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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)

**SUPPLEMENTAL BRIEF IN  
 SUPPORT OF EX PARTE  
 APPLICATION OF RECEIVER,  
 STEPHEN J. DONELL, FOR ORDER  
 TO SHOW CAUSE WHY CELTIC  
 BANK SHOULD NOT BE HELD IN  
 CIVIL CONTEMPT**

Date: June 6, 2016  
 Time: 1:30 p.m.  
 Ctrm: 6  
 Judge: Hon. Stephen V. Wilson

**TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THIS  
 HONORABLE COURT:**

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"), hereby submits this Supplemental Brief in support of his pending *ex parte* Application for an Order to Show Cause Why Celtic Bank Should Not Be Held In Civil Contempt (the "Application") and in response to the Supplemental Brief filed by Celtic Bank ("Celtic") on May 3, 2016.

1 **I. INTRODUCTION.**

2 Despite Celtic's concerted efforts to complicate the issues before the Court,  
3 there is only one question to be addressed: has Celtic willfully failed to comply  
4 with this Court's December 11, 2015 Preliminary Injunction, Order Appointing  
5 Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the  
6 "Appointment Order") by refusing to turn over funds held in deposit accounts  
7 owned by Receivership Entities at Celtic? There can be no reasonable dispute that  
8 these funds are assets of the Receivership Entities, yet Celtic has failed and refused,  
9 and continues to fail and refuses, to return these funds to the Receiver.  
10 Accordingly, an Order to Show Cause ("OSC") why Celtic should not be held in  
11 civil contempt is warranted.

12 The facts underlying the Receiver's Application are simple: the Appointment  
13 Order directed all parties in possession of assets of the Receivership Entities  
14 ("Receivership Assets" or "Assets") to turn such Assets over to the Receiver, and  
15 barred all parties from taking any action to interfere with the Receiver's efforts to  
16 obtain possession and control over such Assets. Celtic was provided with a copy of  
17 the Appointment Order and a detailed tracing by the Receiver confirming that  
18 foreign Receivership Entity investors were the direct source of \$1 million of the  
19 funds on deposit with Celtic. Celtic has refused to turn over the money.

20 The Receiver's Application appended excerpts from a deposition transcript  
21 wherein defendant Yang further confirmed that the other \$1 million on deposit with  
22 Celtic originated with a domestic investor in HealthPro Capital Partners, LLC, a  
23 Receivership Entity in direct privity with Celtic. Nonetheless – and despite  
24 submitting a Certified Statement to the Receiver confirming that it is holding \$2  
25 million in Receivership Assets subject to the turnover requirements of the  
26 Appointment Order – Celtic has refused to turn over the approximately \$2 million at  
27 issue in the Application.

28

1 The justifications Celtic offers for its noncompliance with the Appointment  
 2 Order are legion, ranging from the outlandish (the receivership and the Appointment  
 3 Order are unconstitutional), to the merely bizarre (the Court has no jurisdiction over  
 4 Celtic or the \$2 million in issue), to the outright false (the Receiver has failed to  
 5 identify the source of the \$2 million on deposit). None of Celtic's excuses are  
 6 relevant or warranted, and each of its arguments studiously avoids the facts and the  
 7 applicable law. The Receiver therefore reiterates his request that the Court enter an  
 8 OSC re civil contempt for Celtic's willful and continued violation of the  
 9 Appointment Order's turnover requirement.

## 10 **II. ARGUMENT.**

### 11 **A. The Funds On Deposit With Celtic Are Receivership Assets.**

12 Notwithstanding Celtic's baseless and unsupported contentions to the  
 13 contrary, it is not reasonably disputed that the \$2 million on deposit with Celtic is a  
 14 Receivership Asset. First, as already reflected in the Application, Celtic submitted a  
 15 Certified Statement to the Receiver confirming the funds were Receivership Entity  
 16 funds. (See Dkt. Nos. 48 at 6:1-16 and Ex. A; 49, Ex. A; and 50, Ex. A.) Second,  
 17 the Receiver has confirmed (and submitted evidence to confirm) that the funds  
 18 originated with Receivership Entity investors. (Id.) As such, these assets are  
 19 indisputably subject to the turnover requirement of the Appointment Order.

20 But perhaps more simply, even when presenting its most incredible  
 21 arguments, Celtic has never contended that the funds on deposit were anything other  
 22 than cash deposited by the Receivership Entities. It simply contends that it has a  
 23 security interest in the funds, which it claims justifies its willful violation of the  
 24 Appointment Order.<sup>1</sup> In point of fact, Celtic is no different from any other  
 25

26 <sup>1</sup> Celtic's invocation of the Small Business Association ("SBA") is irrelevant. The  
 27 SBA is merely a guarantor on two construction loans originated by Celtic and  
 28 secured by real property belonging to the Receivership Entities. While the SBA's  
 relation to the loans may be a concern to Celtic based on fears that the SBA will  
 not honor its guaranty as a consequence of Celtic's own conduct, nothing in the  
 Appointment Order or the governing law suggests that the Receivership Entities

1 depository institution or person or entity holding Receivership Assets, and it must  
2 comply with this Court's Appointment Order.

