

**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 THIRD QUARTERLY FEE APPLICATION

Pursuant to the *Court’s Order Appointing Receiver* (Dkt. 10) and the *Court’s Order Modifying and Clarifying Order Appointing Receiver* (Dkt. 39), 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 Third Quarterly Fee Application (the “Third Quarterly Application” or “Application”). Counsel of record for the Securities and Exchange Commission has reviewed this Application pursuant to the *Court’s Order Appointing Receiver* (Dkt. 10), and has indicated that it has no objection to the relief sought herein.

I. INTRODUCTION

This Third Quarterly Application covers the three-month period of time from July 1, 2017 through September 30, 2017.¹

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, 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 seeking authorization to pay the retained accountant and web designer fees incurred during the first quarter, which remains pending. On August 14, 2017, the Receiver filed his Second Quarterly Fee Application (Dkt. 97), which also remains 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 accounting firm on February 14, 2017. The Court approved the Receiver’s engagement of Howard LLP as the Receiver’s accounting firm 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).

The Receiver also engaged Mario Dolan of the law firm Jackson Walker L.L.P. to assist the Receiver with a transaction whereby the Receivership Estate would convert a royalty interest in Whrzt Inc.'s sales into equity. This engagement was approved by the Court's Order, dated June 2, 2017, authorizing a total amount to be incurred with Jackson Walker not to exceed \$20,000 unless otherwise approved by the Court. During this quarter, on September 28, 2017, the Receivership Estate was invoiced, and paid, \$10,720 to Jackson Walker L.L.P. for these services, and because this payment was approved by this Court's June 2, 2017, order, this payment is not subject to this fee application.

During the time period relevant to this application, the total professional services fees were **\$95,523.90**. 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 Third Application is to request Court approval for all the professional services fees during the period from July 1, 2017 through September 30, 2017, and to authorize payment of the retained portion (i.e. the 20% that has not been paid) of those fees which, for this quarter is \$3,824 to Howard LLP and \$15,226.78 to Palter Stokley Sims, PLLC.

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,

Case 3:17-cv-00420-L Document 99 Filed 12/01/17 Page 4 of 15 PageID 2064
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 July 1, 2017 through September 30, 2017. **Exhibit A-2** is the invoice from Palter Stokley Sims, PLLC for work performed in July and August 2017, and **Exhibit A-3** is the invoice from Palter Stokley Sims, PLLC for work performed in September 2017.

The tax professional fees from Howard L.L.P. (which are billed at \$300 for partners and \$200 for associates), during this quarter totaled \$19,120.00 with a total amount of hours of 92. Pursuant to the Court's Orders at Dkts. 39 and 10, the Receiver paid 80% of this invoice (\$15,296) during this quarter and has retained \$3,824 that is the subject of this application. **Exhibit B-1** tabulate the aggregate hours and amount billed by each timekeeper from July 1, 2017 through September 30, 2017 with Howard L.L.P. **Exhibit B-2** is the invoice received by the Receiver during this quarter from Howard L.L.P.

III. CURRENT AND PREVIOUS BILLINGS

A. Total Compensation and Amount Requested

The Receiver is requesting approval of fees and expenses in at total amount of were **\$95,523.90**, and authorization to pay the retained 20% of this total as follows: \$3,824 to Howard LLP and \$15,226.78 to Palter Stokley Sims, PLLC. The allocation of the fees among the Receiver and his counsel is shown in **Exhibit A-1**.

B. Previous Awards

This is the Third 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 of services. A supplemental application is currently pending for that same time period which seeks approval of **\$6,299.61** for the services rendered

Case 3:17-cv-00420-L Document 99 Filed 12/01/17 Page 5 of 15 PageID 2065
 by Howard LLP and NetVida, pursuant to the Supplemental Application. The Receiver's
 Second Application also remains pending, requests **\$121,020.49** for the services of the
 Receiver, Palter, Stokely Sims PLLC, Howard LLP and NetVida. This Third Application for
 the third quarter of 2017 requests a total of **\$95,523.90** for services of the Receiver, Palter
 Stokley Sims, PLLC, and Howard LLP.

C. Billing Summary

During the Application Period which consisted of approximately 90 days, the Receiver billed
 192 hours to this matter and other timekeepers at Palter Stokley Sims, PLLC billed 66.2 hours.
 An itemization of hours and dollars billed, per timekeeper, is reflected on **Exhibit A-1**.
 Tabulated below is the total amount of professional fees incurred for Q3 2017, Q2 2017, and
 during the initial period between February 14, 2017 and March 31, 2017:

Description	<u>Q3 2017</u>	<u>Q2 2017</u>	<u>Awarded 2/14 - 3/31</u>
Receiver	\$62,400.00	\$82,615.00	\$60,190.00
Palter Stokley Sims, PLLC	\$13,657.50	\$37,157.50	\$33,797.50
Expenses	\$101.40	\$915.49	\$272.48
Howard LLP	\$19,120.00	\$0.00	\$5570.00*
NetVida	\$0.00	\$332.50	\$729.61*
Total:	\$95,278.90	\$121,020.49	\$100,559.59

* See Dkt. No. 89.

