

**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 SUPPLEMENTAL QUARTERLY FEE APPLICATION

Pursuant to the Order Appointing Receiver (Dkt. 10), W. Craig Stokley, in his capacity as the Receiver for Defendants Patrick O. Howard, Howard Capital Holdings, LLC and Optimal Economics Capital Partners, LLC hereby submits the Receiver’s Supplemental Quarterly Fee Application (the “Supplemental Application”).

I. INTRODUCTION

On May 15, 2017, the Receiver submitted his Quarterly Fee Application (the “Original Application”) covering the period of time from inception of the receivership on February 14, 2017 through March 31, 2017.¹ (Dkt. 65). On June 13, 2017, the Court granted the Receiver’s Original Application for the total amount requested, specifically, **\$94,259.98**. However, in its Order, the Court noted that the “amount requested does not reflect any fees for the accountant or the web designer hired by the Receiver. If the Receiver desires to request payment for the

¹ Unless defined herein, the definitions refer to those defined terms in the Order Appointing Receiver.

Upon review of the Receiver’s Original Application, it has become apparent that the Receiver inadvertently omitted his request for the accountant and web designer fees in the application, even though he attached those invoices as Exhibits to the Original Application. Accordingly, the Receiver submits this Supplemental Application to include a formal request for payment for amounts associated with the services rendered by the accountant and the web designer. To that end, the Receiver incorporates by reference herein the Original Application and accompanying exhibits.

II. THE APPLICANT AND THE SUPPLEMENTAL APPLICATION

The Securities and Exchange Commission filed this suit on March 14, 2017, alleging that Defendants Patrick O. Howard (“Howard”), Howard Capital Holdings, LLC (“Howard Capital”) and Optimal Economics Capital Partners, LLC (“OE Capital”) perpetrated fraud on their investors. On February 14, 2017, the Receiver assumed control of Howard Capital and OE Capital (collectively, the “Receivership Entities”). The Receiver also assumed control over the accounts and assets of Patrick O. Howard (“Howard”).

The Receiver engaged Palter Stokley Sims PLLC as the Receiver’s counsel upon appointment on February 14, 2017. Palter Stokley Sims PLLC began work on this matter on February 14, 2017.

The Receiver engaged Howard LLP as the Receiver’s accountants on February 14, 2017. The Court approved the Receiver’s engagement of Howard LLP as the Receiver’s accountants by the Court’s Order dated March 13, 2017. (Dkt. 38).

The Receiver also engaged NetVida to create the Receiver’s informational website and provide web services to the Receiver, which was also approved by the Court by its Order dated March 13, 2017 (Dkt. 38).

On June on May 15, 2017, the Receiver submitted the Original Application (Dkt. 65) requesting that the Court award him **\$94,259.98** for professional fees and expenses. On June 13, 2017, the Court granted the Receiver's Original Application in the amount of **\$94,259.98** and noted that a separate application would be necessary to secure payment for the fees associated with the accountant and the web designer which were inadvertently omitted from the Original Application. (Dkt. 88).

Accordingly, this Supplemental Application seeks the Court's approval to allow the Receiver to pay from the Receivership's assets the fees and expenses for Howard LLP and NetVida for the time period from February 14, 2017 through March 31, 2017 (the "Application Period") pursuant to the Order Appointing Receiver (Dkt. 10) and the Unopposed Motion to Modify and Clarify Order Appointing Receiver (Dkt. 38).

As authorized by the Court's Order Modifying and Clarifying Order Appointing Receiver (Dkt. 39) and the Order Appointing Receiver (Dkt. 10), after presentment and no objection from the Securities and Exchange Commission, the Receiver has paid 80% of the professional services fees and retained 20% of the professional services fees invoiced by Howard LLP and NetVida. The purpose of this Application is to request Court approval for all the professional services fees submitted by Howard LLP and NetVida, and to authorize payment of those fees.

A. Fee Schedule

Howard LLP's billing rates reflect a discount from its standard billing rates. Each Howard LLP invoice includes a summary that reflects each timekeeper's: (1) name; (2) title; (3) hours worked; (4) hourly rate; and (5) total fees billed. Howard LLP's timekeeper's name, title, standard billing rates, and matter billing rates are reflected on **Exhibits A-2 and A-5**. **Exhibit A-2** tabulates the aggregate hours and amount billed by each timekeeper from

February 14, 2017 through March 31, 2017. As reflected on **Exhibits A-2 and A-5**, the total amount invoiced for Howard LLP's accounting services is **\$5,570**.

NetVida's billing rates reflect the standard billing rates for its website development services. The invoices reflecting NetVida's services are attached as **Exhibits A-6 and A-7**, and total **\$729.61**—\$403.75 and \$325.86, respectively.

