

1 DAVID R. ZARO (BAR NO. 124334)
2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)
3 MELISSA K. ZONNE (BAR NO. 301581)
4 ALLEN MATKINS LECK GAMBLE
5 MALLORY & NATSIS LLP
6 865 South Figueroa Street, Suite 2800
7 Los Angeles, California 90017-2543
8 Phone: (213) 622-5555
9 Fax: (213) 620-8816
10 E-Mail: dzaro@allenmatkins.com
11 jdelcastillo@allenmatkins.com
12 mzonne@allenmatkins.com

13 Attorneys for Receiver
14 STEPHEN J. DONELL

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 ROBERT YANG, et al.,

22 Defendants,

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

24 Relief Defendants.

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

NOTICE OF MOTION AND MOTION
OF RECEIVER, STEPHEN J. DONELL,
FOR ORDER APPROVING
SETTLEMENT AGREEMENT WITH
METROPOLITAN WATER DISTRICT
OF CALIFORNIA; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF

[Declaration of Stephen J. Donell;
Declaration of Joshua A. del Castillo; and
[Proposed] Order submitted concurrently
herewith]

Date: March 20, 2017

Time: 1:30 p.m.

Ctrm: 10A

Judge: Hon. Stephen V. Wilson

25 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

26 **PLEASE TAKE NOTICE THAT** that on March 20, 2017, at 1:30 p.m. in
27 courtroom 10A of the above-entitled Court, located at 350 West 1st Street,
28 Los Angeles, California 90012, 10th Flr., Stephen J. Donell (the "Receiver"), the
Court-appointed receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia,
LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates

1 (collectively, the "Receivership Entities" or "Entities"), will and hereby does move
2 the Court for an order approving the Receiver's proposed settlement with the
3 Metropolitan Water District of Southern California (the "MWD").

4 This Motion is based on this Notice of Motion and Motion, the attached
5 Memorandum of Points and Authorities, the supporting declarations of the Receiver,
6 Stephen J. Donell, and his counsel, Joshua A. del Castillo, the documents and
7 pleadings already on file in this action, and upon such further oral and documentary
8 evidence as may be presented at the time of the hearing.

9 This motion is made following conference of counsel pursuant to Local Rule
10 7-3, which was initiated on January 5, 2017.

11
12 Dated: February 16, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
MELISSA K. ZONNE

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15 By: /s/ Joshua A. del Castillo
16 JOSHUA A. DEL CASTILLO

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 As reflected in the Receiver's Forensic Accounting Report and Amended
4 Forensic Accounting Report, the Receiver previously confirmed that \$250,000 in
5 funds derived exclusively from investors in Suncor Lynwood, LLC ("Lynwood")
6 were diverted to Suncor Care, Inc. ("Suncor Care"), an affiliate of the Receivership
7 Entities¹, and ultimately released to the MWD pursuant to a purchase and sale
8 agreement (the "PSA") memorializing an off-the-books, speculative real estate
9 purchase by Suncor Care.

10 The Receiver's duties and obligations include recovering funds derived from
11 Receivership Entity investors, wherever and by whomever held, for the benefit of
12 the Entities and their estate (the "Estate"). Accordingly, and based upon his
13 determination that the PSA by and between Suncor Care and the MWD, including
14 its liquidated damages provision, was an unlawful agreement entered into with
15 misappropriated funds, the Receiver made a demand upon the MWD for the return
16 of these funds. In response, the MWD has raised certain defenses, including the
17 binding nature of the PSA, and its performance at arms-length. While the Receiver
18 believes the defenses presented by the MWD are presented in good faith, he remains
19 steadfast in his conviction that at least a substantial portion of the funds paid to the
20 MWD pursuant to the PSA reflect an unlawful transfer and that, accordingly, those
21 funds must be returned to the Estate.

22 In the wake of the Receiver's turnover demand, the Receiver and the MWD
23 engaged in detailed negotiations and arrived at a proposed settlement whereby the
24 MWD agreed to return to the Receiver the amount of \$124,999, in exchange for a
25 release of claims arising from and in connection with the PSA, while retaining the
26 remainder of the funds paid pursuant to the PSA's liquidated damages provision.

27
28 ¹ Accordingly, and pursuant to this Court's prior orders, a Receivership Entity
itself.

1 The plaintiff Securities and Exchange Commission (the "Commission") supports the
2 proposed settlement. The Receiver strongly believes the proposed settlement to be
3 in the best interest of the Estate, and, accordingly, respectfully requests that the
4 settlement be approved.

