

**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 THIRD QUARTERLY STATUS REPORT**

Pursuant to the *Order Appointing Receiver* (Dkt. 10), W. Craig Stokley, in his capacity as Receiver (the “Receiver”) for Defendants Patrick O. Howard, Howard Capital Holdings, LLC, and Optimal Economics Capital Partners, LLC, submits this, his Third Quarterly Status Report. This Third Quarterly Status Report covers the period of time from July 1, 2017 through September 30, 2017.<sup>1</sup>

**I. CASE STATUS**

**A. SUMMARY OF ACTION BY RECEIVER**

Since appointment on February 14, 2017, the Receiver has operated Howard Capital Holdings, LLC (“Howard Capital”) and Optimal Economics Capital Partners, LLC (“OE Capital”)

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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* (Dkt. 10). This Report is in addition to the Receiver’s previously submitted 30-day status report, covering the time period from February 14, 2017 through March 16, 2017 (Dkt. 40), the Receiver’s Quarterly Status Report, dated May 1, 2017 (Dkt. 60), and the Receiver’s Second Quarterly Status Report, dated July 30, 2017 (Dkt. 96).

(collectively, the “Receivership Entities”). As further described below, from July 1, 2017 through September 30, 2017, the Receiver has: (a) worked with its tax and accounting professionals to address tax issues related to the Receivership Entities; (b) filed the appropriate tax documents with the Internal Revenue Service and issued Schedule K-1s to the investors of the three funds – Insured Liquidity Partners CFG I, LLC, Insured Liquidity Partners CFG II, LLC, and OE Capital Ventures, LLC for 2015 and 2016; (c) finalized and closed on a transaction with WHRZT, Inc. by which OE Capital obtained equity in WHRZT, Inc.; (d) maintained an informational website regarding the Receivership for investors, creditors, and interested third-parties; (e) responded to investor inquiries and correspond with investors regarding information related to the Receivership Estate including taxes and other information contained on the Receiver’s website; (f) administered and negotiated the warehouse contract related to storage of the TU Flo water bottles; (g) sought out potential buyers of the TU Flo water bottles; (h) resolved remaining payroll tax issues that existed when the Receiver was appointed; (i) resolved the pending 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 as to Doville Soblinskas, resulting in recovery to the Estate; (j) pursued a contempt order as to Patrick Howard, which remains pending; (k) responded to frivolous and unauthorized discovery requests from Patrick Howard; (l) obtained refunds for deposits made for cancelled investor events; (m) maintained books and records pursuant to the Court’s orders and SEC guidelines; (n) reviewed correspondence regarding Patrick Howard’s false statements to third-parties about the status of the Receivership; (o) responded to inquiries from the Federal Bureau of Investigation and the United States Postal Inspection Service; and (p) investigated possible claims against third-parties and options related to same.

**B. PROCEDURAL HISTORY SINCE LAST QUARTERLY REPORT**

The procedural history since the last report relates primarily to three items: (a) administration of the Receivership Estate; (b) closing of the transaction to convert into equity the debt obligations of WHRZT, Inc. owed to the Receivership Entities; and (c) resolution of tax issues related to the Estate, Receivership Entities, including amendment of 2015 and 2016 returns and issuance of Schedule K-1s to investors.

**1. Filings Related to the Administration of the Receivership Estate**

There has been very little procedural history during this quarter apart from a reply brief filed by Patrick Howard related to motions filed in the second quarter, and the Receiver's Second Quarterly Report, and the Receiver's Quarterly Fee Application.

