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9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11  
 12 SECURITIES AND EXCHANGE  
 COMMISSION,

13 Plaintiff,

14 v.

15 ROBERT YANG, et al.  
 16 Defendants,

17 AND

18 YANROB'S MEDICAL, INC., et al.  
 19 Relief Defendants,.

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

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION OF RECEIVER, STEPHEN  
 J. DONELL, TO ABANDON A  
 CONTRACT FOR SALE OF REAL  
 PROPERTY

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

Date: June 27, 2016  
 Time: 1:30 p.m.  
 Ctrm: 6  
 Judge: Stephen V. Wilson

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Stephen J. Donell, the Court-appointed permanent receiver (the "Receiver")  
4 for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care  
5 Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the  
6 "Receivership Entities" or "Entities"), hereby respectfully files this motion (the  
7 "Motion") to request that this Court enter an order authorizing the Receiver to  
8 abandon a certain Real Estate Purchase and Sale Agreement, dated June 2015 (the  
9 "PSA") (as amended), which relates to that certain land consisting of 17.6 acres,  
10 Assessor's Parcel Number 0299-111-02/0299-111-08, and commonly known as the  
11 "27 Lot Redland Mentone Site" (the "Mentone Property").

12 In accordance with this Court's December 11, 2015 Preliminary Injunction,  
13 Order Appointing Receiver, Freezing Assets, and Providing for Other Ancillary  
14 Relief (the "Appointment Order"), and the law governing federal equity  
15 receiverships, including the wide deference granted to the business judgment of  
16 Federal court receivers, the Receiver respectfully requests that the Court allow the  
17 Receiver to abandon the PSA, any amendments thereto, and all contractual  
18 obligations to proceed with the sale of the Mentone Property. The Receiver believes  
19 that the abandonment of this PSA, as amended, is necessary and appropriate for the  
20 efficient and cost-effective administration of the estates of the Receivership Entities  
21 (collectively, the "Estate"). Specifically, were the Receiver to proceed under the as-  
22 amended PSA – even if the Receiver were to obtain greater certainty about its  
23 conditions – this effort would likely cost the Estate nearly \$500,000. Despite such  
24 an expenditure, there is no guaranty that the Receiver would be able to successfully  
25 obtain the significant entitlements required to fulfill the terms of the PSA. This risk  
26 is especially significant given a comparison of the costs to proceed in comparison  
27 with the amount of investor funds the Receiver has recovered thus far. Accordingly,  
28 the Receiver respectfully submits that, in his business judgment, the requested relief

1 will mitigate substantial risk, thereby conserving the assets of the Estate for the  
2 benefit of all interested parties.

3 **II. RELEVANT FACTUAL BACKGROUND.**

4 **A. Background Relating to the Appointment of the Receiver.**

5 The above-captioned action commenced on November 19, 2015, when the  
6 Commission filed its Complaint. (Docket No. 1.) In its Complaint, the Commission  
7 alleges that from September 2012 through at least early 2014, Robert Yang  
8 ("Yang") and Claudia Kano ("Kano"), through their affiliated entities, Suncor  
9 Fontana, LLC ("Suncor Fontana"), Suncor Hesperia, LLC ("Suncor Hesperia"), and  
10 Suncor Care Lynwood, LLC ("Suncor Lynwood") (collectively, the "Suncor  
11 Entities") raised millions of dollars from forty (40) investors located in China who  
12 sought to participate in the federal EB-5 investment and immigration program. The  
13 Commission alleged these funds were raised via three securities offerings that  
14 indicated that the investor funds would be used exclusively to develop specific  
15 medical facilities, but that Yang and Kano engaged in a scheme to misappropriate,  
16 divert, and misuse investor funds, while misrepresenting that the securities offerings  
17 were "structured to maximize" the prospects that the investments would qualify for  
18 the EB-5 program. Shortly after the filing of the Complaint, and upon the  
19 stipulation of the parties, the Appointment Order was entered on December 11,  
20 2015.

