions to be taken by others to "hinder, obstruct, or otherwise interfere" or "harass" the Receiver. Specifically, Howard's Response focuses on direct action, and mischaracterizes the Receiver's evidentiary showing as not demonstrating direct action. *See, e.g.*, Howard's Response (Dkt. No. 69) at 4 ("[T]he Receiver does not offer any evidence that Mr. Howard caused any such thinking or that the Receiver was hindered, obstructed or interfered with such that the Receiver could not perform his duties. Consequently, the Receiver fails to satisfy the clear and convincing evidentiary standard as to whether investors have been confused or that the Receiver has, in any way, been prevented from carrying out his job."). To the contrary, while the Receiver has made a compelling showing of direct actions by Howard, there is no doubt based on the record before the Court that Howard was indirectly involved and certainly caused actions to be taken by others that violated this Court's Order. And, as it turns out, so did his attorneys (*i.e.*, the very same attorneys who presumably drafted Howard's Response).

While Howard's unsubstantiated brief sets out to confuse the issues and facts, the substantiated evidence provided by the Receiver regarding Howard's direct and indirect actions demonstrate 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. *See Waste Mgmt. of Washington, Inc. v. Kattler*, 776 F.3d 336, 341 (5th Cir. 2015) (the Receiver must establish by "clear and convincing evidence" that a party violated "a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order") (*citing Hornbeck Offshore Servs., L.L.C. v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013)).

Howard does not refute that a court order was in effect that applied to him. *See* Howard's Response (Dkt. No. 69) at 2. Instead, Howard asserts that (1) there is no factual foundation to hold him in contempt, and (2) Howard's conduct was not prohibited by this Court's Order. *See generally id.* at 3-9. Both of these positions are untenable.

1. The factual evidence supports holding Howard in contempt, which Howard's Response wholly fails to adequately refute.

Howard's first argument mischaracterizes the substance of this Court's Order and appears to be an attempt to manufacture a "loop hole" to excuse his misconduct. Specifically, Howard attempts to argue that his conduct did not impact the Receiver's performance of his duties (entirely ignoring the portion of the order requiring Howard to not harass the Receiver). *See, e.g.*, Howard's Response (Dkt. No. 69) at 4. This argument is without merit.

First, Howard's position is contradicted by the evidence submitted in connection with Receiver's Motion. As detailed therein, Respondents' conduct preempted the Receiver's communications to the investors with false and misleading information. These communications were specifically designed to confuse the investors and band them together against the Receiver, long before the Receiver's communication was sent to the investors. Further, these communications sought money from investors to pay counsel to advance Respondents' fraudulent scheme – not the interests of legitimate investors. If the Receiver did not take action in response to such communications, the investors would have been defrauded of additional money to fund Howard's plan to "create havoc" for this Court's Receiver, to "jettison" the Receiver, and to make "winter" come for the Receiver. *See* **Exhibit A** (Email from McCarthy to Howard and Bell, dated February 26, 2017) [Rapp. 2].[3] In fact, Christine

[3] Indeed, Howard's own Response acknowledges that Howard's conduct has interfered with the Receiver's ability perform his duties when it states that "the Receiver's Motion . . . and the litigation it has caused, is an

Horne's email to Howard when Respondents were crafting the fraudulent substance of their initial email to investors contains draft language that betrays their specific contemptuous intent: "The reason I am sending you this email is to let you know that you will likely receive communications from the SEC's receiver, Craig Stokley, an attorney in Dallas, in the near future." **Exhibit D** (Email from Christine Horne to James Howard, dated April 2, 2017) [Rapp. 24].

Second, Howard's Response does not refute the above evidence whatsoever. Indeed, rather than provide sworn testimony or evidence detailing exactly what Howard's involvement was in the efforts described in the Receiver's Motion, Howard's Response attempts only to falsely characterize the Receiver's substantiated proof as merely showing the "possibility" of Howard's involvement. *See* Howard's Response (Dkt. No. 69) at 5 ("The Receiver has not provided facts to demonstrate anything other than the possibility that at some point, Mr. Howard became aware of the April 8, 2017 email to Optimal Economics' investors."). The Receiver stands by its Motion which sets out Howard's own words demonstrating his misconduct. In addition, the Receiver now has Soblinskas' sworn affidavit which demonstrates conclusively that Howard was directly involved in the efforts surrounding the April 8, 2017 email. *See* **Exhibit B** (Soblinskas Affidavit) [Rapp. 3-20]. Indeed, as set forth therein, Howard was directly and actively involved in recruiting the initial core group of investors. *Id.* at ¶¶ 4-5 [Rapp. 5]. Howard and Soblinskas met together in person with several of the investors whose names appear on the April 8, 2017 email. *Id.* at ¶ 18 [Rapp. 7]. Howard