Currently, the following motions and issues are ripe for ruling by the Court:

- (a) The Receiver's unopposed Second Quarterly Fee Application (Dkt. 97) filed on August 14, 2017 is ripe for ruling.
- (b) The Court's Order to Show Cause (Dkt. 59) – On April 28, 2017, the Court ordered Patrick Howard, Doville Soblinskas, Christine Horne, and Ron Scherer to show cause why they should not be held in contempt of this Court's Order Appointing Receiver. The Court stated that because the motion sought two forms of contempt – civil and criminal – the Court would consider the civil contempt issues through written submissions. The written submissions of the civil contempt issues have been fully briefed (Patrick Howard – Dkt. 69) (Christine Horne – Dkt. 68 which was supplemented without leave on June 12, 2017 in Dkt. 87) (Ron Scherer – no response) (Doville Soblinskas and the Receiver filed a papers to resolve the contempt

issues related to Ms. Soblinskas which the Court entered – Docket Entry Nos. 83 and 84) and responded to by the Receiver (Docket Entry Nos. 81 and 82) . As such, the Court’s consideration of the civil contempt issues related to Patrick Howard, Christine Horne, and Ron Scherer are ripe for ruling.

- (c) Patrick Howard’s Motion to Strike (Dkt. 85), filed on June 9, 2017, which is opposed by the Receiver’s Response (Dkt. 92) is ripe for ruling.
- (d) Patrick Howard’s Motion for Expedited Discovery (Dkt. 90), filed on June 16, 2017, which is opposed by the Receiver’s Response (Dkt. 92) is ripe for ruling.
- (e) Patrick Howard’s Motion to Seal (Dkt. 91), which is opposed by the Receiver’s Response (Dkt. 92) is ripe for ruling.

### **C. OPERATIONS OF THE RECEIVER**

As detailed in the Receiver’s First Quarterly Report (Dkt. 40), the Receiver investigated the investments made by the Receivership Entities and determined that the Receivership Entities could not 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, discontinued all future funding and marketing activities of the Receivership Entities. During the second quarter of 2017, the Receiver focused on administrative matters related to the Receivership Estate, identifying any 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. During the third quarter, the Receiver’s primary focus related to working with its tax and accounting professionals to address tax issues

related to the Receivership Estate; finalizing and closing on a transaction with WHRZT, Inc. by which OE Capital obtained a substantial amount of equity in WHRZT, Inc.; managing issues related to the substantial inventory of approximately 38,000 units of TU Perform products that are currently warehoused in Tampa, Florida on approximately 180 pallets and attempting to find a buyer for this product; responding to frivolous and unauthorized discovery from Patrick Howard; and investigating possible claims against third-parties and options related to same. In addition, the Receiver has spent time and resources on his general day-to-day duties such as resolving remaining payroll tax issues that existed when the Receiver was appointed, maintaining books and records pursuant to the Court's orders and SEC guidelines, responding to myriad inquiries from various third-parties; reviewing court filings.

**1. Website.**

The Receiver continues to communicate to investors, creditors and interested parties through his informational website that went live in April 2017, located at [www.companyReceiver.com](http://www.companyReceiver.com). The website contains a summary of the SEC's allegations, the case's procedural history, a summary of the initial actions taken by the Receiver, a link to the court filings, status updates, a contact form for communicating with the Receiver, and a section for making claims when and if a claims process becomes appropriate.

**2. Notifications and communications with Investors.**

During this quarter, the Receiver has responded to investor inquiries in person, over the phone, and by email on various subjects. The Receiver has also provided Schedule K-1s to the investors for tax years 2015 and 2016, based on amended tax filings for those years.

**3. Whrzt, Inc.**

On March 23, 2017, the Receiver sought authority from the Court to enter into an

agreement with Whrzt, Inc. whereby Whrzt, Inc. would pay cash consideration for the option to convert its remaining outstanding obligations to the Receivership Entities to equity. Ultimately, Whrzt, Inc. was unable to pay the cash consideration and, therefore, the deal was never consummated.

On May 12, 2017, the Receiver filed two unopposed motions related to the Receivership Entities' contractual relationship with Whrzt, Inc. First, the Receiver filed an unopposed motion for authority to enter into a certain transaction with Whrzt, Inc. that, if ultimately agreed upon by the parties, would convert some of Whrzt's contractual obligations to the Receivership Entities into equity. (Dkt. 64). Second, the Receiver filed an unopposed motion to retain transactional counsel Mario Dolan to assist the Receiver with legal documentation memorializing the agreement to convert the Receivership Entities interests into equity. (Dkt. 63). The investors were given notice of the motion on May 15, 2017 and the right to object.

