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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11  
12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14  
15 v.

16 ROBERT YANG, et al.,

17 Defendants,

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19 YANROB'S MEDICAL, INC., et al.,

20 Relief Defendants.  
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Case No. 5:15-CV-02387-SVW (KKx)

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
THIRD INTERIM APPLICATIONS  
FOR PAYMENT OF FEES AND  
REIMBURSEMENT OF EXPENSES OF  
(1) RECEIVER, STEPHEN J. DONELL;  
AND (2) RECEIVER'S COUNSEL,  
ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

[Notice of Applications for Payment of  
Fees and Reimbursement of Expenses and  
Motion for Approval; Third Interim  
Application of Receiver; Third Interim  
Application of Allen Matkins;  
Declaration of Stephen J. Donell; and  
[Proposed] Order submitted concurrently  
herewith]

Date: February 27, 2017  
Time: 1:30 p.m.  
Ctrm: 10A  
Judge: Hon. Stephen V. Wilson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 This Court appointed Stephen J. Donell (the "Receiver") as the permanent  
4 receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care  
5 Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the  
6 "Receivership Entities") on December 11, 2015, pursuant to its Preliminary  
7 Injunction, Order Appointing Receiver, Freezing Assets, and Providing for Other  
8 Ancillary Relief (the "Appointment Order").

9 Since his appointment, the Receiver has, with assistance from his counsel of  
10 record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"),  
11 diligently carried out his duties in accordance with the Court's Orders, including the  
12 Appointment Order and the Court's March 8, 2016 Order in Aid of Receivership.  
13 Pursuant to Article V(P) of the Appointment Order, the Receiver and Allen Matkins  
14 now hereby submit their respective Third Interim Applications for Payment of Fees  
15 and Reimbursement of Expenses (the "Applications"), for fees and expenses  
16 incurred by the Receiver and his professionals from the period of July 1, 2016  
17 through September 30, 2016 (the "Application Period").

18 The Applications seek approval of:

19 (1) \$31,555.80 in fees and \$159.76 in expenses incurred by the Receiver;

20 and

21 (2) \$83,899.35 in fees and \$1,132.15 in expenses incurred by Allen

22 Matkins.

23 The Applications seek authority for the Receiver to make payments, on an  
24 interim basis, of reduced amounts. Specifically, they request authority to:

25 (1) Pay the Receiver 90% of his fees, and 100% of his expenses, in the  
26 respective amounts of \$28,400.22 and \$159.76, on an interim basis; and

27 (2) Pay Allen Matkins 80% of its fees, and 100% of its expenses, in the  
28 respective amounts of \$67,119.48 and \$1,132.15, on an interim basis.

1 The remainder (or "holdback") of these fees and expenses will be requested  
2 for payment at the conclusion of this receivership. As reflected herein, and in the  
3 concurrently submitted supporting Declaration of Stephen J. Donell ("Donell  
4 Decl."), the Receiver has determined, in his reasonable business judgment, that the  
5 fees and expenses incurred by the Receiver and Allen Matkins during the  
6 Application Period, are appropriate, inured to the benefit of the Receivership  
7 Entities, and should now be approved and paid from the assets of the Receivership  
8 Entities.

9 **II. RELEVANT FACTUAL BACKGROUND.**

10 While a full recitation of the procedural history of this matter is unnecessary  
11 for the purposes of the Applications, and is presented completely in the Receiver's  
12 December 23, 2015 Initial Report Re: Marshaling and Preservation of Receivership  
13 Assets, and Petition for Further Instructions (the "Initial Report"), the April 18, 2016  
14 First Quarterly Status Report (the "Interim Report"), and the August 15, 2016  
15 Second Quarterly Status Report ("Second Interim Report"), each of which  
16 summarize the efforts of the Receiver and his professionals<sup>1</sup> since the  
17 commencement of the instant receivership. The facts most relevant to the  
18 Applications are as follows:

19 The above-captioned enforcement action commenced with the plaintiff  
20 Securities and Exchange Commission's (the "Commission") Complaint (the  
21 "Complaint"), filed on November 19, 2015, against Defendants Robert Yang,  
22 Claudia Kano, the Receivership Entities, and certain relief defendants. (See Dkt.  
23 No. 1.) In its Complaint, the Commission alleged that the Defendants had  
24 committed securities fraud using the Receivership Entities as a means of  
25 fraudulently raising \$20 million from foreign investors in connection with the  
26 United States Customs and Immigration Service EB-5 investment and immigration  
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<sup>1</sup> Allen Matkins is occasionally referred to herein as the Receiver's "professionals."  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF FEE  
APPLICATIONS

1 program. (Id.) The Court appointed the Receiver as a permanent receiver and  
2 entered the Appointment Order on December 11, 2015. (See Dkt. No. 18.)

3 The Receiver filed his Initial Report on December 23, 2015. (See Dkt. No.  
4 20.) On March 8, 2016, the Court entered its Order in Aid of Receivership,  
5 clarifying certain administrative matters and providing the Receiver with specific  
6 authority regarding communications with Receivership Entity investors, providing  
7 for the protection of private information, and granting the Receiver authority to  
8 abandon receivership estate assets he determines are "underwater" or represent a net  
9 loss or liability to the Receivership Entities. (See Dkt. No. 46.) The Receiver filed  
10 his Interim Report, which included a Forensic Accounting Report, on April 18,  
11 2016. (See Dkt. Nos. 53, 53-2.) He submitted an Amended Forensic Accounting  
12 Report to the Court on May 20, 2016. (See Dkt. Nos. 69, 69-1.) The Receiver filed  
13 his Second Interim Report on August 15, 2016. (See Dkt. No. 129.)

14 As reflected in the Initial Report, the Interim Report, the Second Interim  
15 Report, and in materials filed concurrently herewith, since his appointment as  
16 Receiver, and despite facing significant challenges including the production of  
17 incomplete and inaccurate records and information by Defendants, interference by  
18 would-be creditors, and the complexity of the Entities' business and financial  
19 activities, the Receiver has, among other things:

- 20 • Continued to administer the estates of the Receivership Entities  
21 (collectively, the "Estate"), funded via approximately \$2.4 million in  
22 cash recoveries;
- 23 • Confirmed the amount and location of nearly \$3 million in cash assets  
24 potentially available for recovery and subject to turn-over requirements  
25 of the Appointment Order, in the form of approximately \$2.5 million in  
26 cash deposits (\$2.4 million of which have been turned over, with  
27 further proceedings pending as to \$2 million of this total) and \$250,000  
28

- 1 in investor funds paid to the Metropolitan Water District of Southern  
2 California in the pre-receivership period;
- 3 • Secured the turn-over of \$2 million of the above-referenced cash  
4 deposits from Celtic Bank Corporation ("Celtic Bank"), which funds  
5 the Receiver is holding in a separate account pending a Court  
6 determination regarding competing claims to these funds;
  - 7 • Continued to develop and undertake a marketing and disposition plan  
8 in connection with each of the real properties implicated in this matter,  
9 including via the engagement of real property brokers and the  
10 commencement of marketing efforts for all saleable properties
  - 11 • Coordinated with Celtic Bank and with GBC International Bank ("GBC  
12 Bank") regarding the abandonment of two of the real properties  
13 implicated in this matter;
  - 14 • Identified two real properties determined to be "underwater," and  
15 subject to immediate abandonment, and prepared and filed a motion for  
16 authority to complete an abandonment of those properties, ultimately  
17 resulting in the Court-approved abandonment of these properties during  
18 Application Period;
  - 19 • Identified a pre-receivership purchase and sale agreement ("PSA") for  
20 another real property which the Receiver determined should be  
21 abandoned, ultimately resulting in Court approval of the PSA's  
22 abandonment;
  - 23 • Prepared and submitted the Second Quarterly Status Report;
  - 24 • Continued to monitor and participate in all pending state court litigation  
25 matters affecting or relating to the Receivership Entities, and  
26 maintained the status quo in such matters; and
  - 27 • Communicated with investors (and counsel for investors) in the  
28 Receivership Entities regarding the status of the receivership, issues

1 relating to investor immigration petitions, and registration via the  
2 Receiver's website.