unnecessary drain on the limited Receivership assets that could otherwise be preserved for investors." Howard's Response (Dkt. No. 69) at 1. If Howard did not embark on this plan to defraud legitimate investors to accomplish his goal to "jettison" the receiver, and "create havoc" for the Receiver, these litigation expenses never would have been incurred. The Receiver cannot just sit idly by and allow Howard to continue to defraud the legitimate investors in order to advance his underhanded scheme. In sum, Howard's conduct made the Receiver's Motion necessary.

even traveled with Soblinskas to Austin for one of these meetings, and attended conference calls. Soblinskas' sworn testimony is that during these meetings, the same information listed in the April 8, 2017 email was stated to these investors. *Id.* at ¶ 9 [Rapp. 6]. Moreover, drafts of the April 8, 2017 email were circulated by Horne to Howard and Soblinskas. *Id.* at ¶¶ 12 [Rapp. 6], 15; *see also* **Exhibit D** (Email from Christine Horne to James Howard, dated April 2, 2017) [Rapp. 24]. Howard himself drafted the initial version of "Investment Return Generation Plan for OE Capital Partners" and circulated it to Soblinskas on March 13, 2017. *See* **Exhibit C** (Email from Howard to Soblinskas, dated March 13, 2017) [Rapp. 22]. Thus, the suggestion in Howard's Response that there is no support for the allegations that Howard was involved in the efforts of Respondents is entirely unfounded. On the contrary, the evidence shows that Howard and his counsel were the architects of this plan.

Finally, Howard's Response appears to miss entirely the point the Receiver was making in providing instances of Howard's communications with investors. Specifically, on pages 5 and 6 of the Response, Howard argues that because many of the statements made to investors were technically "truthful," he was not in violation of this Court's Order or the Receiver's admonition that the Respondent not mislead investors. *See* Howard's Response (Dkt. No. 69) at 5-6. But whether Howard's communications with investors were technically truthful is not material to his participation in the overarching fraudulent scheme to violate this Court's Order Appointing Receiver. Indeed, these emails show that Howard was directly involved in causing others to interfere with the Receivership and this Court's Order.[4]

[4] To the extent Howard asserts there is no evidence of the additional allegations of contempt, the purpose for these instances was to alert the Court that the Howard has continued to undermine and violate this Court's order appointing receiver. The Receiver did not file its Motion to Show Cause on a whim. It was only after careful deliberation, and continued violations by Howard, that it became clear that the Order was not being followed, and a contempt order was appropriate.

2. Howard's conduct is prohibited by the Court's Order.

Howard further argues that this Court's Order Appointing Receiver (Dkt. No. 10) does not prevent the conduct alleged in Receiver's Motion to Show Cause. *See* Howard's Response (Dkt. No. 69) at 8-9. In making this argument, Howard conveniently assumes that the Court will be believe that all Howard did was merely communicate with investors. However, the overwhelming evidence demonstrates otherwise. Howard also overlooks the portions of the Order that the Receiver accuses him of violating, specifically in interfering with the Receiver's duties and harassing the Receiver. Such conduct is clearly prohibited by the Court's Order.

3. Howard should not be permitted to conduct discovery.

Finally, Howard asserts that he should be permitted discovery in connection with the Receiver's Motion to Show Cause. While such a request is not properly sought and untimely, it should nevertheless be denied. The glaring defect in this argument is that the Motion relates to Howard's own conduct – not the conduct of the Receiver. If Howard was not involved, or any of the unsubstantiated assertions and arguments contained in his Response had any merit whatsoever, Howard surely would have provided sworn testimony to that effect. The fact is that he cannot provide such testimony. Specifically, he cannot testify that he was not involved in this contemptuous conduct without perjuring himself. Because Howard has refused to provide any testimony in response to this Court's Order to Show Cause, Howard should not be permitted to take any untimely discovery in connection with such Order.