On June 2, 2017, absent objections, the Court granted both motions. (Dkt. 79, 80).

Subsequently, during this quarter, Whrzt, Inc. and the Receiver worked together to identify another potential agreement that would convert most of Whrzt, Inc.'s obligations to the Receivership Entities into equity which would enable Whrzt, Inc. to raise growth capital from outside investors without the burden of Whrzt, Inc.'s debts to the Receivership Entities. Currently, Whrzt, Inc. is unable to pay any of its debts to the Receivership, so converting to equity is the best method to provide the Receivership Entities an opportunity to recover its investment in the event that Whrzt, Inc. is able to obtain growth capital and become a successful, viable company.

The Receiver presented this agreement to counsel for the SEC, Patrick Howard, counsel for the largest single investor, and posted the agreement on the Receiver's website during an objection period. No objections were received. Thereafter, the Receiver presented the order

unopposed to the Court, and it was granted. The Receiver also obtained approval from the Court to engage transactional counsel to assist with memorializing this agreement between the Receivership Entities and Whrzt, Inc.

During this quarter, the Receiver and his counsel spent considerable time working with Whrzt, Inc. to consummate their transaction which ultimately closed on September 7, 2017. As a result of the transaction, the Receivership Estate currently holds 10,500,000 shares of common stock in Whrzt, Inc. There are currently 17,500,000 authorized and outstanding shares. If Whrzt, Inc. closes on its proposed Series A preferred financing, a number of additional shares may be issued and authorized such that the Receivership Estate will have 22.5% ownership in Whrzt, Inc. (provided that no additional shares are issued which, if they are, would further dilute the Receivership Estate's interest). The Receivership Estate currently holds 60 percent of the shares of Whrzt's outstanding stock. In addition, as a result of the transaction, the Rick Stahl was selected by the Receiver to sit in a board seat with Whrzt, Inc.

It should be noted that the likelihood of recovering any meaningful amounts of money from the equity position in Whrzt, Inc. is not guaranteed.

#### **4. Tax Matters**

During this quarter, the Receiver worked extensively with his tax and accounting professionals to examine the books and records of the Receivership Estate to file any necessary tax reports with the Internal Revenue Service. It was discovered that no tax filings were ever made for the funds -- Insured Liquidity Partners CFG I, LLC; Insured Liquidity Partners CFG II, LLC; and OE Capital Ventures, LLC. As a result, none of the investors ever received Schedule K-1s for their investment into those various funds. The Receiver's tax and accounting professionals prepared and filed tax reporting documents for each fund for 2015 and 2016. This resulted in

Schedule K-1s being issued to investors of those funds that reflected the amounts of money those investors invested into the funds less any distributions they may have received. The Schedule K-1s note the following:

THE [2015 AND 2016] EXPENSES ARE TREATED AS ILLEGITIMATE AND NOT DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES. THEREFORE, THE ATTACHED SCHEDULE K-1 DOES NOT REFLECT ANY ACTIVITY. IN REVENUE RULING 2009-9 AND REVENUE PROCEDURE 2009-20, THE IRS DESCRIBES THE REQUIREMENTS FOR DEDUCTING LOSSES RESULTING FROM A PONZI-TYPE INVESTMENT AND PROVIDES A SAFE HARBOR FOR TAKING DEDUCTION IN THE YEAR THE FRAUD IS DISCOVERY, 2017. IT IS ANTICIPATED THAT THE 2017 RETURNS WILL REFLECT THE THEFT LOSS AMOUNTS ON THE SCHEDULE K-1 AND A SUBSTANTIAL PORTION OF THE LOSSES INCURRED IN THIS INVESTMENT MAY BE DEDUCTIBLE ON THE INVESTORS 2017 INDIVIDUAL INCOME TAX RETURN PROVIDED THAT THE INVESTMENT WAS NOT THROUGH A PRE-TAX INVESTMENT VEHICLE SUCH AS THROUGH A TRADITIONAL IRA OR OTHERWISE. PLEASE CONSULT A COMPETENT TAX ADVISOR TO DETERMINE THE DEDUCTIBILITY OF ANY LOSSES.

