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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)

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 FOURTH INTERIM APPLICATIONS  
 FOR PAYMENT OF FEES AND  
 REIMBURSEMENT OF EXPENSES OF  
 (1) RECEIVER, STEPHEN J. DONELL;  
 AND (2) 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; Fourth Interim  
 Application of Receiver; Fourth Interim  
 Application of Allen Matkins;  
 Declaration of Stephen J. Donell; and  
 [Proposed] Order submitted concurrently  
 herewith]

Date: July 10, 2017  
 Time: 1:30 p.m.  
 Ctrm: 10A  
 Judge: Hon. Stephen V. Wilson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

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

9 Since his appointment, the Receiver has, with assistance from his counsel of  
10 record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"),  
11 diligently carried out his duties in accordance with the Court's Orders, including the  
12 Appointment Order and the Court's March 8, 2016 Order in Aid of Receivership.  
13 Pursuant to Article V(P) of the Appointment Order, the Receiver and Allen Matkins  
14 now hereby submit their respective Fourth Interim Applications for Payment of Fees  
15 and Reimbursement of Expenses (the "Applications"), for fees and expenses  
16 incurred by the Receiver and his professionals from the period of October 1, 2016  
17 through December 31, 2016 (the "Application Period").

18 The Applications seek approval of:

19 (1) \$22,555.60 in fees and \$50.97 in expenses incurred by the Receiver;

20 and

21 (2) \$79,274.70 in fees and \$1,884.60 in expenses incurred by Allen

22 Matkins.

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

25 (1) Pay the Receiver 90% of his fees, and 100% of his expenses, in the  
26 respective amounts of \$20,300.04 and \$50.97, on an interim basis; and

27 (2) Pay Allen Matkins 80% of its fees, and 100% of its expenses, in the  
28 respective amounts of \$63,419.76 and \$1,884.60, on an interim basis.

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

9 **II. RELEVANT FACTUAL BACKGROUND.**

10 While a full recitation of the procedural history of this matter is unnecessary  
11 for the purposes of the Applications, and is presented completely in the Receiver's  
12 December 23, 2015 Initial Report Re: Marshaling and Preservation of Receivership  
13 Assets, and Petition for Further Instructions (the "Initial Report"), the April 18, 2016  
14 First Quarterly Status Report (the "Interim Report"), the August 15, 2016 Second  
15 Quarterly Status Report ("Second Interim Report"), and the January 9, 2017 Third  
16 Quarterly Status Report ("Third Interim Report") each of which summarize the  
17 efforts of the Receiver and his professionals<sup>1</sup> since the commencement of the instant  
18 receivership. The facts most relevant to the Applications are as follows:

19 The above-captioned enforcement action commenced with the plaintiff  
20 Securities and Exchange Commission's (the "Commission") Complaint (the  
21 "Complaint"), filed on November 19, 2015, against Defendants Robert Yang,  
22 Claudia Kano, the Receivership Entities, and certain relief defendants. (See Dkt.  
23 No. 1.) In its Complaint, the Commission alleged that the Defendants had  
24 committed securities fraud using the Receivership Entities as a means of  
25 fraudulently raising \$20 million from foreign investors in connection with the  
26 United States Customs and Immigration Service EB-5 investment and immigration  
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<sup>1</sup> Allen Matkins is occasionally referred to herein as the Receiver's "professionals."  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF FEE  
APPLICATIONS

1 program. (Id.) The Court appointed the Receiver as a permanent receiver and  
2 entered the Appointment Order on December 11, 2015. (See Dkt. No. 18.)

