

1 DAVID R. ZARO (BAR NO. 124334)  
 2 JOSHUA A. DEL CASTILLO (BAR NO. 239015)  
 3 KENYON HARBISON (BAR NO. 260416)  
 4 ALLEN MATKINS LECK GAMBLE  
 5 MALLORY & NATSIS LLP  
 6 515 South Figueroa Street, Ninth Floor  
 7 Los Angeles, California 90071-3309  
 8 Phone: (213) 622-5555  
 9 Fax: (213) 620-8816  
 10 E-Mail: dzaro@allenmatkins.com  
 11 jdelcastillo@allenmatkins.com  
 12 kharbison@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)

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 FIRST INTERIM APPLICATIONS  
 FOR PAYMENT OF FEES AND  
 REIMBURSEMENT OF EXPENSES  
 OF (1) RECEIVER, STEPHEN J.  
 DONELL; (2) FORENSIC  
 ACCOUNTANT, BRANDLIN &  
 ASSOCIATES; AND (3) 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; First Interim  
 Application of Receiver and Forensic  
 Accountant; First Interim Application of  
 Allen Matkins; Declaration of Stephen J.  
 Donell; and [Proposed] Order submitted  
 concurrently herewith]

Date: July 11, 2016  
 Time: 1:30 p.m.  
 Ctrm: 6  
 Judge: Hon. Stephen V. Wilson

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

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

Since his appointment, the Receiver has, with assistance from his forensic accountant, Brandlin & Associates ("Brandlin"), and his counsel of record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), diligently carried out his duties in accordance with the Court's Orders, including the Appointment Order and the Court's March 8, 2016 Order in Aid of Receivership. Pursuant to Article V(P) of the Appointment Order, the Receiver, Brandlin, and Allen Matkins now hereby submit their respective First Interim Applications for Payment of Fees and Reimbursement of Expenses (the "Applications")<sup>1</sup>, for fees and expenses incurred by the Receiver and his professionals from the inception of the receivership through March 31, 2016 (the "Application Period").

The Applications seek approval of:

(1) \$259,618.80 in fees and \$1,800.86 in collective expenses incurred by the Receiver and Brandlin; and

(2) \$239,621.40 in fees and \$9,648.33 in expenses incurred by Allen Matkins.

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

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<sup>1</sup> Because Brandlin billed for its services directly through the Receiver, the Receiver's and Brandlin's Applications are submitted as a single document.

1 (1) Pay the Receiver and Brandlin 90% of their collective fees, and 100%  
2 of their collective expenses, in the aggregate amounts of \$233,656.92 and  
3 \$1,800.96, on an interim basis; and

4 (2) Pay Allen Matkins 80% of its fees, and 100% of its expenses, in the  
5 respective amounts of \$191,697.12 and \$9,648.33, on an interim basis.

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

14 **II. RELEVANT FACTUAL BACKGROUND.**

15 While a full recitation of the procedural history of this matter is unnecessary  
16 for the purposes of the Applications, and is presented completely in the Receiver's  
17 December 23, 2015 Initial Report Re: Marshaling and Preservation of Receivership  
18 Assets, and Petition for Further Instructions (the "Initial Report"), and April 18,  
19 2015 First Quarterly Status Report (the "Interim Report"), each of which summarize  
20 the efforts of the Receiver and his professionals<sup>2</sup> since the commencement of the  
21 instant receivership. The facts most relevant to the Applications are as follows:

22 The above-captioned enforcement action commenced with the Commission's  
23 Complaint (the "Complaint"), filed on November 19, 2015, against Defendants  
24 Robert Yang, Claudia Kano, and the Receivership Entities. (See Dkt. No. 1.) In its  
25 Complaint, the Commission alleged that the Defendants had committed securities  
26 fraud using the Receivership Entities as a means of fraudulently raising \$20 million  
27

28 <sup>2</sup> Brandlin and Allen Matkins are occasionally referred to herein as the Receiver's  
"professionals."

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

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

- 21 • Assumed control over the Receivership Entities and their estates  
22 (collectively, the "Estate");
- 23 • Commenced and concluded a detailed review of the Receivership  
24 Entities' business and financial activities, culminating in his Forensic  
25 Accounting Report and Amended Forensic Accounting Report;
- 26 • Assumed authority and control over the Receivership Entities' real  
27 property assets, managed and preserved those assets (including by  
28 taking immediate action to address soil erosion concerns at one

1 property and suspending construction at another property that appears  
2 to represent a net loss or liability to the Estate), and prepared a  
3 disposition plan for those assets which he reasonably believes can be  
4 sold at a net benefit for the Estate;

- 5 • Recovered \$2,377,211.65, in cash during the Application Period, for  
6 the benefit of the Estate, and commenced efforts to recover another \$2  
7 million on deposit with Celtic Bank; and
- 8 • Engaged marketing professionals to operationalize his real property  
9 marketing and sales plans, which plans have already yielded purchase  
10 offers for two properties, the sale of which will likely result in a net  
11 recovery of at least another \$3.5 million – and perhaps as much as \$5  
12 million – for the benefit of the Estate, meaning total recoveries could  
13 reach \$7.5 million, or more.

14 (See Donell Decl. ¶ 2.)

15 **III. ARGUMENT.**

16 **A. The Applications Are Reasonable And Appropriate, And Payment**  
17 **Should Be Authorized.**

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

25 1. The Fees and Expenses Requested in the Applications are  
26 Reasonable.

27 In determining the reasonableness of fees and expenses requested in this  
28 context, the Court should consider the time records presented, the quality of the

1 work performed, the complexity of the problems faced, and the benefit of the  
2 services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc.,  
3 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973); see also Southwestern Media, Inc. v. Rau,  
4 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by statute as stated  
5 in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP 2011)).