As such, it is anticipated that the investors will receive Schedule K-1s for tax year 2017 on or before March 15, 2018, which will show the theft loss amounts they may be entitled to deduct given the safe harbor set forth by revenue ruling 2009-9.

#### **D. PHYSICAL ASSETS**

The known physical assets of the Receivership Estate at the beginning of this quarter were: (a) approximately 180 pallets of TU FLO + ELIXR exercise water bottles (“TU Bottles”) that are pre-packaged with each pallet measuring 48 x 48 x 62; (b) computer hardware from the Receivership Entities operations; and (c) several designer wrist watches.

The anticipated disposition of the TU Bottles is to sell them to a liquidator. However, despite considerable efforts to identify a liquidator who is willing to pay any material amount of



money, these efforts have not yielded any success to date primarily due to several factors. First, the packaging for the products are not “retail” packaging such that a liquidator could easily sell them to a brick-and-mortar retailer. While the packaging is generally nice, it does not contain a “window” to see the product or a picture on the outside of the box that will show the customer what is inside the box. As such, all potential buyers have indicated that the packaging is not “retail” packaging such that they can easily market the product to stores. Second, the product contains a consumable “elixir” which creates a barrier to sales to most third-parties as most liquidators do not buy any products that contain consumables. Finally, the location of the products in Tampa, and the volume of pallets (180) make a bulk sale difficult due to freight costs for many potential buyers who are in other parts of the country. During the quarter, the Receiver has continued to seek out and pursue interested buyers with the following consumer product suppliers and liquidators: (a) United National Consumer Suppliers; (b) H&J Closeouts; (c) Merchandise USA; (d) Topper Liquidators; (e) AAA Closeout Liquidators; (f) Kole Imports; (g) Via Trading; as well as submitting the products to numerous online liquidators for consideration. In the second quarter, H&J Closeouts made an offer, which was for only a small percentage of product. When asked if they would consider the entire lot, they indicated only a willingness to take the product but they were not willing to pay any more than just the freight costs. Additionally, the entity warehousing the product has demanded that the Receiver vacate the product no later than November 15, 2017. The Receiver is looking for alternative storage space for the product, but storage options are limited for month-to-month arrangements.

The Receiver seized several designer wrist watches from Patrick Howard at the beginning of the Receivership. During this quarter, the Receiver met with Joe DeMesy with DeMesy Fine Watches and Jewelry to determine the best way to monetize this asset. The Receiver learned that

several of the watches were fake and had no material value. Of the watches that were not fake, they were valued in the aggregate at approximately \$1500.

#### **E CASH AND CASH EQUIVALENTS**

As of September 30, 2017, the Receivership Estate had cash on hand of \$228,330.46. During the Report Period, the Receivership Estate received funds in the amount of \$4,040.35 and disbursed \$112,191.51, as evidenced by the accounting statements attached hereto as **Exhibit A**. Aside from small payments for administrative expenses (e.g., subscription fees), the disbursements by the estate related to storage fees, tax liabilities that were unpaid by the Receivership Entities prior to the inception of the Receivership, Receiver and other professional fees.

To date, the Receivership Estate has accrued administrative expenses to the following vendors and Retained Professionals: Howard LLP related to tax and accounting; Net Vida related to the Receivership website and investor communications; Jackson Walker for legal services related to the Whrzt, Inc. transaction, and the Receiver's fees and fees of the Receiver's counsel, Palter Stokley Sims PLLC.

#### **F. 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™ FLO bottles, for which the warehouse claimed \$8,465.40 currently past due as of March 7, 2017 and for which the Receiver has been negotiating removal of the Tu Bottles to avoid those storage costs.