B. Billing History

This is the Receiver's Supplemental Application to the Original Application. As to Howard LLP and NetVida, this Application covers the period from the inception of the Receivership on February 14, 2017 through March 31, 2017. The Court previously entered an Order on the Receiver's Original Application relating to the professional services fees of the Receiver and Palter, Stokely Sims PLLC, allowing a payment in the amount of **\$94,259.98**. **The Receiver now seeks an additional payment in the amount of \$6,299.61 for the services rendered by Howard LLP and NetVida, which were inadvertently omitted from the Original Application.**

III. CURRENT AND PREVIOUS BILLINGS

A. Total Compensation and Amount Requested

The Receiver is requesting approval of accountant and web design fees in the amount of **\$6,299.61** to be paid from the Estate. The allocation of the fees among Howard LLC and Web Vita is shown in **Exhibits A-2, A-5, A-6, and A-7**.

B. Previous Awards

The total compensation and expenses awarded by the Court are tabulated below.

Description	Applied To Date	Previously Awarded
Receiver	\$	\$ 60,190.00
Palter Stokley Sims PLLC	\$	\$ 33,797.50
	\$	\$ 93,987.50
Expenses	\$	\$ 272.48
Total	\$	\$ 94,259.98

C. **Billing Summary**

During the Application Period, Howard LLP billed 23.1 hours. An itemization of hours and dollars billed, per timekeeper, is reflected on **Exhibits A-1 and A-2**. In addition, during the Application Period, NetVida billed 6.25 hours providing web development services and incurred expenses of \$135.86 to create a Web domain with a one year Website Hosting Dreamhost. An itemization of the tasks completed and the amounts billed per hour is reflected on **Exhibits A-6 and A-7**.

IV. **RECORDS SUPPORTING THIS APPLICATION**

In support of this Application, the Receiver incorporates by reference, the Original Application, along with its Exhibit A. For the Court's convenience, the Receiver has also attached the invoices of Howard LLP and NetVida for the Application Period.

Attached as **Exhibits A-2 and A-5** are Howard LLP's timekeeper summary and invoice reflecting the services rendered in relation to invoice number 1173163. The Howard LLP invoices contain a summary of the time billed, rate and total billing per timekeeper.

Attached as **Exhibits A-6 and A-7** are NetVida's invoice numbers 1137 and 1141, respectively.

V. **ARGUMENT AND AUTHORITIES**

A. **The Court should use a lodestar analysis to determine a reasonable fee for Howard LLP and NetVida.**

The professional fees and expenses requested in this Application are governed by the lodestar method of calculation. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319 (5th Cir. 1995); *SEC v. Tyler*, No. 3:02-CV-282-P, 2003 WL 21517879 (N.D. Tex. June 30, 2003) (Solis, J.). The lodestar is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Hensley*, 461 U.S. at 433. In evaluating the reasonableness of the number of hours expended, the Court must “determine whether the total hours claimed are reasonable [and] also whether particular hours claimed were reasonably expended.” *Kellstrom*, 50 F.3d at 325. Reasonable hourly rates may be determined by considering the applicant's regular rates and the prevailing rates in the community. *Id.* at 328. After multiplication of the two amounts, the Court may adjust the lodestar result upward or downward as it sees fit based on consideration of the twelve factors enumerated originally in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974); *Kellstrom*, 50 F.3d at 329. The factors include: (i) time and labor required; (ii) novelty and difficulty of issues; (iii) the skill required to perform the legal services properly; (iv) preclusion from other employment; (v) customary fees; (vi) fixed or contingent fees; (vii) time limitations imposed by client or other circumstances; (viii) results achieved; (ix) experience, reputation and ability; (x) the undesirability of the case; (xi) the nature and length of professional relationship with client; and (xii) awards in similar cases. *Id.*

In support of this Application, the Receiver submits the following exhibits for the Court's review:

1. **Exhibits A-2**, tabulating the hours worked by each timekeeper at Howard LLC;
2. **Exhibits A-5, A-6, and A-7**, reflecting the invoices for the professional fees and expenses from Howard LLC and NetVida covered by this Application showing: (a) the date the services were rendered; (b) the nature of the services rendered; (c) the time required for the performance of such services; and (d) the fees charged for each service rendered; and
3. Certification of W. Craig Stokley, stating the reasonableness of the rates charged and hours billed by professionals at Howard LLP and NetVida are reasonable.

Howard LLP has charged fees that are below the standard billing rates for the professionals working on this matter, and those fees are at or below customary fees charged by like professionals in their respective markets. In addition, Howard LLP's expenses for transportation, parking & tolls, postage and courier fees are billed at actual cost; and in-house copy, fax, phone and related charges have not been billed to the Receivership Estate. No request is made for overhead charges.

NetVida has charged standard hourly rates associated with website development.

The fees and expenses sought in this Application are reasonable and were necessary for proper administration of the duties and responsibilities charged to the Receiver by the Court.

B. The lodestar analysis supports the Application

Application of the relevant *Johnson* factors to the professional services provided in this case demonstrates that the fees and expenses should not be adjusted, either upward or downward.

1. Time and Labor Required.

The time and labor required for this receivership are set forth in the invoices attached

to the Original Application, which the Court has already reviewed. The Receiver has also re-attached the relevant invoices of Howard LLC and NetVida to this Supplemental Application for the Court's convenience. As demonstrated in those documents, the Receivership is complex due to a number of factors, as fully explained in the Original Application.