21 **B. The Purchase of the Mentone Property and Its Status as a**  
22 **Receivership Asset.**

23 As detailed in the First Quarterly Status Report of Receiver Stephen J. Donell  
24 ("Report") (Docket No. 53), and in his forensic accounting attached thereto, over  
25 \$500,000 in funds raised from Entity investors were diverted for the purchase of the  
26 real property located at 11202 Opal Ave., Mentone, California – the Mentone  
27 Property, which was purchased by relief defendant Suncor Care, Inc. ("Suncor  
28 Care"). Accordingly, the Receiver has determined in his business judgment that the

1 Mentone Property is a receivership asset. (Declaration of Stephen J. Donell in  
2 Support of Motion to Abandon a Contract for Sale of Real Property ["Donell  
3 Decl. "], ¶ 2.) Because the Mentone Property was purchased using Entity investor  
4 funds, it is a Receivership Asset, as defined under Section V(A) of the Appointment  
5 Order, and it is Receivership Property, as defined under Section V(D)(4)(a) of the  
6 Appointment Order. This is especially so as a result of the fact that Suncor Care,  
7 Inc., the owner of the Mentone Property, is an affiliate of the Receivership Entities.

8 The Mentone Property is presently comprised of unproductive orchard land,  
9 but sits at the center of a series of parcels of real property immediately adjacent to  
10 the City of Redlands, California, which parcels are apparently intended to be  
11 developed as single-family housing. (Donell Decl, ¶ 2.)

12 **C. The Contemplated Contract by Suncor Care to Sell the Property.**

13 After Suncor Care purchased the property, the individual defendants in the  
14 above-captioned action apparently entered into a contract, on behalf of Suncor Care,  
15 to develop the Mentone Property and sell it. Specifically, among the materials and  
16 documents the Receiver has recovered is a pre-receivership Purchase and Sale  
17 Agreement (the "PSA"), dated on or about June 3, 2015, relating to the Mentone  
18 Property. The PSA indicates that the defendants in the above-captioned action  
19 intended to develop/redevelop (including securing permits and entitlements) the  
20 Mentone Property as a site for 27 single-family homes, prior to the consummation of  
21 a sale of the Mentone Property. (Donell Decl., ¶ 3, Exh. A.)

22 The PSA provides, among other things, that the buyer, RL Communities, Inc.,  
23 would initially transfer \$150,000 into an escrow account for the use of Suncor Care,  
24 that Suncor Care would obtain various entitlements relating to the Mentone Property  
25 ("Entitlement Requirements"), and that RL would purchase the Mentone Property  
26 for \$5,000,000 from Suncor Care, and would close escrow on that purchase after,  
27 *inter alia*, the Entitlement Requirements were fulfilled by Suncor Care. Among the  
28

1 entitlements required for closing is the annexation of the Mentone Property by the  
2 City of Redlands. (Donell Decl., ¶ 3.)

3 Of the \$150,000 in initial money to be transferred by RL pursuant to the PSA,  
4 \$100,000 was Independent Consideration, as defined in the PSA, and was  
5 immediately released to Suncor Care. (Donell Decl., ¶ 4, Exh. A.) The PSA also  
6 provided that if RL delivered to Suncor a Notice to Proceed, as defined in the PSA,  
7 then RL would deposit a further \$100,000 into escrow ("Second Deposit"), which  
8 money would be released to Suncor Care upon, inter alia, Suncor Care delivering  
9 into escrow a recordable Deed of Trust, as defined in the PSA. (Donell Decl., ¶ 5,  
10 Exh. A.)

11 A First Amendment to Real Estate Purchase and Sale Agreement was  
12 apparently executed on or about September 18, 2015 by the parties to the PSA  
13 ("First Amendment"). Among other things, the First Amendment extended the  
14 Feasibility Period, as defined in the PSA, and allowed for RL's First Deposit of  
15 \$50,000, as defined in the PSA, to be immediately released to Suncor Care upon  
16 Suncor Care's immediate delivery into escrow of a Deed of Trust, as defined in the  
17 PSA and as attached to the First Amendment as Exhibit 1. (Donell Decl., ¶ 6, Exh.  
18 B.)