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 has conducted an initial investigation into the billing statements and books and records of the Receivership and identified the following as potential creditors of the Receivership Entities to date: (a) American Express; (b) BMW Financial Services; (c) BlueCross BlueShield; (d) DiLucci&&DiLucci; (e) Eplus Technology; (f) EQD/Consilio; (g) ERGOS Technology Partners; (h) Harbor Insurance Group; (i) IPFS Corporation; (j) K&L Gates; (k) Logix; (l) Mass Mutual; (m) Masters of Taxation, Inc.; (n) Olymbec USA; (o) PostNet; and (p) Tower Club, among possible others. No official claims have been submitted and a formal claims process has not been proposed by the Receiver or approved by the Court.

#### **G. NOTICE OF VIOLATION OF ORDERS**

During this quarter, it has come to the Receiver's attention that Patrick Howard has continued to make false statements about the Receivership Entities, the status of the Receivership, and the likelihood of any material recovery and/or recoupment of investors investment. The Receiver has received **Exhibits B, C, and D** – each of which are emails from Patrick Howard to various third-parties containing false and misleading statements about the Receivership. The fact that Mr. Howard continues to make false statements to third-parties about the Receivership underscores the need for a contempt order for Mr. Howard. A summary of the false statements in Mr. Howard's communications are as follows:

On October 10, 2017, Mr. Howard sent an email to a friend of an investor that stating, in part, that “No investor has lost any money” and that “the investments are still ongoing, and at present, it seems that the investors stand to make a good return.” Both of these statements are

outright false and have the effect of creating the false impression among investors that their have not lost money, and stand to make a good return. See **Exhibit B** for the entire text of the false and misleading email sent by Mr. Howard.

On September 27, 2017, Mr. Howard sent an email to Daniel Bagwell – an entrepreneur who Mr. Howard told he could help raise money for his product. In connection with those discussions, Mr. Bagwell asked Mr. Howard “I’m curious if you were planning on telling us about your SEC case?”. Mr. Howard falsely responded by stating: “the investors have lost no money, and at this point, stand to gain quite a bit” among numerous other false and misleading statements about the SEC. See **Exhibit C**.

On July 7, 2017, Patrick Howard emailed Bob Enslein who is friends with at least one investor. Mr. Howard stated that “the investor base is now in a good position in terms of the overall investments”, and “the companies [i.e. investments] are doing well”. These statements are outright false. See **Exhibit D**.

It is important to note that the Receiver is not actively seeking out Mr. Howard’s communications. There is no telling how many people Mr. Howard has made false statements about the Receivership. Regardless, it is clear that Mr. Howard continues to make false statements about the Receivership, and needs to be enjoined from discussing the Receivership Entities at all with any third-parties as requested by the Receiver in his motion to show cause and briefs in support of a contempt order (Docket Entry Nos. 56 and 81).

## **II. CONCLUSION**

This Third Quarterly Report is for the period of July 1, 2017 through September 30, 2017. The Receiver anticipates filing similar reports on a quarterly basis in accordance with the Court’s *Order Appointing Receiver*. The Receiver recommends that the Receivership continue so that the

Receiver can finalize all tax reporting obligations for 2017; confirm and enforce Whrzt, Inc.'s obligations to the Receivership Entities based in the equity position (i.e. stock certificates); pursue potential claims the Receivership Estate may have against companies it invested into and/or entities who may have caused the Receivership Estate financial harm; sell and/or liquidate the inventory of TU Water bottles; sell all remaining physical assets; and distribute any remaining cash and/or stock certificates to investors and/or creditors, or trusts for their benefit (as appropriate to address issues related to investors using their IRAs) through an appropriate administrative process.

Respectfully submitted,

*/s/ Kimberly M. J. Sims*

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**ATTORNEYS FOR RECEIVER**

**CERTIFICATE OF SERVICE**

On November 10, 2017, I electronically filed the Receiver's Third Quarterly 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**