

**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 SECOND 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 Second Quarterly Fee Application (the "Second Quarterly Application" or "Application").

I. INTRODUCTION

This Second Quarterly Application covers the three-month period of time from April 1, 2017 through June 30, 2017.¹ Pursuant to the Court's Order Appointing Receiver, this application has been presented to the United States Securities and Exchange Commission, and the Commission does not oppose the relief sought by this Application, and has no objections to the invoiced attached hereto.

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

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. (Dkt. 65). On June 13, 2017, the Court granted the Receiver’s Original Application for the total amount requested, specifically, **\$94,259.98**, but the amount requested in the Original Application inadvertently left out the fees for the accountant and web designer hired by the Receiver. (Dkt. 88). On June 14, 2017, the Receiver filed a supplemental quarterly fee application to correct the inadvertent error in its Original Application seeking authorization to pay accountant and web designer fees incurred during the first quarter. The Supplemental Application is still pending.

II. THE APPLICATION

The Securities and Exchange Commission filed this suit on February 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).

During the time period relevant to this application, the total professional services fees were **\$121,020.49**. 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. The purpose of this Second Application is to request Court approval for all the professional services fees during the period from April 1, 2017 through June 30, 2017, and to authorize payment of the retained portion (i.e. the 20% that has not been paid) of those fees.

A. Fee Schedule

The billing rates of all Palter Stokley Sims PLLC timekeepers, including the Receiver, reflect a discount from their standard billing rates. In general, Palter Stokley Sims PLLC has discounted its rates and capped the fees charged by its professionals at \$325 per hour.

Each Palter Stokley Sims, PLLC invoice includes a summary that reflects each timekeeper's: (1) name; (2) title; (3) hours worked; (4) the effective hourly rate; and (5) total fees billed. The Receiver's and each Palter Stokley Sims, PLLC timekeeper's name, title, standard billing rates and matter billing rates are reflected on **Exhibit A-1**. **Exhibit A-1** tabulates the aggregate hours and amount billed by each timekeeper from April 1, 2017 through June 30, 2017.

The web designer fees are billed at \$95 / hour, and during this quarter the billings totaled 3.5 hours for a total amount of \$332.50.

B. Billing History

This is the Receiver's Second Application. This Application covers the period from April 1, 2017 through June 30, 2017.

The Receiver's Original Application, covering the period February 14, 2017 through March 31, 2017, was granted by the Court on in the amount of **\$94,259.98**. The Receiver's Supplemental Application, which requests an additional amount of **\$6,299.61** for that same time period which was inadvertently omitted from the Original Application, has not yet been ruled upon by the Court.

III. CURRENT AND PREVIOUS BILLINGS

A. Total Compensation and Amount Requested

The Receiver is requesting approval of fees and expenses in the amount of **\$121,020.49**. The allocation of the fees among the Receiver and his counsel is shown in **Exhibit A-1**.

B. Previous Awards

This is the Second Application by the Receiver. 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** for the first quarter which consisted of approximately 45 days. A supplemental application is currently pending for that same time period which seeks approval of **\$6,299.61** for the services rendered by Howard LLP and NetVida, pursuant to the Supplemental Application.

C. Billing Summary

During the Application Period which consisted of approximately 90 days, the Receiver billed 254.2 hours to this matter and other timekeepers at Palter Stokley Sims PLLC billed 155.2 hours. An itemization of hours and dollars billed, per timekeeper, is reflected on **Exhibit A-1** and tabulated below:

Description	Second Quarter	Previously Awarded
Receiver	\$ 82,615.00	\$ 60,190.00
Palter Stokley Sims PLLC	\$ 37,157.50	\$ 33,797.50

Expenses	\$ 915.49	\$ 272.48
Netvida	\$ 332.50	Pending Application
Total	\$ 121,020.49	\$ 94,259.98

IV. RECORDS SUPPORTING THIS APPLICATION

In support of this Application, the Receiver has attached invoices from Palter Stokley Sims PLLC for the Application Period. Attached as **Exhibits A-2, A-3, and A-4** are Palter Stokley Sims PLLC invoices numbers 6473, 6573, and 6707, respectively. Each Palter Stokley Sims PLLC invoice contains: (i) a summary of the time billed, rate, and total billing per timekeeper and (ii) fees billed per task. Attached as **Exhibits A-5 and A-6** are Netvida invoice numbers 1142, and 1151, respectively. Each Netvida invoices contains (i) a summary of the time billed, rate, and total billing per timekeeper and (ii) fees billed per task.

V. ARGUMENT AND AUTHORITIES

A. **The Court should use a lodestar analysis to determine a reasonable fee for the Receiver and his professionals.**

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 loadstar 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. **Exhibit A-1** tabulating the hours worked by each timekeeper at Palter Stokley Sims PLLC;
2. **Exhibits A-2, A-3, A-4, A-5, and A-6** reflecting the invoices for the professional fees and expenses covered by this Application showing: (i) 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.
3. Certification of W. Craig Stokley, stating the reasonableness of the rates charged and hours billed by professionals at Palter Stokley Sims PLLC are reasonable.

Palter Stokley Sims PLLC 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. Further, Palter Stokley Sims PLLC's expenses for transportation, parking and 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. 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.

