



**Whether The Receivership Should Be Continued:**

Yes. There are several tasks that remain that require a designated authorized person making decisions on behalf of the Receivership Estate, including the following:

(a) 2017 Taxes. The Receiver intends to file the 2017 tax returns for the Receivership Entities. These tax returns are particularly important to the investors because the IRS Revenue Ruling 2009-9 and Revenue Procedure 2009-20 provide a safe harbor to the investors for taking a deduction for losses from a “Ponzi-type investment” in the year the fraud occurs – here 2017. As such, the 2017 returns will reflect the theft loss amounts on the investor’s schedule K-1. As a result, the losses incurred in this investment should be deductible on the investors 2017 individual income taxes (and prior tax years if needed to obtain the full benefit of the deduction) provided that the investment was through a pre-tax investment vehicle. In short, utilizing the specific IRS regulations for Ponzi-type investments that were passed in the wake of the Madoff case likely will allow many of the investors to recoup a portion of their losses through deductions. Importantly, these deductions can be taken in past years’ returns so that the entire deduction can be taken by each investor. However, many of the investors used a self-directed retirement account that may have been pre-tax funds. In this situation, there would not be any deductions allowed. The Receiver anticipates this task being completed in the first quarter of 2018. Thereafter, the Receivership Entities will need to file a final tax return once the Receivership is wound up.

(b) Claims Process. At a minimum, the Receivership Estate will have transferrable common stock in at least one entity – Whrzt, Inc. – and hopefully Unequal Technologies Company (the Receiver is working to make the Receivership Estate’s 666,667 shares of Unequal Technologies Company transferrable) – to distribute to investors and/or creditors. Several investors have indicated a desire to have their shares of these entities held together as they feel that

it will be more marketable as a larger group. The Receiver intends to circulate claim forms to all of the investors and creditors where they will have the option to take their shares personally or, if feasible, held in a to-be-created trust for their benefit. The Receiver anticipates conducting this claim administration procedure during the second quarter of 2018, and making a recommendation to the Court for disbursement percentages based upon the claim amount (for investors, the amount invested and for creditors the amount of credit). It is anticipated that such a motion would likely be submitted unopposed, but should be pending with sufficient time for any objections to be lodged by investors or creditors after a sufficient notice period.

(c) Potential Third-Party Claims. The Receiver is currently in the final stages of analysis regarding potential third party claims. It is anticipated that any third party claims the Receivership Estate may have will be asserted in the second quarter of 2018, but any lawsuit on those claims would depend upon the schedule assigned by the presiding court for that case.

(d) Disposition of TU Flow Inventory. The Receiver is currently working to sell or dispose of the inventory of TU Flow bottles. It is anticipated that this will be accomplished in the first quarter of 2018.

(e) SEC's Motion for Civil Penalties. The judgment entered against the Receivership Entities (and Patrick Howard) was bifurcated as to liability only, and contemplated that “[u]pon motion of the [SEC], the Court shall determine whether a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act is appropriate and, if so, the amount of the penalty.” Docket Entry No. 36 at p. 4. It is Receiver’s understanding that the SEC intends to file this motion for disgorgement and/or civil penalties (*i.e.*, the amount of the judgment), and while technically it may not be necessary for the Receiver to be in place to act on behalf of the Receivership Entities in connection with that motion, it likely would be appropriate.

(f) Document Preservation. It is the Receiver's understanding that there is currently an ongoing Department of Justice investigation related to the securities fraud that formed the basis for this Receivership. A search warrant was obtained for Receivership information during the fourth quarter of 2017, and the Receiver is under an obligation to preserve any evidence of the Receivership Entities. In an effort to minimize costs associated with making a forensic image of each computer, the Receiver is instead preserving the information on the actual machines that were used by the Receivership Entities. It is an option at the close of the Receivership to turn over all of these machines to the Federal Bureau of Investigation. As such, if this is the only remaining obligation of the Receiver, alternates to a Receivership may be used to hold this information.

(g) Final Tax Return / Wind Up Entities. At the conclusion of the Receivership, the Receiver envisions filing a final tax return, and winding up the Receivership Entities with the Texas Secretary of State.

In summary, it is the Receiver's recommendation that the Receivership remain in place until at least the third quarter of 2018. In the event no third-party claims are pending at that time, the Receiver anticipates being able to wind up the receivership during the third quarter of 2018.

**What Anticipated Amounts Investors Will Receive:**

In short, the Receiver anticipates that the investors will receive their pro rata portion of common stock in Whrzt, Inc. and Unequal Technologies Company, as well as cash from any proceeds of third-party claims that may be asserted.