In sum, Howard inexplicably chose not to attach a single piece of evidence to show this Court any cause why he should not be held in contempt. Contrary to the evidence presented in Receiver's Motion and this Brief, Howard's Response would have the Court believe that Howard was not involved in any way with the fraudulent April 8, 2017 email or any of the false information

that was disseminated thereafter. Because Howard's Response lacks competent evidence and support and because Receiver has presented clear and convincing evidence of Howard's violation of this Court's Order Appointing Receiver (Dkt. No. 10), the Court should enter an order finding Howard in contempt.

III. HORNE'S CONTEMPTUOUS CONDUCT

A. Recently Acquired Evidence Corroborates Horne's Contemptuous Conduct.

This Court should enter an order of contempt against Christine Horne because the Receiver's Motion to Show Cause provides clear and convincing evidence of the following facts about Christine Horne:

- 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." Receiver's Brief in Support of Motion to Show Cause (Dkt. No. 57) at 23.

- Horne included her name as one of the people in the investor group sending the fraudulent April 8, 2017 Email. *Id.* at 23.

- Horne knew that Soblinskas likewise was organizing the email and did not include her name. *Id.* at 23.

- Horne knew the statements in the email were false. *Id.* at 23.

- Horne's 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. *Id.* at 23.

- 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. *Id.* at 23.

To be sure, all the above facts and instances of misconduct by Horne are corroborated by the sworn testimony of Respondent Dovile Soblinskas. Specifically, in her affidavit, which is attached as **Exhibit B** to this Response, Soblinskas testifies as follows with regard to Horne's participation in the scheme to "create havoc" for the Receiver:

- "I met with the Receiver, Craig Stokley (the 'Receiver'), in his office on March 21, 2017 with Christine Horne ('Horne'). In that meeting, Horne expressed some concern about what the Receiver's communications to the investors might say, and that she wanted the Receiver to word the communications in a way that would not harm her reputation with her clients - the investors of Optimal Economics Capital Partners, LLC ('OE Capital Partners'). The Receiver

> informed Horne and myself that not only would it be entirely inappropriate for the Receiver to craft a communication to the investors in this manner, it would directly violate the Order Appointing Receiver ('Order'). The Receiver told myself and Horne that we were not authorized to send any communications that were not truthful to any investors." **Exhibit B** (Soblinskas Affidavit) at ¶ 1 [Rapp. 4].

- "Horne and myself began drafting content for an email that would be sent to all of the investors of OE Capital Partners, LLC." *Id.* at ¶ 12 [Rapp. 6].

- "After the call, on April 8, 2017, I sent the attached email (Exhibit A) to all of the investor emails that I had for the OE Capital Partners LLC investors, which I understood to include most, if not all, of the investors. **Christine Horne and I wrote the email together**." *Id.* at ¶ 15 [Rapp. 7] (emphasis added).

- "I also conducted several conference calls with investors in furtherance of this effort to remove the Receivership. Christine Horne attended most, if not all, of those conference calls." *Id.* at ¶ 20 [Rapp. 7].

- "We informed the investors that in order to save costs on attorney fees, this attorney would work through 2-3 people. These 2-3 people were intended to include myself, Horne, and Eric Stahl." *Id.* at ¶ 26 [Rapp. 8].

In addition, the documentary evidence reveals the extent of Horne's direct and indirect involvement in harassing and interfering with the Receiver in the execution of his duties. For example, Christine Horne's email to Howard when Respondents were crafting the fraudulent substance of their initial email to investors contains draft language that betrays their specific contemptuous intent: "The reason I am sending you this email is to let you know that you will likely receive communications from the SEC's receiver, Craig Stokley, an attorney in Dallas, in the near future." **Exhibit D** (Email from Christine Horne to James Howard, dated April 2, 2017) [Rapp. 24]; *see also* **Exhibit E** (Email from Horne to "Jan and Jim" dated April 2, 2017) [Rapp. 26]. The reason for sending this email was to get ahead of the Receiver's communication to investors.

Accordingly, based on the evidence submitted in the Receiver's Motion, the affidavit of Soblinskas, the recently-acquired evidence, and Horne's utter lack of evidence in

opposition, this Court should enter an order finding Horne in contempt of this Court's Order Appointing Receiver (Dkt. No. 10).