19 **D. The Receiver's Conclusions Relating to Performance by Suncor**  
20 **Care and RL Under the PSA, As-Amended.**

21 The Receiver has confirmed that RL transferred a total of \$150,000 into a  
22 Park Place Escrow account numbered 11406, relating to the PSA, the First  
23 Amendment, and the Mentone Property. The Receiver has no records indicating  
24 that that RL ever delivered to Suncor Care a Notice to Proceed, as defined in the  
25 PSA or in the First Amendment. The Receiver has confirmed that the Deed of Trust  
26 was recorded by RL, relating to the Mentone Property. (Donell Decl., ¶¶ 7-9.)

27 The Receiver has confirmed that all but \$10,000 of the \$150,000 deposited  
28 into escrow account 11406 by RL was either misdirected by the individual



1 defendants in the above-captioned action, for purposes unrelated to the Mentone  
2 Property, or was otherwise withdrawn from escrow account number 11406 as cash  
3 withdrawals, or was spent on construction-related costs that cannot be tied to any  
4 particular entity or property at issue in this receivership. Of the \$10,000 identified  
5 above, \$8,000 was spent on Mentone Property-related work, and \$2,000 remains  
6 unspent. (Donell Decl., ¶ 10.)

7 **E. The Receiver's Anticipated Budget For Fulfilling the Entitlement**  
8 **Requirements.**

9 The Receiver has received proposals for professional work relating to what  
10 (excluding all costs incurred to-date) would be required in order to fulfill the  
11 Entitlement Requirements of the PSA, and has worked with his professionals to  
12 develop a comprehensive budget for what we would have to spend in order to fulfill  
13 the terms of the PSA, as amended, a figure that totals at least \$492,500. (Donell  
14 Decl., ¶ 11.)

15 **F. Negotiations with the Buyer.**

16 On April 6, 2016, the Receiver participated in a call with his counsel and, on  
17 behalf of RL, with Gary Hester. At that time, the Receiver expressed his position  
18 that in order for him to proceed with the transaction contemplated under the PSA  
19 and the First Amendment, the timeframe for completing the Entitlement  
20 Requirements would have to be extended, as they could take between a year and a  
21 year-and-a-half to complete, the PSA would have to be amended to give him greater  
22 certainty regarding its terms and also that RL would actually consummate the  
23 transaction, and RL would need to contribute additional money in the amount of at  
24 least \$200,000 (to be deducted from the \$5,000,000 purchase price under the PSA,  
25 as an additional advance), in order to help fund the development process and share  
26 risk with me. (Donnell Decl., ¶ 12.)

27 On April 12, 2016, Gary Hester informed the Receiver that an extension of  
28 the time-frame would be acceptable, but that RL was not willing to contribute any



1 additional money up front. The Receiver instructed his counsel to inform Mr.  
 2 Hester that he would eventually be filing this Motion, and that was communicated to  
 3 Mr. Hester by his counsel. (Donnell Decl., ¶ 13.)

4 **G. Current Status of Funds Recovered by the Receiver.**

5 The total amount of Receivership Entity funds recovered by the Receiver  
 6 since the inception of the receivership is at least \$2,413,195.45, before any  
 7 deductions for his fees or for those of his professionals. (Donnell Decl., ¶ 14.)<sup>1</sup>

8 As explained in greater detail below, there are significant benefits to  
 9 proceeding under the as-amended PSA, but there are also significant risks. In the  
 10 Receiver's reasonable business judgment, he respectfully requests that the Court  
 11 authorize him to abandon the PSA and all related contracts and amendments. The  
 12 Receiver respectfully submits, in his reasonable business judgment, that this will  
 13 best preserve limited Estate assets.

14 **III. LEGAL AUTHORITY: THE RECEIVER IS EMPOWERED TO**  
 15 **ABANDON THE CONTRACT.**

16 **A. District Court Power To Administer The Receivership.**

17 A district court's power to administer an equity receivership is extremely  
 18 broad. SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset  
 19 Management, LLC, 242 F.3d 325, 331 (5th Cir. 2001); SEC v. Basic Energy &  
 20 Affiliated Resources, 273 F.3d 657, 668 (6th Cir. 2001); SEC v. Elliot, 953 F.2d  
 21 1560, 1566 (11th Cir. 1992); SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991).