3 **B. Courts In Similar Circumstances Have Required The Turnover Of**  
4 **Estate Assets.**

5 It is axiomatic that principles in bankruptcy can be applied by analogy to  
6 federal receiverships. See, e.g., CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107, 1116  
7 (9th Cir. 1999); Fidelity Bank, Nat'l Assoc. v. M.M. Group, Inc., 77 F.3d 880, 882  
8 (6th Cir. 1996); Unisys Fin. Corp. v. RTC, 979 F.2d 609, 611 (7th Cir. 1992).  
9 Bankruptcy law is clear both with respect to the turnover of estate assets and the  
10 impact of a security interest in claimed "collateral" in substantially similar contexts.  
11 For instance, in U.S. v. Whiting Pools, Inc., the Supreme Court required a secured  
12 creditor (in that instance, the IRS) to return a debtor's property in which the IRS had  
13 a secured interest, reasoning that a "reorganization effort would have small chance  
14 of success" if essential assets "were excluded from the estate." 462 U.S. 198, 204  
15 (1983). The Court went further, specifying that this principle "extends *even to*  
16 *property of the estate in which a creditor has a secured interest.*" Id. (emphasis  
17 added). Likewise, the Eleventh Circuit has confirmed that "[c]ollateral which has  
18 been pledged by the debtor as security ... *is property of the debtor's estate.*" In re  
19 Air Conditioning, Inc. of Stuart, 845 F.2d 293, 296 (11th Cir. 1988) (emphasis  
20 added).

21 The same principles apply here, and with equal force. As with a debtor in a  
22 reorganization proceeding, the Receiver cannot maximize the value of the estate and  
23 benefit its creditors without access to all Receivership Assets. This means that, as in  
24 the Whiting Pools matter, Celtic must be compelled to return the subject \$2 million  
25 to the Receiver. Further, as confirmed by the Air Conditioning, Inc. court, the fact  
26 that Celtic may hold a security interest in the deposit accounts does not exempt  
27

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should bear the cost of any origination, servicing, or other errors committed by  
Celtic.

1 Celtic from its obligation to return the funds in those accounts to the Receiver. In  
2 other words, *none* of Celtic's defenses which invoke the SBA, or Celtic's claimed  
3 security interest in the depository accounts in which the \$2 million in Receivership  
4 Assets are held, are justifications for Celtic's noncompliance with the clear terms of  
5 the Appointment Order, and an OSC re civil contempt is warranted.

6 **C. Celtic's Remaining Arguments Are Equally Unfounded.**

- 7 1. Neither the Application nor the Appointment Order violate  
8 Celtic's due process rights.

9 In opposition to the Application, Celtic has repeatedly argued that either the  
10 Application or the Appointment Order itself violate its due process rights. As a  
11 preliminary matter, Celtic has consistently failed to point the Court to any authority  
12 supporting this contention. More importantly, the contention is inaccurate: This is  
13 not a real property condemnation action and Celtic has consistently availed itself of  
14 opportunities to be heard, both by opposing the Application and filing its (equally  
15 meritless) Motion for Leave to Intervene. Moreover, as a creditor of the  
16 receivership estate, Celtic will have the right to participate in any eventual claims  
17 and distribution process approved by this Court.

- 18 2. Celtic is indisputably in active concert or participation with the  
19 Receivership Entities.

20 Celtic further argues that its due process rights would be violated were it  
21 required to turn over the \$2 million in Receivership Assets because it is not in  
22 "active concert or participation" with any Receivership Entity. Without repeating  
23 the previous controlling points, Celtic's statement is false. Indeed, most of Celtic's  
24 defenses depend *entirely* upon agreements between two Receivership Entities and  
25 Celtic. In other words, the contractual privity between the Receivership Entities and  
26 Celtic serves as the sole basis for Celtic's refusal to comply with the Appointment  
27 Order. There can therefore be no question that Celtic remains in active concert or  
28 participation with the Receivership Entities, and is therefore bound by the

1 Appointment Order. See, e.g., Regal Knitwear Co. v. NLRB, 324 U.S. 9, 14 (1945)  
2 (Fed. R. Civ. P. 65 injunction language binding entities in "active concert or  
3 participation" with parties is "is derived from the common-law doctrine that a decree  
4 of injunction not only binds the parties ... but also those ... in 'privity' with  
5 them[.]").

6 3. Celtic has not controverted any of the basic facts before the  
7 Court on the Receiver's Application, including that the funds in  
8 issue are Receivership Assets.