B. Horne's Unsubstantiated Brief Does Not Satisfy Her Burden To Show Cause.

On April 28, 2017, the Court ordered Christine Horne to "file a written brief showing cause why [she is] not in contempt of this Court's order as alleged, and documented, by the Receiver in docket entry numbers 56-58". Order (Dkt. No. 59) at 2. Horne wholly failed to do what the Court ordered her to do – to show cause why she should not be held in contempt. Indeed, her response brief is wholly devoid of any proof or evidence whatsoever. *See generally* Respondent, Christine Horne's Response in Opposition to Motion to Show Cause, dated May 18, 2017 (Dkt. No. 68) (hereinafter, "Horne's Response"). Specifically, Horne did not provide any affidavit testimony refuting the fact that she was instructed by the Receiver to not mislead investors. Horne did not provide any affidavit testimony stating that she was not attempting to get the Receiver removed. Moreover, Horne did not provide any documents that show other communications with investors, that could possibly controvert the clear and convincing evidence provided by Receiver in his Motion. In sum, Horne failed to meet her burden to show cause as ordered by this Court.

The reason Horne cannot provide any such evidence or testimony refuting the Receiver's Motion and complying with this Court's Order is because no such evidence exists to contradict the clear and convincing evidence provided by the Receiver. Indeed, all of the statements described in the chart on pages 10 through 13 of Receiver's Brief in Support of his Motion (Dkt. No. 57) are attributed to Horne. Horne put her name on the email that contains an incredible amount of false and misleading information. As set forth in the testimony of Soblinskas, Horne was involved in most if not all of the conference calls that were organized

for the purpose of removing the receiver. **Exhibit B** (Soblinskas Affidavit) at ¶ 20 [Rapp. 7]. In addition, Horne was one of the drafters of the April 8 Email to investors and sent drafts to Howard and Soblinskas before it was ultimately sent to the investors. *Id.* at ¶¶ 12, 15 [Rapp. 6-7]. To make matters worse, Horne's emails confirm that she was trying to beat the Receiver to the investors. **Exhibit D** (Email from Christine Horne to James Howard, dated April 2, 2017) [Rapp. 24] ("The reason I am sending you this email is to let you know that you will likely receive communications from the SEC's receiver, Craig Stokley, an attorney in Dallas, in the near future.").[5]

What is undisputed is that Horne raised millions of dollars from investors for OE Capital – unlike any of the other victim investors listed on the April 8 Email. *See* Receiver's Brief in Support of Motion to Show Cause (Dkt. No. 57) at 7 (chart showing amounts raised through scheme). Thus, Horne's attempt to say that she was only technically an "employee" for ten (10) days is disingenuous and an attempt to further mislead. *See* Horne's Response (Dkt. No. 68) at 3. To the contrary, Horne was one of the top producers in this Ponzi scheme. Horne solicited investments in the Ponzi scheme as far back as October 5, 2015. *See* Exhibit B-9 to Appendix to Receiver's Motion to Show Cause (Dkt. No. 58) (raw data showing money raised by each agent). Indeed, instead of providing sworn testimony that she "did not make any knowingly false statements to any investor, which hindered, obstructed, or otherwise interfered with the Receiver," she relies only on the conclusory statement of her counsel in

[5] Horne's gripe that other investors listed in the April 8 Email are not the subject of the Receiver's Motion to Show Cause is a "red herring." See Horne's Response (Dkt. No. 68) at 3. The truth is that the other investors were not also employees of OE Capital and responsible for raising millions from investors in the Ponzi scheme. While Horne claims to have only been a W-2 employee, she was paid handsomely by OE Capital for the money she raised for investors. This is also the reason she is identified as a "possible" investor in the Receiver's Motion – specifically, it is unclear the extent to which the money she "invested" was actually money she invested out-of-pocket or an investment that was credited to her based on her work in raising money for the fraudulent scheme.

the Response to Receiver's Motion to Show Cause. *See* Horne's Response (Dkt. No. 68) at 4. The reason she cannot provide such sworn testimony is because it would constitute perjury.