22 "The power of a district court to impose a receivership or grant other forms of  
 23 ancillary relief does not in the first instance depend on a statutory grant of power  
 24 from the securities laws. Rather, the authority derives from the inherent power of a  
 25 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369

27 <sup>1</sup> As of the filing of the First Quarterly Status Report of Receiver Stephen J.  
 28 Donnell on April 18, 2016 (Docket No. 53), the Receiver had recovered a total of  
 \$2,413,195.45, as reflected therein. Since that time, the Receiver has not yet  
 updated his figures for recovery.

1 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
 2 and efficient administration of the estate by the district court for the benefit of  
 3 creditors." Hardy, 803 F.2d at 1038. The Ninth Circuit has explained:

4 A district court's power to supervise an equity receivership and  
 5 to determine the appropriate action to be taken in the  
 6 administration of the receivership is extremely broad. The  
 7 district court has broad powers and wide discretion to determine  
 8 the appropriate relief in an equity receivership. The basis for  
 9 this broad deference to the district court's supervisory role in  
 10 equity receiverships arises out of the fact that most  
 11 receiverships involve multiple parties and complex transactions.

12 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005) (citations  
 13 omitted); see also CFTC v. Topworth Int'l, Ltd.; 205 F.3d 1107, 1115 (9th Cir.  
 14 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we  
 15 generally uphold reasonable procedures instituted by the district court that serve  
 16 th[e] purpose' of orderly and efficient administration of the receivership for the  
 17 benefit of creditors."). Accordingly, this Court has broad equitable powers and  
 18 discretion in formulating procedures, schedules and guidelines for administration of  
 19 the Estate.

20 **B. Deference To The Receiver's Business Judgment.**

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

1 **IV. ANALYSIS OF THE MENTONE PROPERTY PURCHASE AND SALE**  
 2 **AGREEMENT.**

3 **A. The Potential for Significant Recovery for the Estate Provides an**  
 4 **Argument that the Receiver Should Attempt to Renegotiate the**  
 5 **PSA And Proceed.**

6 If the Receiver were to complete the project relating to the Mentone Property,  
 7 and fulfil the terms of the PSA, as amended or as potentially further amended, this  
 8 could potentially create a net profit for the investors in the Receivership Entities of  
 9 approximately \$3,943,815, less fees incurred by the Receiver and his professionals  
 10 in analyzing this issue, provided that relevant city and county agencies issue  
 11 required approvals, and that RL moves forward with completing the transaction.  
 12 This figure is derived from the total purchase price under the PSA, minus the known  
 13 amount of Receivership Entity investor money invested in purchasing the Mentone  
 14 Property, minus the Receiver's estimated costs to fulfil the Entitlement  
 15 Requirements, minus other incurred costs prior to the appointment of the Receiver.  
 16 (Donnell Decl., ¶ 15.)

17 Thus, in the Receiver's business judgment, there are significant potential  
 18 benefits to the Estate of the Receivership Entities, which would accrue if the  
 19 Receiver took the extensive risk (as described in the below section) of attempting to  
 20 redevelop the Mentone Property, namely the significant potential profit to the  
 21 Estate. (Donnell Decl., ¶ 16.)

22 **B. The Significant Risks of Proceeding Under the PSA, Even If**  
 23 **Renegotiated, More Strongly Favors Abandonment of the As-**  
 24 **Amended PSA.**

25 However, in the Receiver's business judgment, there are also significant risks  
 26 inherent in undertaking such a course of action, which counsel in favor of  
 27 abandonment of the PSA and all related amendments. Among these risks are: the  
 28 funding level of the Estate; the risks of failing to achieve annexation and the related

1 Entitlement Requirements; and the ability to realize funds, with certainty, by selling  
2 the Mentone Property in its "as-is" condition.