5 **II. RELEVANT FACTS.**

6 **A. The Receiver's Appointment And Authority To Pursue**
7 **Receivership Assets.**

8 The Commission filed its Complaint against the defendants Robert Yang and
9 Claudia Kano (collectively, "Defendants") and the Receivership Entities on
10 November 19, 2015. (Dkt. No. 1.) Among other things, the Commission alleged
11 that Defendants raised approximately \$20 million from investors in China via the
12 federal EB-5 investment and immigration program, and that Defendants, directly
13 and through the Receivership Entities, diverted and misappropriated substantial
14 portions of these funds for purposes never disclosed to investors. (Id.)

15 The Receiver was appointed on December 11, 2015, pursuant to the Court's
16 Preliminary Injunction, Order Appointing Receiver, Freezing Assets, and Providing
17 for Other Ancillary Relief (the "Appointment Order"). (Dkt. No. 18.) The
18 Appointment Order vested the Receiver with exclusive authority and control over
19 the assets of the Receivership Entities ("Receivership Assets"), including funds
20 derived from Receivership Entity investors. (Id.) The Receiver was further vested
21 with the authority to pursue and recover such Receivership Assets. (Id.) Finally,
22 the Appointment Order requires the turnover, to the Receiver, of all funds derived
23 from Receivership Entity investors, wherever and by whomever held. (Id.)

24 **B. The PSA And Suncor Care's Payment To The MWD.**

25 On or around January 8, 2015, and after Entity investors had invested millions
26 in Lynwood, Suncor Care and the MWD entered into the PSA. (See concurrently
27 submitted Declaration of Stephen J. Donell ["Donell Decl."] ¶ 4, Ex. 1.) The
28 purpose of the PSA was to enable Suncor Care to purchase a parcel of real property

1 in Riverside County, California (the "Property"), from the MWD. (Id.) Among
2 other things, the PSA provided that Suncor Care would purchase the Property from
3 the MWD for \$5 million, with an initial deposit amount of \$250,000 (the "Deposit")
4 to be paid within two business days after full execution of the PSA. (Id.)

5 In the event that Suncor Care failed to consummate its purchase of the
6 Property in accordance with to the terms of the PSA, the PSA provided that the
7 Deposit would become non-refundable and the MWD would be entitled to retain the
8 entire Deposit amount as liquidated damages. (Donell Decl. at ¶ 5.)

9 The Receiver has confirmed that, in accordance with the requirements of the
10 PSA, Suncor Care opened an escrow account at Park Place Escrow, as Escrow
11 No. 10832-NW, and caused \$250,000 in funds derived exclusively from
12 Receivership Entity investors, reflecting the Deposit amount, to be transferred into
13 this escrow account. (Donell Decl. at ¶ 6; see also Dkt. Nos. 53, Ex. 2; 69, Ex. 1.)

14 Suncor Care subsequently failed to perform its obligations under the PSA and
15 the relevant diligence period expired. As a result, the \$250,000 in Deposit funds
16 were released from escrow to the MWD in accordance with the PSA, on or around
17 March 13, 2015. (Donell Decl. at ¶ 7.)

18 **C. The Receiver's Turnover Demand.**

19 Having confirmed, in the process of preparing his forensic accounting and the
20 resultant Forensic Accounting Report and Amended Forensic Accounting Report,
21 that the funds comprising the Deposit and paid to the MWD were derived
22 exclusively from Receivership Entity investors, the Receiver issued the first of at
23 least three (3) turnover demands to the MWD, through counsel, on or around August
24 8, 2016. (See concurrently filed Declaration of Joshua A. del Castillo ["del Castillo
25 Decl."] ¶ 3, Ex. 1.) Thereafter, through counsel, the Receiver sent two additional
26 demands, dated October 5 and November 3, 2016, respectively. (Id. at ¶ 4, Exs. 2,
27 3.) In this correspondence, the Receiver demanded the return of the Deposit, and
28 identified the factual and legal support for his demand, including the Receiver's

1 confirmation of the Deposit as a Receivership Asset, the requirements of the
 2 Appointment Order, and the Receiver's position that the PSA and its attendant
 3 liquidated damages provision were invalid.² (Id.)

4 Detailed discussions with the MWD followed the Receiver's most recent
 5 turnover demand. (del Castillo Decl. ¶ 5.) In the course of those discussions,
 6 counsel for the Receiver expanded upon the factual and legal bases for the
 7 Receiver's demand, and counsel for the MWD presented its anticipated defenses,
 8 including that the PSA was negotiated at arms-length and in good faith, and that
 9 liquidated damages provisions are presumptively valid under California law. (Id.)