Howard LLP works closely with the Receiver and his team to provide accounting support. Its work during the Application Period is detailed in its attached invoice, but in summary, its services during the Application Period include:

1. Setting up the Receivership 's books and records;
2. Analyzing the tax issues faced by the Receivership Entities; and
3. Determining corrections to investor tax statements and necessity of amendment of tax returns.

In addition, NetVida works with the Receiver to create the Receiver's informational website and to provide web services to the Receiver. Its work during the Application Period is detailed in the attached invoices.

2. The Novelty and Complexity of the Issues

By its very nature, each receivership is unique and complex. This Receivership has been particularly complex, in part, due to: (a) the existence of Portfolio Company "investments" without the record-keeping, personnel or capital necessary to operate them; (b) deciphering the Receivership Entities' books and records, which were kept in an idiosyncratic fashion and scattered among various databases and electronic and paper files; (c) the intangible nature of the substantial Receivership Entities' assets, which largely consist of interests and agreements for revenue sharing with the Portfolio Companies, which have little operating history; (d) the multitude of funds and mingling of investors' funds, which has created numerous classes of potentially defrauded investors and other creditors and (e)

3. The Skill Required to Perform the Services.

The services performed in this matter required professionals who have specialized knowledge and experience, including on such topics as (a) substantive and procedural law applicable to receiverships; (b) accounting; (c) forensic financial analysis and fund tracing; (d) electronic data recovery; (e) assets administration and liquidation; and (f) tax. Howard LLP has considerable experience in such areas. The complexity of the Receivership also required that a website be developed to assist the Receiver in performing the services, in which NetVida has knowledge and experience.

4. The Preclusion of Other Employment Due to Acceptance of the Case.

Howard LLP has not declined any representation and NetVida has not declined any work solely because of the Receiver's work.

5. The Customary Fee.

As set forth in the Certification of W. Craig Stokley filed in connection with this Application, the hourly rates charged in this matter are: (a) discounted off of the professional's ordinary and customary rates; (b) commensurate with the rates charged by other professionals of similar experience in their respective geographic markets; and (c) reasonable, necessary, and commensurate with the skill and experience required for the activity performed. In addition, the fees charged by NetVida commensurate with the standard market fees for such work.

6. Whether the Fee is Fixed or Contingent.

The fees of Howard LLP and NetVida are fixed insofar as they are based upon hourly rates.

7. Time Limitations.

Time is of the essence in a receivership, especially in the initial stages. The efforts undertaken in this case related to the stabilization of the Receivership Entities' business operations, the recovery of receivership assets, and analysis of records to locate assets were necessarily conducted on an expedited basis. In addition, the Court required that the Receiver make a comprehensive report regarding the estate within thirty days of his appointment.

8. The Amount Involved and the Results Obtained

This case involves investments (in debt or equity) by approximately 119 persons totaling more than \$13 million. The priority of these various claims is yet to be determined. There is also substantial additional debt. There are also assets – primarily causes of action and collection from the Portfolio Companies - that are likely valuable but which have yet to be monetized. Thus, in terms of dollars returned to investors and other creditors, it is too early to tell how successful the Receiver and his professionals have been or will be.

That being said, the Receiver and his team have performed significant work and achieved real results for the Estate. As discussed above and in the Receiver's Quarterly Status Report, the Receiver has (i) stabilized the operating business of the Receivership Entities to allow realization of revenue from the Portfolio Companies' operations; (ii) reduced Estate expenses and (iii) provided the Court and the parties with a detailed analysis of the financial status of the Receivership Entities.

VI. CONCLUSION

For the reasons stated herein, the Receiver requests that the Court approve the Application.

Respectfully submitted,

/s/ W. Craig Stokley

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On June 14, 2017, I electronically filed the Receiver's Quarterly Fee Application via the Court's CM/ECF filing system, which will send a notice of electronic filing to all CM/ECF participants. I further certify that I served a true and correct copy of the foregoing document and the notice of electronic filing via UPS and electronic mail on all non-CM/ECF parties and/or their counsel.

/s/ W. Craig Stokley

W. CRAIG STOKLEY

**IN THE UNITED STATES DISTRICT COURT
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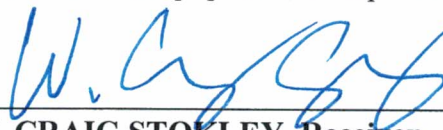
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**RECEIVER’S CERTIFICATE IN SUPPORT OF
SUPPLEMENTAL QUARTERLY FEE APPLICATION**

I, William Craig Stokley, the court appointed Receiver in the above captioned matter and in connection with the Supplemental Quarterly Fee Application therein (the “Supplemental Application”) do hereby certify that:

- (a) I have read the Supplemental Application;
- (b) To the best of my knowledge, information and belief formed after reasonable inquiry, the Supplemental Application and all fees and expenses therein are true and accurate and comply with the Billing Instructions;
- (c) All fees contained in the Supplemental Application are based on the rates listed in the Fee Schedule attached hereto and such fees are reasonable, necessary, and commensurate with the skill and experience required for the activity performed; and
- (d) The amount for which reimbursement is sought does not include the

amortization of the cost of any investment, equipment, or capital outlay.



W. CRAIG STOKLEY, Receiver