3 (See Donell Decl. ¶ 2.)

4 **III. ARGUMENT.**

5 **A. The Applications Are Reasonable And Appropriate, And Payment**  
6 **Should Be Authorized.**

7 "As a general rule, the expenses and fees of a receivership are a charge upon  
8 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).  
9 These expenses include the fees and expenses of the Receiver and his professionals.  
10 Decisions regarding the timing and amount of an award of fees and costs to the  
11 Receiver and his professionals are committed to the sound discretion of the Court.  
12 See SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other  
13 grounds, 998 F.2d 922 (11th Cir. 1993)).

14 1. The Fees and Expenses Requested in the Applications are  
15 Reasonable.

16 In determining the reasonableness of fees and expenses requested in this  
17 context, the Court should consider the time records presented, the quality of the  
18 work performed, the complexity of the problems faced, and the benefit of the  
19 services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc.,  
20 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973); see also Southwestern Media, Inc. v. Rau,  
21 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by statute as stated  
22 in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP 2011)).

23 Here, the Applications describe the nature of the services that have been  
24 rendered, and, where appropriate, the identity and billing rate of the individual(s)  
25 performing each task. The Receiver and Allen Matkins have endeavored to staff  
26 matters as efficiently as possible in light of the level of experience required and the  
27 complexity of the issues presented.

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1           Moreover, the Receiver and Allen Matkins seek payment, on an interim basis,  
 2 of only a percentage of the fees and costs incurred, in recognition of the fact that the  
 3 work on this matter is ongoing. Specifically, the Receiver seeks payment of 90% of  
 4 discounted fees incurred during the Application Period, in the amount of  
 5 \$28,400.22, plus 100% of its expenses, totaling \$159.76. Allen Matkins seeks  
 6 payment of 80% of its discounted fees incurred during the Application Period,  
 7 totaling \$83,899.35, plus 100% of its expenses, totaling \$1,132.15. Payment of the  
 8 proposed 10% and 20% holdbacks, respectively, will be sought at the conclusion of  
 9 the receivership, and will be subject to Court approval. In general, the Applications  
 10 reflect the Receiver's and Allen Matkins' customary billing rates and the rates  
 11 charged for comparable services in other matters, less any discounts or reductions  
 12 specifically identified.<sup>2</sup>

13           The Receiver has reviewed the Applications, and believes the fee and expense  
 14 requests to be fair and reasonable, and an accurate representation of the work  
 15 performed for the benefit of the Receivership Entities. (See Donell Decl. ¶ 3-4.)  
 16 The Receiver has likewise determined that the Estate has actually benefited from the  
 17 services. (*Id.*)

18                           2.     The Fees and Expenses Requested in the Third Fee Applications  
 19                                     have been Submitted to the Commission, Without Objection.

20           Courts give great weight to the judgment and experience of the Commission  
 21 relating to receiver compensation. "[I]t is proper to [keep] in mind that the  
 22 [Commission] is about the only wholly disinterested party in [this] proceeding and  
 23 that ... its experience has made it thoroughly familiar with the general attitude of the  
 24 Courts and the amounts of allowances made in scores of comparable proceedings."  
 25

26  
 27 <sup>2</sup> As reflected in the Applications, the Receiver and Allen Matkins have conferred  
 28 with the Commission regarding the amounts requested in the Applications, as  
 required by the Appointment Order. All three parties have provided discounts  
 and write-offs over and above the discounts to which they committed at the  
 inception of this receivership.

1 In re Philadelphia & Reading Coal & Iron Co., 61 F.Supp. 120, 124 (D.C. Pa. 1945)  
2 ("In re Philadelphia"). Indeed, the Commission's perspectives are not "mere casual  
3 conjectures, but are recommendations based on closer study than a district judge  
4 could ordinarily give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d  
5 Cir. 1950) (internal quotation marks omitted). In fact, "recommendations as to fees  
6 of the [Commission] may be the only solution to the 'very undesirable subjectivity  
7 with variations according to the particular judge under particular circumstances'  
8 which has made the fixing of fees seem often to be 'upon nothing more than an ipse  
9 dixit basis.'" Id. Thus, the Commission's perspective on the matter should indeed  
10 by given "great weight," as observed by the court in Fifth Avenue Coach Lines, Inc.,  
11 364 F. Supp. at 1222.

12 In order to ensure that the fees and expenses requested in the Applications are  
13 appropriate, and in compliance with the terms of the Appointment Order, the  
14 Receiver and Allen Matkins submitted their respective invoices to the Commission  
15 for review. The Commission met and conferred with the Receiver regarding the  
16 Applications. After delaying the submission of the Applications at the  
17 Commission's request to address a handful of outstanding questions, the Receiver  
18 and Allen Matkins agreed to additional discounts over and above the across-the-  
19 board discounts they are already applying to their work on this matter, and  
20 successfully addressed all outstanding issues identified by the Commission.  
21 Accordingly, the Applications have been diligently vetted by the Commission,  
22 which has indicated that it does not object to the requested fees and expenses.

23 The Commission's position merits significant deference. As the In re  
24 Philadelphia court observed, the Commission is "thoroughly familiar with ... the  
25 amounts of allowances made in scores of comparable proceedings." In re  
26 Philadelphia, 61 F.Supp. at 124. Indeed, the Commission is likely in the best  
27 position to measure the fees and costs requested here against those incurred in other,  
28 similar proceedings, and cases of similar complexity. The Receiver and his



1 Professionals thus respectfully request that the Court approve all requested fees and  
2 expenses reflected in the Applications, and authorize the payment of the requested  
3 amounts, on an interim basis.

4 **B. The Receiver Should Be Authorized To Pay Allowed Fees And**  
5 **Expenses From Cash On Hand.**

6 The Receiver presently holds approximately \$2 million for the benefit of the  
7 Receivership Entities, not including the funds turned over by Celtic Bank, which I  
8 am holding separately, pending an adjudication of the parties right in those funds.  
9 (See Donell Decl. ¶ 6.) In the aggregate, the Receiver holds funds well in excess of  
10 those requested in the Applications, and the Receiver respectfully requests the  
11 Court's permission to pay requested fees and costs from the cash on hand and  
12 available from the accounts of the Receivership Entities.

13 **IV. CONCLUSION.**

14 The Receiver and Allen Matkins therefore respectfully request that this Court  
15 enter an Order:

- 16 1. Approving the Receiver's discounted fees, in the amount of  
17 \$31,555.80, and expenses, in the amount of \$159.76;
- 18 2. Approving Allen Matkins' discounted fees, in the amount of  
19 \$33,899.35, and expenses, in the amount of \$1,132.15;
- 20 3. Authorizing and directing the Receiver to pay himself 90% of  
21 their approved fees (\$28,400.22) and 100% of approved expenses (\$159.76),  
22 for a total of \$28,559.98, from the assets of the Receivership Entities, on an  
23 interim basis; and

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4. Authorizing and directing the Receiver to pay Allen Matkins 80% of approved fees (\$67,119.48) and 100% of approved expenses (\$1,132.15), for a total of \$68,251.63, from the assets of the Receivership Entities, on an interim basis.

Dated: January 11, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
KENYON HARBISON

By:           /s/          Joshua A. del Castillo          

JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
STEPHEN J. DONELL

**PROOF OF SERVICE**

*Securities and Exchange Commission v. Robert Yang, Suncor Fontana, et al.*  
USDC, Central District of California – Case No. 5:15-cv-02387-SVW (KKx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
THIRD INTERIM APPLICATIONS FOR PAYMENT OF FEES AND  
REIMBURSEMENT OF EXPENSES OF (1) RECEIVER, STEPHEN J.  
DONELL; (AND (2) RECEIVER'S COUNSEL, ALLEN MATKINS  
LECK GAMBLE MALLORY & NATSIS LLP**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **January 11, 2017**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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- **Joshua Andrew del Castillo**  
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- **David R Zaro**  
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On \_\_\_\_\_, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit. Or, I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **January 11, 2017** at Los Angeles, California.

*/s/ Martha Diaz*  
\_\_\_\_\_  
Martha Diaz