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 for the Court's review. As demonstrated in those documents, the services performed by the Receiver and Palter Stokley Sims PLLC during the Application Period include:

1. Taking possession and control over the business and assets of the Receivership Entities;
2. Continued to identify and preserve any and all assets of the Receivership Estate;
3. Terminated any continuing financial obligations that would not maximize the value of the Receivership Estate;
4. Conducting administrative matters related to the Receivership Estate, including: identifying additional sources of recovery; minimizing expenses; and positioning the receivership estate to be in the best position to recover investor funds in the event any of the portfolio companies succeed in the future;
5. Negotiate terms of a potential agreement whereby certain obligations of Whrzt, Inc. would be converted to equity;
6. Preparation of two unopposed motions: (1) for authority to enter into a certain transaction with WHRZT, Inc.; and (2) to retain Mario Dolan as transactional counsel;

7. Coordination with WHRZT, Inc. to identify another potential agreement that would convert most of WHRZT, Inc. obligations to the Receivership Entities into equity.
8. Communication with investors and their respective counsel;
9. Finalized an informational website regarding the receivership for investors, creditors, and interested third parties;
10. Sent formal notification to the investors regarding the receivership;
11. Responded to investor inquiries;
12. Returned Patrick Howard's leased 7-series BMW;
13. Administered contracts with movers;
14. Canceled certain events and obtained refund for deposits;
15. Managed inventory of TU Flo bottles and sought interested buyers;
16. Negotiated with Midland IRA to freeze all 401K accounts to avoid any fees being directly charged to investors and associated collection efforts;
17. Resolved payroll tax issues that existed when the Receiver was appointed;
18. Prepared and filed Florida reemployment tax reports and paid associated taxes;
19. Responded to and resolved notices from the Texas Workforce Commission Special Actions Unit for overdue unemployment taxes for the first quarter of 2015, first quarter of 2016, and certain unemployment taxes for the second, third, and fourth quarters of 2016;
20. Investigate circumstances surrounding false and misleading emails from the email address: oeccapitalpartnersinvestors@gmail.com that began on April 8, 2017;
21. File motion to show cause why certain former employees should not be held in contempt for causing false and misleading communications to be sent to legitimate investors of the Receivership;
22. Responded to Patrick Howard's counsel's motion to seal records from the public, have certain documents stricken, and other harassing actions by Howard that interfered with the administration of the Receivership;
23. Preparation of the Receiver's First and Second Quarterly Status Reports;

24. Investigate possible claims against third-parties and options related to same; and
25. Management of general activities of receivership estate, including dealing with tax, employment, and insurance issues.

The time spent on these activities and others are detailed on 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 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) numerous, poorly documented payments to or on behalf of Defendants.

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.

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

The Receiver and Palter Stokley Sims PLLC, has not declined any specific representation solely because of the Receiver’s work. However, because of the magnitude of the effort required, the Receiver and many members of his team have devoted substantial

portions of their time which would have been utilized in efforts for other paying clients.

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.

6. Whether the Fee is Fixed or Contingent.

The fees of Palter Stokley Sims PLLC are fixed insofar as they are based upon hourly rates. But, payment of any fees and expenses is contingent upon the Court's discretion and sufficient funds.

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.

8. The Amount Involved and the Results Obtained

This case involves investments (in debt or equity) by approximately 119 persons totaling approximately \$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) identified additional sources of recovery and minimized expenses; (ii) managed various tax matters; and (iii) provided the Court and the parties with a detailed analysis of the status of the Receivership Entities.

VI. CONCLUSION

For the reasons stated herein, the Receiver requests that the Court approve the Application and professional fees sought by this application in the total amount of \$121,020.49 and authorize payment of the 20% retained unpaid portion of those fees from the Receivership Estate.

Respectfully submitted,

/s/ Kimberly Sims

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On August 14, 2017, I electronically filed the Receiver's Second 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/ Kimberly Sims

KIMBERLY M. J. SIMS

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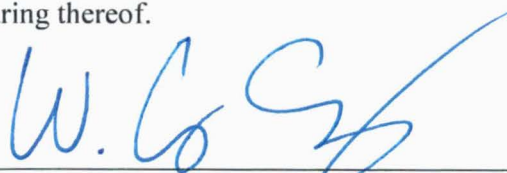
DEFENDANTS.

RECEIVER'S CERTIFICATE IN SUPPORT OF SECOND QUARTERLY FEE APPLICATION

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

- (a) I have read the Second Quarterly Fee Application;
- (b) To the best of my knowledge, information and belief formed after reasonable inquiry, the Second Application and all fees and expenses therein are true and accurate and comply with the Billing Instructions;
- (c) All fees and expenses included in the Second Application were incurred in the best interests of the Receivership Estate;
- (d) All fees contained in the Second 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;

- (e) The amount for which reimbursement is sought does not include the amortization of the cost of any investment, equipment, or capital outlay;
- (f) The requests for reimbursement of services that were justifiably purchased or contracted for from third-parties (such as copying, imaging, bulk mail, messenger service, overnight courier, or title and lien searches), request reimbursement only for the amount billed to Palter Stokley Sims PLLC by the third-party vendor and paid by Palter Stokley Sims PLLC to such vendor. To the extent such services were performed within Palter Stokley Sims PLLC, it is not making a profit on such reimbursable service; and
- (g) With the exception of the Billing Instructions, I have not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.



W. CRAIG STOKLEY, Receiver