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 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 AUTHORIZING
 RECEIVER NOT TO PREPARE AND
 FILE PRE-RECEIVERSHIP TAX
 RETURNS

[Declaration of Stephen J. Donell; and
 [Proposed] Order submitted concurrently
 herewith]

Date: April 17, 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 April 17, 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
 (collectively, the "Receivership Entities" or "Entities"), will and hereby does move

1 the Court for an order authorizing him not to prepare and file pre-receivership state,
2 federal, or municipal tax returns for the Receivership Entities.

3 This Motion is made on the grounds that, while most of the Entities were
4 properly registered with the California Secretary of State at or around the time of
5 their creation, the three principal Receivership Entities failed to obtain tax
6 identification numbers ("TINs") or take any other action to prepare and file required
7 tax returns with either the California Franchise Tax Board (the "FTB"), the federal
8 Internal Revenue Service (the "IRS"), or any municipalities in which they operated.
9 While other Entities did file some pre-receivership tax returns, they have not done
10 so consistently. In the Receiver's reasonable business judgment, the expense of
11 reconstructing their accounting for all relevant pre-receivership periods and
12 preparing and submitting tax returns militates against such an effort, even assuming,
13 *arguendo*, that such an effort is feasible.

14 This Motion is based on this Notice of Motion and Motion, the attached
15 Memorandum of Points and Authorities, the supporting declaration of the Receiver,
16 the documents and pleadings already on file in this action, and upon such further
17 oral and documentary evidence as may be presented at the time of the hearing.

18 This motion is made following conference of counsel pursuant to Local Rule
19 7-3, which was initiated on March 3, 2017.

20

21 Dated: March 13, 2017

ALLEN MATKINS LECK GAMBLE
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By: /s/ Joshua A. del Castillo
JOSHUA A. DEL CASTILLO

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Upon his appointment as receiver in this matter, the Receiver and his
4 professionals, including his forensic and tax accountants, began an investigation and
5 accounting aimed at verifying and better understanding the business and financial
6 activities of the Receivership Entities. These efforts resulted in the preparation and
7 submission of the Receiver's April 15, 2015 Forensic Accounting Report and May
8 20, 2016 Amended Forensic Accounting Report (collectively, the "Accounting
9 Reports"). The Accounting Reports presented the Receiver's conclusions that,
10 among other things, the Receivership Entities substantially commingled funds raised
11 from investors and were operated as a unitary enterprise that undertook transactions
12 inconsistent with the Entities' investment goals presented in offering memoranda to
13 EB-5 investors, including by diverting substantial funds raised from investors for the
14 personal benefit of Receivership Entity principals and other insiders.

15 While the investigation underlying the Receiver's Accounting Reports has
16 been invaluable for identifying, locating, and recovering assets of the Receivership
17 Entities – and will underlie the claims process recently approved by the Court – it
18 has also enabled the Receiver to identify certain issues with the Receivership
19 Entities' ordinary business practices, including their tax-filing practices, or lack
20 thereof. Specifically, and for the purposes of this Motion, the Receiver and his tax
21 accountant, SL Biggs, have confirmed that, while they were formally organized in
22 California in 2012 and 2013, and registered with the California Secretary of State,
23 the three principal Receivership Entities (Suncor Fontana, LLC , Suncor Hesperia,
24 LLC, and Suncor Care Lynwood, LLC) never obtained TINs and did not file any
25 state, federal, or municipal tax returns in the pre-receivership period. Likewise,
26 HealthProCapital Partners, LLC and Suncor Care, Inc., two affiliates of the
27 Receivership Entities who are treated as Receivership Entities in this matter, at least
28 for the purposes of asset recovery and disposition, filed some tax returns in the pre-

1 receivership period, but are not up-to-date in their pre-receivership tax filing
2 obligations. Despite substantial effort, the Receiver has been unable to locate or
3 easily reconstruct accounting records reliable enough for tax preparation and filing
4 purposes for any of these Entities.

5 Given the circumstances attendant to the present case, the Receiver has
6 determined that he cannot prepare and file pre-receivership returns without
7 subjecting the Receivership Entities substantial fees and costs – expenses which the
8 Receiver has reasonably determined will not inure to the Entities' benefit, for the
9 reasons addressed below. Accordingly, while the Receiver does not request that the
10 Court relieve the Receivership Entities of their tax preparation and filing
11 obligations, he requests that the Court enter an order authorizing him not to prepare
12 or file pre-receivership state, federal, or municipal tax returns for the Receivership
13 Entities.

14 **II. RELEVANT FACTS.**

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.) Pursuant to
18 the Appointment Order, and among other things, the Receiver was charged with
19 investigating, locating, and recovering assets of the Receivership Entities. (Id.) In
20 accordance with this charge, the Receiver and his professionals undertook a detailed
21 investigation and analysis of Receivership Entity records, covering a period of more
22 than five years, and reflecting more than 20,000 individual transactions. (Dkt. Nos.
23 53-2, 69-1.) The results and conclusions drawn from this review and analysis were
24 presented in the Receiver's Accounting Reports. (Id.)