9 Celtic relies upon Peterson v. Highland Music, Inc., 140 F.3d 1313, 1324 (9th  
10 Cir. 1998) for the proposition that this Court may not impose a contempt sanction  
11 absent an evidentiary hearing and discovery. Its reliance is misplaced. While, in  
12 Peterson, the Ninth Circuit stated the general precept that "a district court ordinarily  
13 should not impose contempt sanctions solely on the basis of affidavits[,] it went on  
14 to confirm that contempt sanctions may be imposed on the pleadings if the key facts  
15 are not subject to dispute. Id. Such is the case here. Specifically, Celtic has never  
16 provided any evidence to support its contention that the \$2 million in issue are not  
17 Receivership Assets; instead, it has merely supplemented the information provided  
18 by the Receiver with its own contentions regarding its purported security interest.  
19 However, as noted above, even assuming, *arguendo*, that Celtic has a security  
20 interest in the depository accounts in which the \$2 million is held, that security  
21 interest *does not* excuse Celtic's noncompliance with the turnover requirement of the  
22 Appointment Order. Accordingly, there is no need for an evidentiary hearing here,  
23 and an OSC re civil contempt is warranted.

24 Likewise, Celtic's bizarre contention that the Receiver has not established that  
25 the funds in issue are Receivership Assets is entirely unsupported by the record  
26 before the Court. As reflected in the Application, the Receiver has specifically and  
27 directly traced approximately \$1 million of the subject funds to foreign investors in  
28 what is commonly known as the Fontana Project and confirmed, via defendant

1 Yang's own testamentary admission, that the remaining \$1 million originated  
2 exclusively with a domestic investor in HealthPro Capital Partners, LLC, another  
3 Receivership Entity. (See Dkt. No. 48-50.)

4 Celtic's reliance on SEC v. Colello, 139 F.3d 674, 677 (9th Cir. 2011) for the  
5 proposition that the Receiver must establish that Celtic has no interest in the funds at  
6 issue before the Court can order a turnover is also misplaced. Colello does not  
7 address a receiver's ability to enforce, via a request for a contempt sanction, a court's  
8 turnover order. Instead, it merely stands for the proposition that, in order for the  
9 Securities and Exchange Commission (the "Commission") (not a receiver) to add a  
10 party as a nominal defendant, that party must generally have "received ill gotten  
11 funds *and* ... not have a legitimate claim to those funds." Id. (emphasis original).  
12 The Commission is not the movant here, nor has Celtic been named as a nominal  
13 defendant in this action. Most importantly, the funds in issue are Receivership  
14 Assets. Accordingly, neither Colello or Celtic's repeatedly emphasized security  
15 interest is relevant.

16 4. Celtic's claim that the Appointment Order is vague and  
17 unenforceable strains credulity.

18 In its supplemental briefing, Celtic claims that the Appointment Order is so  
19 vague that it is impossible to determine whether accounts *held by and maintained*  
20 *for the benefit of*, a Receivership Entity are accounts "relating to" the Receivership  
21 Entities. (See Dkt. 59 at 4:15-17.) It would be an understatement to characterize  
22 this claim as outlandish. The Celtic accounts containing the \$2 million in issue here  
23 are the literal definition of accounts "relating to" the Receivership Entities.  
24 Moreover, Celtic ignores the fact that the Appointment Order specifically defines as  
25 "Recoverable Assets" the assets of the named receivership defendants as well as  
26 "those assets of Relief Defendants ... HealthPro Capital Partners, LLC and Suncor  
27 Care, Inc. that ... are *attributable to funds derived from investors*..." (emphasis  
28 added). Here, the funds on deposit are literally funds derived directly from

1 investors. Accordingly, there can be no reasonable dispute that the \$2 million that  
2 the Receiver has requested be returned falls squarely within the ambit of those  
3 Assets the Court intended to be turned over. Celtic's effort to pretend otherwise is  
4 genuinely incredible and emphasizes the need for an OSC re civil contempt for its  
5 misconduct.

6 **III. CONCLUSION.**

7 For the foregoing reasons, as well as the reasons initially presented in his  
8 Application and the documents in support thereof, the Receiver respectfully requests  
9 that this Court enter an OSC re civil contempt in connection with Celtic's willful and  
10 persistent violation of the Appointment Order.

11  
12 Dated: May 16, 2016

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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 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

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

**SUPPLEMENTAL BRIEF IN SUPPORT OF EX PARTE  
APPLICATION OF RECEIVER, STEPHEN J. DONELL, FOR  
ORDER TO SHOW CAUSE WHY CELTIC BANK SHOULD NOT BE  
HELD IN CIVIL CONTEMPT**

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 **May 16, 2016**, 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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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL and EMAIL (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.

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 **May 16, 2016** at Los Angeles, California.

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