Because Horne has failed to (and, indeed, cannot) satisfy her burden to show cause for why she should not be held in contempt, the Court should enter an order finding Christine Horne in contempt of this Court's Order Appointing Receiver (Dkt. No. 10).

IV. SCHERER'S FAILURE TO RESPOND TO COURT'S ORDER

On April 28, 2017, the Court ordered Respondent Ron Scherer to "file a written brief showing cause why [he is] not in contempt of this Court's order as alleged, and documented, by the Receiver in docket entry numbers 56-58". Order (Dkt. No. 59) at 2. Specifically, the Court instructed Ron Scherer to serve his brief "no later than May 19, 2017, or 21 days after receiving services, whichever is later." *Id.* at 2.

On May 1, 2017, a copy of the Receiver's Motion to Show Cause, Receiver's Brief in Support of Motion to Show Cause with Table of Contents and Table of Authorities, Receivers' Appendix in Support of Motion to Show Cause with Description of Affidavits and Exhibits and Order, was delivered and received by a process server charged with the responsibility of serving Scherer. *See* Affidavit of Service (Dkt. No. 67) at 1. On May 2, 2017, all the aforementioned documents were delivered to Ron Scherer at his home at 452 Cedar Drive Saint Henry, OH 45883-8631 by personal service. *See id.* Thus, according to this Court's Order, Scherer's response was due on May 23, 2017.

To date, Scherer has not provided a response to the Court's Order to Show Cause (Dkt. No. 59). Thus, as of the date of this Response, Scherer has wholly failed to do what the Court ordered him to do – to show cause why he should not be held in contempt. Therefore, the

Receiver respectfully requests that the Court enter an order holding Scherer in civil contempt as requested by the Receiver's Motion.

V. STATEMENT REGARDING STATUS OF CONTEMPT PROCEEDINGS RELATED TO SOBLINSKAS

While the Receiver immediately attempted to serve Soblinskas with a copy of the Receiver's Motion as instructed by this Court, the Receiver was initially unable to personally serve her despite countless attempts to serve her through her counsel James Bell. Then, just six (6) days after initially appearing on behalf of Soblinskas, Mr. Bell filed a motion to withdraw as counsel for Soblinskas. Dkt. No. 70. Subsequently, the Receiver was notified that counsel Ramon Rodriguez would be representing Soblinskas in this matter, and Mr. Rodriguez promptly filed a notice of appearance, notice acknowledging service, and motion to withdraw Mr. Bell's motion for discovery. Dkt. Nos. 72-74. The Receiver agreed to provide Soblinskas' new counsel an additional fourteen (14) days to respond.

The Receiver and Soblinskas are currently engaged in discussions to submit a jointly-proposed resolution to this matter with respect to Ms. Soblinskas. As such, this brief does not relate to Soblinskas because it would be premature given that the date for Soblinskas to show cause has not come, and the Receiver anticipates the cause Soblinskas will show will be her cooperation and commitment to continued cooperation with the Receiver consistent with her obligations in the Court's Order Appointing Receiver (Dkt. No. 10).

VI. REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests that the Court enter an order (i) finding that Patrick Howard and Christine Horne have not shown cause for why they should not be held in contempt, (ii) finding that Patrick Howard and Christine Horne are in contempt for violating this Court's Order Appointing Receiver (Dkt. No. 10), (iii) requiring

Patrick Howard, Christine Horne, and Ron Scherer to each pay $5,000 to the Receiver as a penalty for their contemptuous conduct, (iv) requiring Howard, Horne, and Scherer to forfeit any investment they may have in the Receivership Entities; (v) modifying the Order Appointing Receiver to restrain and enjoin Respondents each 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; (vi) either (a) requiring Howard to appear at a hearing to show cause why he should not be held in criminal contempt, or (b) instructing Howard that should he violate the orders in the future, he will be held in criminal contempt and placed into custody; and (vii) granting any and all further and other relief to which the Receiver may be entitled, at law or in equity.

Dated: June 2, 2017

Respectfully submitted,

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ATTORNEY FOR RECEIVER
W. CRAIG STOKLEY

CERTIFICATE OF SERVICE

On June 2, 2017, I electronically filed this Receiver's Omnibus Response to Howard's, Horne's, and Scherer's Responses to Court's Show Cause Order 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.

KIMBERLY M.J. SIMS