3 The Receiver filed his Initial Report on December 23, 2015. (See Dkt. No.  
4 20.) On March 8, 2016, the Court entered its Order in Aid of Receivership,  
5 clarifying certain administrative matters and providing the Receiver with specific  
6 authority regarding communications with Receivership Entity investors, providing  
7 for the protection of private information, and granting the Receiver authority to  
8 abandon receivership estate assets he determines are "underwater" or represent a net  
9 loss or liability to the Receivership Entities. (See Dkt. No. 46.) The Receiver filed  
10 his Interim Report, which included a Forensic Accounting Report, on April 18,  
11 2016. (See Dkt. Nos. 53, 53-2.) He submitted an Amended Forensic Accounting  
12 Report to the Court on May 20, 2016. (See Dkt. Nos. 69, 69-1.) The Receiver filed  
13 his Second Interim Report on August 15, 2016. (See Dkt. No. 129.) The Receiver  
14 filed his Third Interim Report on January 9, 2017. (See Dkt. No. 150.)

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

- 21 • Continued to administer the estates of the Receivership Entities  
22 (collectively, the "Estate"), funded via approximately \$2.43 million in  
23 cash recoveries;
- 24 • Confirmed the amount and location of millions in cash assets  
25 potentially available for recovery and subject to turn-over requirements  
26 of the Appointment Order, in the form of approximately \$2.5 million in  
27 cash deposits (\$2.4 million of which have been turned over, with  
28 further proceedings pending as to \$2 million of this total) and \$250,000

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- in investor funds paid to the Metropolitan Water District of Southern California in the pre-receivership period;
- Secured the turn-over of \$2 million of the above-referenced cash deposits from Celtic Bank Corporation ("Celtic Bank"), which funds the Receiver is holding in a separate account pending a Court determination regarding competing claims to these funds;
  - Continued to develop and undertake a marketing and disposition plan in connection with each of the real properties implicated in this matter, including via the engagement of real property brokers and the commencement of marketing efforts for all saleable properties;
  - Coordinated with Celtic Bank and with GBC International Bank ("GBC Bank") regarding the abandonment of two of the real properties implicated in this matter;
  - Identified two real properties determined to be "underwater," and subject to immediate abandonment, and prepared and filed a motion for authority to complete an abandonment of those properties, ultimately resulting in the Court-approved abandonment of these properties during Application Period;
  - Solicited and countered purchase offers received in connection with the anticipated sales of the Entities' remaining real estate Assets, which sales he anticipates submitting for Court approval promptly;
  - Developed a claims process, filed a motion seeking Court approval of the proposed claims process and secured such approval;
  - Prepared and submitted my Third Quarterly Status Report;
  - Continued to monitor and participate in all pending state court litigation matters affecting or relating to the Receivership Entities, and maintained the status quo in such matters; and

- Communicated with investors (and counsel for investors) in the Receivership Entities regarding the status of the receivership, issues relating to investor immigration petitions, and registration via the Receiver's website.

(See Donell Decl. ¶ 2.)

### III. ARGUMENT.

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

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

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

In determining the reasonableness of fees and expenses requested in this context, the Court should consider the time records presented, the quality of the work performed, the complexity of the problems faced, and the benefit of the services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc., 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973); see also Southwestern Media, Inc. v. Rau, 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by statute as stated in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP 2011)).

Here, the Applications describe the nature of the services that have been rendered, and, where appropriate, the identity and billing rate of the individual(s) performing each task. The Receiver and Allen Matkins have endeavored to staff

1 matters as efficiently as possible in light of the level of experience required and the  
2 complexity of the issues presented.

3 Moreover, the Receiver and Allen Matkins seek payment, on an interim basis,  
4 of only a percentage of the fees and costs incurred, in recognition of the fact that the  
5 work on this matter is ongoing. Specifically, the Receiver seeks payment of 90% of  
6 discounted fees incurred during the Application Period, in the amount of  
7 \$20,300.04, plus 100% of its expenses, totaling \$50.97. Allen Matkins seeks  
8 payment of 80% of its discounted fees incurred during the Application Period,  
9 totaling \$63,419.76, plus 100% of its expenses, totaling \$1,884.60. Payment of the  
10 proposed 10% and 20% holdbacks, respectively, will be sought at the conclusion of  
11 the receivership, and will be subject to Court approval. In general, the Applications  
12 reflect the Receiver's and Allen Matkins' customary billing rates and the rates  
13 charged for comparable services in other matters, less any discounts or reductions  
14 specifically identified.<sup>2</sup>