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

11 Moreover, the Receiver, Brandlin, and Allen Matkins seek payment, on an  
12 interim basis, of only a percentage of the fees and costs incurred, in recognition of  
13 the fact that the work on this matter is ongoing. Specifically, the Receiver and  
14 Brandlin seek payment of 90% of fees incurred during the Application Period, in the  
15 amount of \$233,656.92, plus 100% of expenses incurred, in the amount of  
16 \$1,800.96. Allen Matkins seeks payment of 80% of its fees incurred during the  
17 Application Period, totaling \$191,697.12, plus 100% of its expenses, totaling  
18 \$9,648.33. Payment of the proposed 10% and 20% holdbacks, respectively, will be  
19 sought at the conclusion of the receivership, and will be subject to Court approval.  
20 In general, the Applications reflect the Receiver's, Brandlin's, and Allen Matkins'  
21 customary billing rates and the rates charged for comparable services in other  
22 matters, less any discounts or reductions specifically identified.<sup>3</sup>

23 The Receiver has reviewed the Applications, and believes the fee and expense  
24 requests to be fair and reasonable, and an accurate representation of the work  
25

26 \_\_\_\_\_  
27 <sup>3</sup> As reflected in the Applications, the Receiver, Brandlin, and Allen Matkins have  
28 conferred 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 performed for the benefit of the Receivership Entities. (See Donell Decl. ¶ 3.) The  
2 Receiver has likewise determined that the Estate has actually benefited from the  
3 services. (Id.)

4 2. The Fees and Expenses Requested in the First Fee Applications  
5 have been Submitted to the Commission, Without Objection.

6 Courts give great weight to the judgment and experience of the Commission  
7 relating to receiver compensation. "[I]t is proper to [keep] in mind that the  
8 [Commission] is about the only wholly disinterested party in [this] proceeding and  
9 that ... its experience has made it thoroughly familiar with the general attitude of the  
10 Courts and the amounts of allowances made in scores of comparable proceedings."  
11 In re Philadelphia & Reading Coal & Iron Co., 61 F.Supp. 120, 124 (D.C. Pa. 1945).  
12 Indeed, the Commission's perspectives are not "mere casual conjectures, but are  
13 recommendations based on closer study than a district judge could ordinarily give to  
14 such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal  
15 quotation marks omitted). In fact, "recommendations as to fees of the  
16 [Commission] may be the only solution to the 'very undesirable subjectivity with  
17 variations according to the particular judge under particular circumstances' which  
18 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit  
19 basis.'" Id. Thus, the Commission's perspective on the matter should indeed be  
20 given "great weight," as observed by the court in Fifth Avenue Coach Lines, Inc.,  
21 364 F. Supp. at 1222.

22 In order to ensure that the fees and expenses requested in the Applications are  
23 appropriate, and in compliance with the terms of the Appointment Order, the  
24 Receiver, Brandlin, and Allen Matkins submitted their respective invoices to the  
25 Commission for review. The Commission has met and conferred with the Receiver  
26 and, after particular issues identified by the Commission were addressed, the  
27 Commission has indicated that it does not object to the requested fees and expenses.  
28

1 The Commission's position merits significant deference. As the Philadelphia  
2 & Reading Coal & Iron Co. court observed, the Commission is "thoroughly familiar  
3 with ... the amounts of allowances made in scores of comparable proceedings." 61  
4 F.Supp. at 124. Indeed, the Commission is likely in the best position to measure the  
5 fees and costs requested here against those incurred in other, similar proceedings,  
6 and cases of similar complexity. The Receiver and his Professionals thus  
7 respectfully request that the Court approve all requested fees and expenses reflected  
8 in the Applications, and authorize the payment of the requested amounts, on an  
9 interim basis.

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

12 The Receiver presently holds approximately \$2,132,891.11 for the benefit of  
13 the Receivership Entities. (See Donell Decl. ¶ 6.) In the aggregate, the Receiver  
14 holds funds well in excess of those requested in the Applications, and the Receiver  
15 respectfully requests the Court's permission to pay requested fees and costs from the  
16 cash on hand and available from the accounts of the Receivership Entities.

17 **IV. CONCLUSION.**

18 The Receiver, Brandlin, and Allen Matkins therefore respectfully request that  
19 this Court enter an Order:

- 20 1. Approving the Receiver's and Brandlin's collective fees, in the  
21 amount of \$259,618.80, and expenses, in the amount of \$1,800.96;
- 22 2. Approving Allen Matkins' fees, in the amount of \$239,621.40,  
23 and expenses, in the amount of \$9,648.33;
- 24 3. Authorizing and directing the Receiver to pay himself and  
25 Brandlin 90% of their approved fees (\$233,656.92) and 100% of approved  
26 expenses (\$1,800.96), for an aggregate total of \$235,457.88, from the assets  
27 of the Receivership Entities, on an interim basis; and

28 \\\

1 4. Authorizing and directing the Receiver to pay Allen Matkins 80% of  
2 approved fees (\$191,697.12) and 100% of approved expenses (\$9,648.33), for  
3 a total of \$201,345.45, from the assets of the Receivership Entities, on an  
4 interim basis.

5  
6 Dated: June 3, 2016

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

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9 By:           /s/          Joshua A. del Castillo          

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

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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:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
FIRST INTERIM APPLICATIONS FOR PAYMENT OF FEES AND  
REIMBURSEMENT OF EXPENSES OF (1) RECEIVER, STEPHEN J.  
DONELL; (2) FORENSIC ACCOUNTANT, BRANDLIN &  
ASSOCIATES; AND (3) 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 **June 3, 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:

- **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**  
mhiraide@hiraidelaw.com, kju@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.

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 **June 3, 2016** at Los Angeles, California.

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