25 While the Receiver's investigation and analysis was particularly useful for
26 understanding and documenting the Receivership Entities' questionable business
27 practices, led to the identification and recovery of, to-date, nearly \$2 million, in
28 cash, for the benefit of the Receivership Entities (along with other recoverable

1 assets, since recovered or subject to pending proceedings), and successfully
2 identified many of the transactions required to administer an appropriate claims
3 process, it also confirmed that the Entities failed in many respects to comport
4 themselves in accordance with standard business practices, including with respect to
5 maintaining ordinary business records and filing appropriate tax returns.

6 Among these failures, the Receiver has confirmed that, while they are
7 registered with the California Secretary of State, Suncor Fontana, LLC, Suncor
8 Hesperia, LLC, and Suncor Care Lynwood, LLC never obtained TINs or filed state,
9 federal, or municipal tax returns in the pre-receivership period. (See concurrently
10 filed Declaration of Stephen J. Donell, ¶ 2.) The Receiver further confirmed that
11 relief defendants HealthPro Capital Partners, LLC ("HealthPro") and Suncor Care,
12 Inc. ("SCI"), each of which are considered Receivership Entities pursuant to the
13 Appointment Order, at least to the extent that they were the recipients of or
14 presently hold receivership assets, appear not to have accounting records sufficient
15 for tax return preparation purposes, and that neither is current on its state or federal,
16 pre-receivership tax filing obligations. (Id. at ¶ 3.)

17 Given the above facts, the Receiver has consulted with his tax accountant, SL
18 Biggs, in order to estimate the potential cost associated with preparing and filing
19 appropriate pre-receivership returns for each of the Entities. (Id. at ¶ 4.) Based on
20 the information presently available, the Receiver estimates the cost of obtaining
21 appropriate pre-receivership TINs (retroactively), developing or reconstructing
22 business records in a form appropriate for tax return preparation (assuming,
23 *arguendo*, that such preparation is feasible in this context), and preparing and
24 submitting the returns, to range from \$25,000 to \$40,000, inclusive of Receiver,
25 accountant, and attorney time. (Id.)

26 In his reasonable business judgment, the Receiver believes that such costs
27 would reflect an inappropriate economic burden upon the Receivership Entities. (Id.
28 at ¶ 5.) Specifically, the Receiver does not believe that the preparation and

1 submission of pre-receivership tax returns would yield any appreciable benefit to the
 2 Receivership Entities, particularly if, as is likely, any reconstituted accounting
 3 records established that the Entities had no taxable income. Moreover, pre-
 4 receivership returns would appear to be unnecessary here, given that the FTB, the
 5 IRS, and any appropriate municipal taxing entities will be permitted to participate in
 6 the Court-approved claims process, and will have their claims for payment, if any,
 7 adjudicated in that context.¹ (Id.) Put simply, the Receiver does not believe that the
 8 present circumstances merit the imposition of such a cost upon the Receivership
 9 Entities and, by implication, their creditors.

10 The Commission has indicated to the Receiver that it has no objection to the
 11 relief requested herein.

12 Accordingly, and for the forgoing reasons, the Receiver respectfully requests
 13 that the Court enter an order authorizing him not to prepare and file pre-receivership
 14 tax returns for Suncor Fontana, LLC; Suncor Hesperia, LLC; Suncor Care
 15 Lynwood, LLC; HealthPro; or SCI.

16 **III. ARGUMENT.**

17 **A. This Court Enjoys Broad Equitable Discretion To Grant The** 18 **Relief Requested Herein.**

19 A district court's power to administer an equity receivership is extremely
 20 broad. SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset
 21 Mgmt., LLC, 242 F.3d 325, 331 (5th Cir. 2001); SEC v. Basic Energy & Affiliated
 22 Resources, 273 F.3d 657, 668 (6th Cir. 2001); SEC v. Wang, 944 F.2d 80, 85 (2d
 23 Cir. 1991).

24 Moreover, the "primary purpose of equity receiverships is to promote orderly
 25 and efficient administration of the estate by the district court *for the benefit of*

27 ¹ The IRS, FTB, and appropriate municipal taxing entities have been notified of
 28 the claims process and provided with the Court-approved claim forms. (Donell
 Decl. ¶ 6.) Likewise, they will be served with this motion, and shall be entitled
 to participate in the claims process previously approved by the Court.

1 *creditors.*" Hardy, 803 F.2d at 1038 (emphasis added). The Ninth Circuit has
2 emphasized a district court's broad discretion, finding that:

3 A district court's power to ... determine the appropriate
4 action to be taken in the administration of the receivership
5 is extremely broad. The district court has *broad powers*
6 *and wide discretion* to determine the appropriate relief in
7 an equity receivership..