Currently, the Receivership Estate holds 10,500,000 shares of common stock in Whrzt, Inc. At the time the Receivership Estate transacted to convert Whrzt, Inc.'s obligations into common stock, the Receivership Estate held 60% of the total shares of outstanding Whrzt, Inc. stock. That amount may have subsequently been diluted; however, the Receivership Estate holds

a substantial ownership stake in Whrzt, Inc., and has appointed a board member. This common stock is transferrable, and the Receiver anticipates the investors and creditors receiving their pro rata share of the common stock. The value of the Whrzt, Inc. stock is highly speculative, and at this time, the value is likely very low.

The Receivership Estate holds 666,667 shares of preferred common stock of Unequal Technologies Company. At the time these shares were issued, these shares represented .67% of the authorized shares of common stock. The value of these shares is also highly speculative.

As of the date of filing of this report, the cash balance of the Receivership Estate is \$139,354.05. However, this amount does not reflect any billings from Receivership professionals from December 1, 2017 through present, and it does not reflect the 20% hold back from billings by Receivership professionals that is currently outstanding. The 20% hold back is currently approximately \$54,127.32. The Receiver does not anticipate that the Receivership Estate will have enough cash to pay for all of the work necessary to complete the tasks needed to wind up this Receivership in 2018 (absent recovery from any possible third-party claims). However, the Receiver recognizes that there are inherent risks associated with serving as a Receiver – one being the possible lack of funds to pay all of the fees associated with carrying out the Receiver's duties. As such, the Receiver intends to keep sufficient funds in the Receivership Estate to pay for remaining third-party professionals needs (accountants and website administrator). Additionally, any third-party claims will likely be asserted through a contingency arrangement with litigation counsel subject to any required approval. As such, absent recovery from any potential third-party claims, the Receiver acknowledges that there may not be sufficient funds to compensate for his firm's work in the final months winding up this Receivership.

## **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”) (collectively, the “Receivership Entities”). As further described below, from October 1, 2017 through December 31, 2017, the Receiver has: (a) worked with its tax and accounting professionals to address tax issues related to the Receivership Entities including state franchise tax issues and responding to inquiries from investors related to the K-1s that were issued in September 2017; (b) monitored the operations of WHRZT, Inc. after closing on a transaction with WHRZT, Inc. by which OE Capital obtained a substantial equity in WHRZT, Inc. and appointed a board member; (c) maintained an informational website regarding the receivership for investors, creditors, and interested third parties; (d) 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; (e) managed issues related to the warehouse contract related to storage of the TU Flo water bottles; (f) sought potential buyers of the TU Flo bottles; (g) maintained books and records pursuant to the Court’s orders and SEC guidelines; (h) responded to a search warrant served by the Federal Bureau of Investigation and the United States Postal Inspection Service for certain documents of the Receivership Estate; (i) created archive backup of all email files from the Receivership Estate; (j) investigated possible claims against third-parties and options related to same; and (k) prepared and planned for creditor and investor claims processes.

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

There has been very little procedural history during this quarter aside from the Receiver’s Third Quarterly Report and the Receiver’s Third Quarterly Fee Application.

### **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. During the fourth quarter, the Receiver met with countless potential buyers of the TU Flow inventory and researched issues related to labeling and packaging that were making it difficult to recoup any value from the inventory; the Receiver identified a method and procedure to resolve the TU Flow inventory which the Receiver anticipates being fully resolved during the first quarter of 2018; responding to a search warrant obtained by the Department of Justice; and archiving certain files from the Receivership Estate. In addition, the Receiver has spent time and resources on his general

day to day duties such as addressing tax issues; maintaining books and records pursuant to the Court's orders and SEC guidelines; responding to myriad inquiries from various third parties.

**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.companysreceiver.com](http://www.companysreceiver.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.

**3. Tax Matters**

During the preceding 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 Form 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 Form 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 DISCOVERED, 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 are entitled to deduct given the safe harbor set forth by revenue ruling 2009-9. During the Fourth Quarter, the Receiver fielded calls and inquiries related to the above-cited footnote and how that may impact them.

#### **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 or dispose of them through a bid process in the first quarter of 2018. In the event that no parties make any offers for the inventory, the Receiver intends to dispose of them to avoid any further storage costs.

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 \$1,500.

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

As of September 30, 2017, the Receivership Estate had cash on hand of \$140,211. During the Report Period, the Receivership Estate received funds in the amount of \$1,525.49 and disbursed \$62,628.95, as evidenced by the accounting statement attached 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, 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 anticipates administering a claims process in 2018, and making a recommendation to the Court regarding the priority of claims for approval.

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; (p) Tower Club, among possible others. No official claims have been submitted and a formal claims process is anticipated to be proposed by the Receiver in 2018 for Court approval.

## II. CONCLUSION

This Fourth Quarterly Report is for the period of October 1, 2017 through December 31, 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 dispose of the inventory of TU Water bottles; sell all remaining physical assets; preserve all documentation of

the Receivership; 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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**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 February 21, 2018, I electronically filed the Receiver's Fourth 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**