3 First, the Receiver cannot provide any guaranties to the Court or to investors  
4 that the cost to obtain the Entitlement Requirements would not exceed the amounts  
5 stated above in the Receiver's anticipated budget. Second, substantial uncertainty  
6 exists concerning whether or not the City of Redlands, or the relevant county  
7 agencies, would agree to annexation of the Mentone Property and issuance of the  
8 approvals necessary to fulfill the Entitlement Requirements, even if the Receiver  
9 undertook to perform under either the PSA and First Amendment, or under a future-  
10 negotiated amendment to the PSA. Third, because the money that was deposited  
11 into escrow by RL has been dissipated on non-related matters (as described above),  
12 and because RL is unwilling to advance any additional money to share risk, the  
13 estate of the Receivership Entities would have to bear the full monetary risk of any  
14 failure to fulfill the Entitlement Requirements, even if it was caused by regulatory  
15 actions outside of the Receiver's control. (Donell Decl., ¶ 16.)

16 In the Receiver's business judgment, while there are significant potential  
17 benefits to proceeding under the PSA, under the First Amendment, and/or under a  
18 contemplated further amendment, the risks outweigh the benefits, and the PSA and  
19 related contracts and amendments must be abandoned. (Donell Decl., ¶ 18.) This is  
20 especially true because a sale of the Mentone Property in its "as-is" condition should  
21 yield a recovery of between \$1,850,000 and \$2,125,000 to the Estate, and  
22 potentially more, without the need for the Receiver or for the Estate to incur  
23 significant risk. (*See* Donell Decl., ¶ 17.)<sup>2</sup>

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24  
25 <sup>2</sup> In connection with the abandonment of the Mentone Property PSA, First  
26 Amendment, and any other contractual obligations, as addressed herein, the  
27 Receiver does not dispute the up-to-\$150,000 lien that RL possesses relating to  
28 its transfers to Suncor Care, Inc., relating to the Mentone Property PSA and the  
Deed of Trust. The Receiver plans for the proceeds of any eventual sale of the  
Mentone Property to first be used to pay any and all outstanding real property  
liens and taxes affecting the Mentone Property, including any such lien amounts  
held by RL.

1 Finally, in his business judgment, the Receiver further believes that,  
2 notwithstanding his conclusions, because of the material nature of the subject PSA  
3 and the impact on the Estate, he must seek approval from the Court before  
4 proceeding with this course of action and abandoning the amended PSA and related  
5 contractual obligations. (Donell Decl., ¶ 19; *see also* USDC, C.D. Cal., Local Rule  
6 66-7(d).) The Receiver respectfully requests that the Court authorize him to  
7 abandon the PSA and all related contracts and amendments. The Receiver  
8 respectfully submits, in his reasonable business judgment, that this will best  
9 preserve limited Estate assets and limit risk to the investors.

10 **V. CONCLUSION.**

11 For the foregoing reasons, the Receiver respectfully requests that this Court  
12 consider his business judgment and the wide discretion afforded to Federal court  
13 receivers, grant this Motion, and allow the Receiver to abandon the PSA, the First  
14 Amendment, and all of the Receiver's contractual obligations to fulfill the  
15 Entitlement Requirements or to proceed with the sale of the Mentone Property to  
16 RL. The Receiver respectfully submits that, in his business judgment, such relief  
17 will assist in the efficient and effective administration of the Estate, and will  
18 mitigate substantial risk, thereby conserving the assets of the Estate for the benefit  
19 of all interested parties.

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Dated: May 27, 2016

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Attorneys for Receiver  
STEPHEN J. DONELL

1 **PROOF OF SERVICE**

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

4 I am employed in the County of Los Angeles, State of California. I am over  
5 the age of 18 and not a party to the within action. My business address is 515  
6 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

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

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
10 MOTION OF RECEIVER, STEPHEN J. DONELL, FOR AUTHORITY  
11 TO ABANDON A CONTRACT FOR SALE OF REAL PROPERTY**

12 1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC**  
13 **FILING ("NEF")** – the above-described document will be served by the Court  
14 via NEF. On **May 27, 2016**, I reviewed the CM/ECF Mailing Info For A Case  
15 for this case and determined that the following person(s) are on the Electronic  
16 Mail Notice List to receive NEF transmission at the email address(es) indicated  
17 below:

- 18 • **Zachary T. Carlyle**  
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- **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.

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 27, 2016** at Los Angeles, California.

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