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 and A-3** are Palter Stokley
 Sims, PLLC invoices numbers 006899, and 007102, respectively. Each Palter Stokley Sims,
 PLLC invoice contains: (i) a summary of the time billed, rate, and total billing per timekeeper

Case 3:17-cv-00420-L Document 99 Filed 12/01/17 Page 6 of 15 PageID 2066
and (ii) fees billed per task. Attached as **ExhibitB-2** is Howard LLP invoice number 1178585.
The Howard LLP invoice 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. **Exhibits A-1 and B-1** tabulating the hours worked by each timekeeper at Palter Stokley Sims, PLLC and Howard LLP, respectively;
2. **Exhibits A-2, A-3, and B-2**, 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 and Howard LLP 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, Palter Stokley Sims, PLLC during the Application Period include:

1. Working with tax and accounting professionals to address tax issues related to the Receivership Entities;
2. Filing the appropriate tax documents with the Internal Revenue Service and issuing 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;
3. Finalizing and closing on a transaction with Whrzt, Inc. by which OE Capital obtained equity in Whrzt, Inc.;
4. Maintaining an informational website regarding the Receivership for investors, creditors, and interested third-parties;
5. Responding to investor inquires and corresponding with investors regarding information related to the Receivership Estate including taxes and other information contained on the Receiver's website;
6. Pursuing contempt order as to Patrick Howard;
7. Responding to frivolous and unauthorized discovery requests from Patrick Howard;
8. Obtaining refunds for deposits made for cancelled investor events;
9. Maintaining books and records pursuant to the Court's order and SEC guidelines;
10. Reviewing correspondence regarding Patrick Howard's false statements to third-parties about the status of the Receivership;
11. Maintaining an investor database as well as service providers for company emails and create forensic image of all OE Capital email accounts;
12. Reviewing reply brief filed by Patrick Howard relating to various motions for discovery, to strike, and to seal.
13. Responding to inquiries from the Federal Bureau of Investigation and Office of Postal Inspector Agents.

14. Investigating potential claims against numerous third parties;
15. Terminating continuing financial obligations that would not maximize the value of the Receivership Estate;
16. 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;
17. Communicating with investors and their respective counsel;
18. Managing inventory of TU Bottles and seeking interested buyers;
19. Preparing the Receiver's Second Quarterly Status Report; and
20. Managing 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 as **Exhibits A-2 and A-3**. 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 invoices (**Exhibit B-2**), but in summary, its services during the Application Period include:

1. Reviewing books and records to determine appropriate tax implications;
2. Analyzing the tax issues faced by the Receivership Entities;
3. Determining corrections to investor tax statements and necessity of amendment of tax returns;
4. Preparation and filing of tax reporting documents for funds;
5. Issuance of K1s to investors for tax years 2015 and 2016.

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.

Additionally, during this quarter, the Receiver and Howard LLP spent considerable time reviewing the books and records to correct past tax filings which is inherently difficult and cumbersome. This involved researching the revenue code and its revenue rulings related to deducting losses resulting from Ponzi-type investments and the safe harbor for taking a deduction in the year of discovery.

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. Palter Stokley Sims, PLLC and Howard LLP has considerable experience in such areas.

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

The Receiver, Palter Stokley Sims, PLLC, and Howard LLP 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.

In addition, the fees charged by Howard LLP are commensurate with the standard market fees for such work.

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. The fees of Howard LLP are fixed insofar as they are based upon hourly rates. However, payment of any fees and expenses is contingent upon the Court's discretion and sufficient funds.

7. Time Limitations.

Time is important 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 may have value 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 Reports, the Receiver has (i) identified potential 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 for professional fees rendered to be paid from the Estate (80% of which have been paid to date, and 20% retained pursuant to the *Order Appointing Receiver* (Dkt. 10) and the *Court's Order Modifying and Clarifying Order Appointing Receiver* (Dkt. 39)) and **authorize** the Receiver to distribute the 20% retainage from the Estate as follows: \$3,824 to Howard LLP and \$15,226.78 to Palter Stokley Sims, PLLC.

Respectfully submitted,

/s/ Kimberly Sims

W. CRAIG STOKLEY

State Bar No. 24051392

cstokley@palterlaw.com

KIMBERLY M. J. SIMS

State Bar No. 24046167

ksims@palterlaw.com

PALTER STOKLEY SIMS, PLLC

8115 Preston Road, Suite 600

Dallas, Texas 75225-8009

Tel: 214-888-3106

Fax: 214-888-3109

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On December 1, 2017, I electronically filed the Receiver's Third 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

**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 CERTIFICATE IN SUPPORT OF
THIRD QUARTERLY FEE APPLICATION**

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

- (a) I have read the Third Quarterly Fee Application;
- (b) To the best of my knowledge, information and belief formed after reasonable inquiry, the Third 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 Third Application were incurred in the best interests of the Receivership Estate;
- (d) All fees contained in the Third 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