8 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005) (citations
9 omitted) (emphasis added); see also CFTC. v. Topworth Int'l, Ltd., 205 F.3d 1107,
10 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
11 role, and 'we generally uphold reasonable procedures instituted by the district court
12 that serve th[e] purpose' of orderly and efficient administration of the receivership
13 for the benefit of creditors.").

14 Here, the Receiver requests that, in order to preserve receivership estate
15 resources, and because the preparation and submission of pre-receivership tax
16 returns will not yield a concomitant benefit to the Receivership Entities or their
17 creditors, the Court enter an order authorizing him not to incur the cost of preparing
18 and filing any delinquent or outstanding pre-receivership returns. He is *not*
19 requesting that the Court relieve the Receivership Entities of their tax filing
20 obligations². As noted above, the Receiver has determined that the preparation and
21 submission of any such returns, to the extent it is feasible at all³, would result in fees
22

23 ² The Court may not exempt the Receivership Entities from their tax filing
24 obligations. See 28 U.S.C. § 2201(a); 26 U.S.C. § 7421(a). Of course, the
25 Receiver will file appropriate post-receivership returns for each Entity, or for the
26 Entities collectively, as a qualified settlement fund, as appropriate.

27 ³ Even if it were possible to reconstruct business records for the purposes of
28 preparing and submitting pre-receivership returns, it is unclear whether such
returns would even be required; that is, as a consequence of the nature of their
conduct, the Receivership Entities may have been insolvent, without any taxable
income, from or shortly after their inception. See, e.g., Donell v. Kowell, 533
F.3d 762, 770-71 (9th Cir, 2008) (where there are indicia of Ponzi-like transfers,
the scheme operator may be presumed to be insolvent). Here, while the Entities
did not perpetrate a Ponzi scheme in the traditional sense, improper diversion and

1 and expenses as high as \$40,000, and not yield any appreciable benefit to the
 2 Receivership Entities or their creditors. Likewise, such an effort is unnecessary to
 3 protect the interests of the FTB, IRS, or other taxing entities, each of whom has been
 4 notified of and may participate in the claims process recently approved by the Court.

5 As such, the facts strongly militate in favor of the Court exercising its "broad
 6 powers and wide discretion" to authorize the Receiver to conserve receivership
 7 estate resources and not to prepare and file pre-receivership tax returns for the
 8 Receivership Entities.

9 **B. The Receiver's Business Judgment Is Entitled To Substantial**
 10 **Deference.**

11 In the estate administration context, courts are deferential to the business
 12 judgment of bankruptcy trustees, receivers, and similar estate custodians. See, e.g.,
 13 Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the
 14 business management decisions of a bankruptcy trustee."); Southwestern Media,
 15 Inc. v. Rau, 708 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the form
 16 of ... [estate administration] ... rested with the business judgment of the trustee.");
 17 In re Thinking Machines Corp., 182 B.R. 365, 368 (D. Mass. 1995) ("The
 18 application of the business judgment rule ... and the high degree of deference
 19 usually afforded purely economic decisions of trustees, makes court refusal
 20 unlikely.") (rev'd on other grounds, In re Thinking Machines Corp., 67 F.3d 1021
 21 (1st Cir. 1995).

22 Here, the Receiver has determined that incurring the cost of preparing and
 23 submitting pre-receivership Entity returns (again, to the extent it is feasible at all)
 24 would range between \$25,000 and \$40,000 and would not yield a concomitant
 25

26 _____
 27 misappropriation of funds, and inter-Entity commingling as confirmed in the
 28 Accounting Reports meant no Entity was ever generating a taxable surplus, and
 each was consistently unable to repay its debts. In essence, in "robbing Peter to
 pay Paul," the Entities created an inter-Entity Ponzi where no entity would be in
 a position to repay its creditors without a diversion of funds from other Entities.

1 benefit to the Receivership Entities, particularly given that the FTB and IRS will be
2 entitled to participate in the Court-approved claims process. As such, in the
3 Receiver's reasonable business judgment, incurring this expense is not in the best
4 interest of the Receivership Entities. He therefore respectfully requests that the
5 Court authorize him to conserve limited receivership estate resources and not to
6 prepare and file pre-receivership tax returns for the Receivership Entities.

7 **IV. CONCLUSION.**

8 For the foregoing reasons, the Receiver respectfully requests that this Court
9 enter an order authorizing him not to prepare and file pre-receivership state and
10 federal tax returns for the Receivership Entities.

11
12 Dated: March 13, 2017

ALLEN MATKINS LECK GAMBLE
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DAVID R. ZARO
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14
15 By: /s/ Joshua A. del Castillo
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17 Attorneys for Receiver
18 STEPHEN J. DONELL
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