15 The Receiver has reviewed the Applications, and believes the fee and expense  
16 requests to be fair and reasonable, and an accurate representation of the work  
17 performed for the benefit of the Receivership Entities. (See Donell Decl. ¶ 3-4.)  
18 The Receiver has likewise determined that the Estate has actually benefited from the  
19 services. (*Id.*)

20 2. The Fees and Expenses Requested in the Fourth Fee  
21 Applications have been Submitted to the Commission, Without  
22 Objection.

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

15 In order to ensure that the fees and expenses requested in the Applications are  
16 appropriate, and in compliance with the terms of the Appointment Order, the  
17 Receiver and Allen Matkins submitted their respective invoices to the Commission  
18 for review. The Commission met and conferred with the Receiver regarding the  
19 Applications. After delaying the submission of the Applications at the  
20 Commission's request to address a handful of outstanding questions, the Receiver  
21 and Allen Matkins agreed to additional discounts over and above the across-the-  
22 board discounts they are already applying to their work on this matter, and  
23 successfully addressed all outstanding issues identified by the Commission.  
24 Accordingly, the Applications have been diligently vetted by the Commission,  
25 which has indicated that it does not object to the requested fees and expenses.

26 The Commission's position merits significant deference. As the In re  
27 Philadelphia court observed, the Commission is "thoroughly familiar with ... the  
28 amounts of allowances made in scores of comparable proceedings." In re

1 Philadelphia, 61 F.Supp. at 124. Indeed, the Commission is likely in the best  
2 position to measure the fees and costs requested here against those incurred in other,  
3 similar proceedings, and cases of similar complexity. The Receiver and his  
4 Professionals thus respectfully request that the Court approve all requested fees and  
5 expenses reflected in the Applications, and authorize the payment of the requested  
6 amounts, on an interim basis.

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

9 The Receiver presently holds approximately \$2.4 million for the benefit of the  
10 Receivership Entities, *not* including the funds turned over by Celtic Bank, which he  
11 is holding separately, pending an adjudication of the parties right in those funds.  
12 (See Donell Decl. ¶ 6.) In the aggregate, the Receiver holds funds well in excess of  
13 those requested in the Applications, and the Receiver respectfully requests the  
14 Court's permission to pay requested fees and costs from the cash on hand and  
15 available from the accounts of the Receivership Entities.

16 **IV. CONCLUSION.**

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

- 19 1. Approving the Receiver's discounted fees, in the amount of  
20 \$22,555.60, and expenses, in the amount of \$50.97;
- 21 2. Approving Allen Matkins' discounted fees, in the amount of  
22 \$79,274.70, and expenses, in the amount of \$1,884.60;
- 23 3. Authorizing and directing the Receiver to pay himself 90% of  
24 their approved fees (\$20,300.04) and 100% of approved expenses (\$50.97),  
25 for a total of \$20,351.01, from the assets of the Receivership Entities, on an  
26 interim basis; and

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4. Authorizing and directing the Receiver to pay Allen Matkins 80% of approved fees (\$79,274.70) and 100% of approved expenses (\$1,884.60), for a total of \$81,159.30, from the assets of the Receivership Entities, on an interim basis.

Dated: June 7, 2017

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

By:           /s/          Joshua A. del Castillo            
JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
STEPHEN J. DONELL

**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:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FOURTH INTERIM APPLICATIONS FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES OF (1) RECEIVER, STEPHEN J. DONELL; AND (2) 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 7, 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**  
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- **David R Zaro**  
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **June 7, 2017**, 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.

Franchise Tax Board (FTB)  
P.O. Box 2952  
Sacramento, CA 95812-2952

**Via U.S. Mail**

Internal Revenue Service  
880 Front Street  
San Diego, CA 92101-8869

**Via U.S. Mail**

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 7, 2017** at Los Angeles, California.

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