

**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 QUARTERLY STATUS REPORT FOR FIRST QUARTER OF 2018

Pursuant to the *Order Appointing Receiver* (Dkt. 10), W. Craig Stokley, in his capacity as Receiver for Defendants Patrick O. Howard, Howard Capital Holdings, LLC and Optimal Economics Capital Partners, LLC, submits his Quarterly Status Report For First Quarter of 2018. This Quarterly Status Report covers the period of time from January 1, 2018 through March 31, 2018.¹

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”)

¹ Unless defined in the Quarterly Status Report, defined terms have the meaning assigned in the *Order Appointing Receiver*. This Report is in addition to the Receiver’s previously submitted 30-day status report, covering the time period February 14, 2017 to March 16, 2017 (Dkt. 40), the Receiver’s Quarterly Status Report dated May 1, 2017 (Dkt. 60), the Receiver’s Second Quarterly Status Report, dated July 30, 2017 (Dkt. 96) and the Receiver’s Third Quarterly Status Report, dated November 10, 2017 (Dkt. 98).

(collectively, the “Receivership Entities”). As further described below, from January 1, 2018 through March 31, 2018, 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; (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 including administering a final process related to this inventory; (f) sought potential buyers of the TU Flo bottles and arranged for the inventory to be donated to Samaritan’s Purse Operation Christmas Child; (g) maintained books and records pursuant to the Court’s orders and SEC guidelines; (h) investigated possible claims against third-parties and options related to same; and (i) prepared and planned for creditor and investor claims processes.

B. PROCEDURAL HISTORY SINCE LAST REPORT

On February 9, 2018, the Receiver filed an unopposed motion for authority to dispose of certain receivership property through a final bid process. In summary, because the Receiver had been unable to identify a buyer for the inventory after exhausting considerable efforts, the Receiver sought authority to send out one final bid package and enlist any investors who knew of a potential buyer to identify them, in an effort to identify a buyer for the inventory. The process did not yield any buyers willing to pay any money for the inventory, and none were even willing to pay the freight costs to take the inventory for free. The Receiver identified a charitable organization named

Samaritan's Purse which sends water bottles to underprivileged countries around the world to use for drinking. Samaritan's Purse offered to pay all of the freight costs if the Receiver donated the water bottle inventory. After exhausting the efforts laid out in the motion for authority, the Receiver exercised the authority granted by this Court's Order (Dkt. No. 102), by (a) filing a notice with the Court (Dkt. 107) and (b) donating the water bottle inventory to Samaritan's Purse.

Additionally, during this Quarter, the Court ruled on several pending motions in Docket Entry Nos. 102, 103, 104, and 106. Docket Entry No. 102 granted a fee application but required the Receiver to hold back 20% and ordered the Receiver to provide: (1) a frank assessment of whether the Receivership should be continued, and (2) an approximation as to the amounts the Receiver anticipates the investors receiving based on the current value of the Receivership estate. This information was provided in the Receiver's Fourth Quarterly Status Report at Docket No. 105. Docket Entry No. 103 granted the Receiver's Motion to Show Cause in part and modified the Order Appointing Receiver to restrain and enjoin Patrick Howard, Ron Scherer, and Christine Horne from communicating in any manner (written, oral, or otherwise) with any investor or third party, directly or indirectly, about the Receivership Estate and/or the Receivership. That motion also denied Defendant Patrick O. Howard's motion for expedited discovery (Dkt. 90), motion to strike (Dkt. 85), and motion to seal (Dkt. 91). The order also directed Scherer to show cause why he did not respond to the Court's April 28, 2017 show cause order. Docket Entry No. 104 supplemented and modified Paragraph VII of the Order Appointing Receiver (Dkt. 10), titled "Injunction Against interference with the Receiver," as clarified in Dkt. 39, to include the following provision:

The Receivership Defendants and all persons receiving notice of this Supplemental Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from communicating in any manner (written, oral or otherwise), with any investor or third party, directly

or indirectly, about the Receivership Entities and/or the Receivership, without express written agreement of the Receiver.

Docket Entry No. 106 placed Ron Scherer on Notice that any further violation of a court order in this matter may result in the imposition of appropriate sanctions, which may include monetary penalties, contempt of court or arrest. That order also directed the Receiver to serve a copy of it by certified and regular mail to Scherer. The Receiver filed notice of said proof of service, acknowledged by Scherer, in a notice at Docket Entry No. 108.

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 warehoused in Tampa, Florida on approximately 180 pallets and attempting to find a buyer for the bottles; 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 of 2017, 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 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.

During the first quarter of 2018, the Receiver finalized the tax reporting for the Receivership Entities such that many of the investors would receive tax relief equal to their entire investment provided they meet certain requirements (namely, they used post-tax funds to invest); disposed of the TU Flow inventory pursuant to the final procedure approved by the Court, as describe in detail above; responded to the Court's inquiries and directives; began investigating and identifying the appropriate structure for a claims process; and investigated potential third-party claims.

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. 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 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. The investors were sent Schedule K-1s for tax year 2017 which show the theft loss amounts they may be entitled to deduct given the safe harbor set forth by revenue ruling 2009-9. During this quarter, the Receiver fielded calls and inquiries related to these Schedule K-1s.

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”) 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 TU Bottles were disposed of during this quarter pursuant to Court-approved procedures whereby there were ultimately donated to a charitable organization without incurring any freight costs to transport or dispose of the inventory.

The Receiver seized several designer wrist watches from Patrick Howard at the beginning of the receivership. During the fourth quarter of 2017, 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 \$135,236.84. During the Report Period, the Receivership Estate received funds in the amount of \$31.10 and disbursed \$6,005.26, 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 Quarterly Report for the First Quarter of 2018 is for the period of January 1, 2018 through March 31, 2018. 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 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

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 April 30, 2018, I electronically filed the Receiver's Quarterly Status Report For the First Quarter of 2018 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

KIMBERLY M. J. SIMS