

**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.)	

**UNOPPOSED MOTION FOR AUTHORITY TO DISPOSE OF CERTAIN
RECEIVERSHIP PROPERTY THROUGH FINAL BID PROCESS**

W. Craig Stokley, the Receiver appointed by the Court in these proceedings files this Unopposed Motion for Authority to Dispose of Certain Receivership Property Through Final Bid Process and, in support, would respectfully show the Court as follows:

1. The *Order Appointing Receiver* issued by this Court on February 14, 2017 [Dkt. 10] provides in Paragraph 37, that the “Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.”

2. As detailed in the Receiver’s Quarterly Status Reports, part of the known physical assets of the Receivership Estate includes approximately 180 pallets of TU FLO + ELIXR exercise water bottles that are pre-packaged with each pallet measuring 48 x 48 x 62 (the “TU Bottles”).

3. As detailed in the Receiver's Third Quarterly Statue Report, during that quarter, the Receiver sought out interested buyers for the TU Bottles 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; among countless additional telephone calls with potential buyers as well as submitting the products to numerous online liquidators for consideration.

4. As of the date of this Motion, the Receiver has been unable to find any acceptable offers to purchase all of the TU bottles. Accordingly, the Receiver seeks approval of the Court to make one final attempt to recover any value from these bottles for the Receivership Estate, and to conduct a virtual auction sale of the TU Bottles to the extent that approval is required by the *Order Appointing Receiver* as a transaction outside of the ordinary course of business. If this effort does not yield any value, it is the Receiver's intent to dispose of the inventory in the most cost-effective manner.

5. Specifically, the Receiver seeks approval from this Court for a virtual auction sale of the TU Bottles with the following procedures:

- a. Upon entry of the proposed *Order Granting Motion for Authority to Conduct Auction Sale*, filed concurrently herewith as **Exhibit A**, the Receiver will send an "Request For Bid" letter, a true and correct copy of which is attached hereto as **Exhibit B**, to all of the potential buyers that have been identified by the Receiver and listed on the table attached hereto as **Exhibit C**.
- b. The "Request for Bid" will request all bids be submitted no later than February 22, 2018.

- c. A copy of the “Request for Bid” will also be sent by email the investors providing each of them an opportunity to identify any potential buyers who may wish to submit a bid for the inventory.
- d. Once all bids have been received, the Receiver will select the bidder that provides the best value for the Receivership Estate, as determined by the Receiver and in accordance with the requirements of the *Order Appointing Receiver*.
- e. Once the winning bidder is selected and notified, the Receiver will file a Notice of Sale with this Court.
- f. If no viable purchaser can be found, the Receiver will file a Notice with the Court advising the Court of same and dispose of the TU Bottles as the Receiver deems necessary to avoid further costs associated with storage of the property.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final consideration of this Unopposed Motion that the Court enter the proposed *Order Granting Unopposed Motion for Authority to Conduct Auction Sale of Certain Receivership Property* and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Dated: February 9, 2018.

Respectfully submitted,



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ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

On February 8, 2018, Movant called Timothy S. McCole, counsel for the United States Securities and Exchange Commission, and Phil Bezanson of Bracewell LLP, counsel for Defendant Patrick O. Howard, in order to confer about the content of this Motion. Movant left a message with both Mr. Bezanson and Mr. McCole that same day. On February 8, 2018, Mr. McCole stated via email that United States Securities and Exchange Commission Counsel is unopposed to the Motion. On February 8, 2018, Phil Bezanson stated that Mr. Howard is unopposed to the Motion.



KIMBERLY M.J. SIMS

CERTIFICATE OF SERVICE

On February 8 2018, I electronically filed the Receiver's Unopposed Motion to Modify and Clarify Order Appointing Receiver 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