10 **D. Summary of the Settlement Agreement.**

11 After substantial discussions between the parties, the Receiver and the MWD
 12 arrived at a tentative settlement agreement (the "Settlement Agreement"), now
 13 proposed for approval by this Court. (Donell Decl. ¶ 8, Ex. 2.) Specifically, and
 14 while the Receiver believes that the facts and the law support his position, he
 15 recognizes that the MWD's defenses may be asserted in good faith, and understands
 16 the cost, unpredictability, and delay that would be associated with any litigation to
 17 recover the Deposit. Accordingly, after weighing the anticipated costs and risks
 18 associated with pursuing litigation, and in his reasonable business judgment, the
 19 Receiver has determined that the proposed settlement, as memorialized by the
 20 Settlement Agreement, reflects an appropriate compromise which will yield a
 21 substantial benefit to the Receivership Entities and their Estate. (Donell Decl. ¶ 9.)

22 Should the Court approve the Settlement Agreement, the MWD will pay the
 23 Receiver a total of \$124,999.00 – only one dollar less than half of the Deposit –
 24 within ten (10) business days from entry of an order approving Settlement
 25

26 ² Specifically, the Receiver maintains that the liquidated damages provision in the
 27 PSA is unenforceable because it represents an arbitrary attempt to calculate
 28 prospective damages and reflects an unreasonable allocation of the risk between
 the parties, who held drastically unequal bargaining power. See, e.g.,
Californians for Population Stabilization v. Hewlett-Packard Co., 58 Cal.App.4th
 273, 289 (1997); Hong v. Somerset Assoc., 161 Cal.App.3d 111, 114 (1984).

1 Agreement, at which time the MWD will be permitted to retain the remaining
2 Deposit funds, and shall be released from any and all claims arising from or in
3 connection with the PSA, the Deposit, and the Property. In other words, the
4 proposed settlement guarantees the return of nearly \$125,000 to the Estate, without
5 the cost, delay, and risk attendant to litigation, for the minimal cost of the fees
6 associated with the negotiation of the Settlement Agreement and preparation of the
7 instant Motion.

8 **III. DISCUSSION.**

9 A federal equity receiver's authority to compromise claims is subject to Court
10 approval. As noted by the Ninth Circuit in SEC v. Hardy, 803 F.2d 1034, 1037
11 (9th Cir. 1986), "[a] district court's power to supervise an equity receivership and to
12 determine the appropriate action to be taken in the administration of the receivership
13 is extremely broad." With regard to settlements entered into by a federal equity
14 receiver, the Court's supervisory role includes reviewing and approving those
15 settlements in light of federal court policy to promote settlements before trial. See
16 Fed. R. Civ. P. 16(c), Advisory Committee Notes.

17 District Courts regularly look to bankruptcy law for guidance in the
18 administration of receivership estates. See SEC v. Capital Consultants, LLC,
19 397 F.3d 733, 745 (9th Cir. 2005); SEC v. Am. Capital Investments, Inc., 98 F.3d
20 1133, 1140 (9th Cir. 1996); SEC v. Basic Energy & Affiliated Resources, 273 F.3d
21 657, 665 (6th Cir. 2001); see also Local Rule 66-8 ("a receiver shall administer the
22 estate as nearly as possible in accordance with the practice in the administration of
23 estates in bankruptcy"). A compromise of claims asserted by or against the estate
24 should be approved where the compromise is "fair and equitable." Woodson v.
25 Fireman's Fund Insurance Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).
26 The approval of a proposed compromise negotiated by a court-appointed fiduciary
27 "is an exercise of discretion that should not be overturned except in cases of abuse
28 leading to a result that is neither in the best interest of the estate nor fair and

1 equitable for the creditors." In re MGS Marketing, 111 B.R. 264, 266 67 (B.A.P.
2 9th Cir. 1990).

3 Accordingly, the Court enjoys great latitude in approving compromises. In
4 passing on the proposed settlement, the Court should consider the following:

- 5 a. The probability of the Receiver's success in litigation against the
6 MWD;
- 7 b. The difficulties, if any, to be encountered in the matter of collection;
- 8 c. The complexity of the litigation involved, along with the expense,
9 inconvenience, and delay necessarily attending the prospect of litigation; and
- 10 d. The paramount interest of the creditors and a proper deference to their
11 reasonable views in the premises.

12 Woodson, 839 F.2d at 620.

13 Here, the Receiver has weighed the costs and likely benefits of prosecuting an
14 action against the MWD, addressing any subsequent appeal, and enforcing a
15 judgment therefrom, assuming a judgment is obtained. As noted above, the MWD
16 has contested some of the Receiver's allegations and presented potentially viable
17 defenses that could, at least, reduce the Receiver's eventual recovery. In other
18 words, it is impossible to guarantee, *ex ante*, that the Receiver will be successful in
19 obtaining an outcome in litigation that will exceed the settlement amount.

20 Moreover, in order for the Receiver to pursue litigation against the MWD, he
21 would first have to secure Court approval of his proposed claims, as well as prepare
22 an anticipated complaint for the Court's review and consideration. This process and
23 the costs of litigation, assuming it were permitted by the Court, could prove
24 substantial, particularly given the unique facts in issue here. As the Court is aware,
25 while the Receiver has had some success in recovering Receivership Assets, the
26 receivership is presently funded in the amount of less than \$2 million, with another
27 \$2 million pending an adjudication of the Entities' rights vis-à-vis a receivership
28 creditor, and another \$1.5 to \$2 million potentially available for recovery via the

1 sale of real property but, as yet, unrealized. In other words, a cost/benefit analysis
2 strongly favors the proposed settlement, which will generate an immediate return of
3 \$124,999.00 for the benefit of the Receivership Entities without the delay, cost, and
4 uncertainty associated with litigation. Accordingly, the Receiver respectfully
5 submits that the proposed settlement, as memorialized in the Settlement Agreement,
6 is in the best interests of the receivership estate, and should be approved.

7 **IV. CONCLUSION.**

8 For the foregoing reasons, the Receiver requests that this Court enter an order:

- 9 1. Approving and authorizing the settlement as memorialized in the
- 10 Settlement Agreement; and
- 11 2. Authorizing the Receiver and the MWD to perform their respective
- 12 obligations, as defined in the Settlement Agreement, and to consummate the
- 13 settlement as soon as practicable.

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15 Dated: February 17, 2017

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

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18 By: /s/ Joshua A. del Castillo
19 JOSHUA A. DEL CASTILLO
20 Attorneys for Receiver
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ROBERT YANG, et al.,

Defendants,

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

Relief Defendants.

Case No. 5:15-DV-02387-SVW (KKx)

[PROPOSED] ORDER APPROVING
SETTLEMENT WITH THE
METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: March 20, 2017
Time: 1:30 pm
Ctvm: 10A
Judge: Hon. Stephen V. Wilson

The Court has reviewed and considered the Motion for Approval of Settlement with the Metropolitan Water District of Southern California (the "Motion") of Stephen J. Donell ("Receiver"), the Court-appointed receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates. Having considered the Motion and good cause appearing therefor, the Court GRANTS the Receiver's Motion and ORDERS as follows:

1. The Settlement Agreement dated January 13, 2017 (the "Settlement Agreement") by and between the Receiver and the Metropolitan Water District of Southern California (the "MWD") is APPROVED and AUTHORIZED; and

1 2. The Receiver and the MWD to are AUTHORIZED to perform their
2 respective obligations, as defined in the Settlement Agreement, and to consummate
3 the settlement as soon as practicable.

4
5 **IT IS SO ORDERED.**

6
7 Dated: _____

Hon. Stephen V. Wilson
Judge, United States District Court

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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:

NOTICE OF MOTION AND MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH METROPOLITAN WATER DISTRICT OF CALIFORNIA; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; [PROPOSED] ORDER APPROVING SETTLEMENT

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 **February 16, 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:

- **Zachary T. Carlyle**
carlylez@sec.gov,kasperg@sec.gov,karpeli@sec.gov,
blomgrene@sec.gov,pinkstonm@sec.gov,NesvigN@sec.gov
- **Stephen J. Donell**
jdelcastillo@allenmatkins.com
- **Mark T. Hiraide**
mth@msk.com,kjue@phlcorplaw.com,
hitabashi@phlcorplaw.com,eganous@phlcorplaw.com
- **Leslie J. Hughes**
hughesLJ@sec.gov,kasperg@sec.gov,pinkstonm@sec.gov,
nesvign@sec.gov
- **George D. Straggas**
George.straggas@straggasdean.com;sarah.borghese@straggasdean.com,
eric.dean@straggasdean.com
- **David J. Van Havermaat**
vanhavermaatd@sec.gov,larofiling@sec.gov,berryj@sec.vog,
irwinma@sec.gov

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- **Joshua Andrew del Castillo**
jdelcastillo@allenmatkins.com
- **David R Zaro**
dzaro@allenmatkins.com

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 **February 16, 2017** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz