

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

7 Attorneys for Receiver
 8 STEPHEN J. DONELL

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 YANROB'S MEDICAL, INC., et al.,

18 Relief Defendants.

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

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION OF RECEIVER,
 STEPHEN J. DONELL, FOR ORDER
 AUTHORIZING RECEIVER TO
 ABANDON REAL PROPERTY
 LOCATED AT 17577 & 17579
 SULTANA STREET, HESPERIA,
 CALIFORNIA 92345**

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

Date: August 8, 2016
 Time: 1:30 p.m.
 Ctrm: 6
 Judge: Hon. Stephen V. Wilson

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

| | | |
|------|---|---|
| I. | INTRODUCTION | 2 |
| II. | RELEVANT FACTUAL BACKGROUND | 3 |
| | A. The Receiver's Appointment And Authority | 3 |
| | B. The Property And The Receiver's Analysis | 3 |
| III. | ARGUMENT | 5 |
| IV. | CONCLUSION | 6 |

TABLE OF AUTHORITIES

Page(s)

Cases

4 Helvey v. U.S. Building and Loan Ass'n,
81 Cal.App.2d 647 (1947).....4, 5

6 SEC v. Hardy,
803 F.3d 1034 (9th Cir. 1986).....4

7 SEC v. Lincoln Thrift Assn,
577 F. 2d 600 (9th Cir. 1978).....4

9 SEC v. Wencke,
622 F. 2d 1363 (9th Cir. 1980).....4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

As reflected in the concurrently filed Notice of Motion and Motion, Stephen J. Donell, as the Court-appointed receiver (the "Receiver") for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the "Receivership Entities"), moves for an Order from the Court authorizing him to abandon the real property located at and commonly known as 17577 & 17579 Sultana Street, Hesperia, California 92345 (the "Property")¹ in accordance with this Court's March 8, 2016 Order in Aid of Receivership. Specifically, by his motion (the "Motion"), the Receiver seeks authority to abandon the Property on the basis that after reviewing all available records in his possession relating to the Property, including as to the Property's market value, salability, and the nature and amount of outstanding, unsatisfied liens against the Property, the Receiver has determined, in his reasonable business judgment, that the Property is worth less than the aggregate amount of all debts secured (or securable) by the Property and cannot be sold at a price that would yield a net surplus to the estates of the Receivership Entities. Accordingly, the Property represents a net liability to the Receivership Entities and is subject to abandonment in accordance with the terms of the Court's Order in Aid of Receivership. Indeed, the Receiver has determined that the Property has no equity available to the Receivership Entities after payment of the secured and trade creditor liens, and taxes, and it therefore represents a net liability – and an ongoing burden – to the Receivership Entities, and is subject to abandonment in accordance with the Court's March 8, 2016 Order in Aid of Receivership.

¹ APN 0411-214-40, 0411-214-41. The legal description of Property which the Receiver seeks authority to abandon is set forth in Exhibit A attached to the Declaration of Stephen J. Donell, submitted herewith.

1 **II. RELEVANT FACTUAL BACKGROUND.**

2 **A. The Receiver's Appointment And Authority.**

3 The Receiver was appointed on December 11, 2015 pursuant to this Court's
4 Preliminary Injunction, Order Appointing Receiver, Freezing Assets, and Providing
5 for Other Ancillary Relief (the "Appointment Order"). (See Dkt. No. 18.) Among
6 other things, the Receiver was vested with exclusive authority and control over the
7 Receivership Entities and their assets, including the Property. (Id.)

8 On January 28, 2016, the Receiver petitioned this Court for an Order in Aid
9 of Receivership. (See Dkt. Nos. 30-32.) The Receiver requested, among other
10 things, authority to abandon any receivership asset (including real property) which
11 he determined, in his reasonable business judgment, was "underwater" – that is
12 worth less than the debts secured by it – or otherwise represented a net liability to
13 the estates of the Receivership Entities. (Id.) The Court's Order in Aid of
14 Receivership conferred this authority upon the Receiver, providing, in pertinent part,
15 that the Receiver is "AUTHORIZE[D] to abandon any Receivership Property, as
16 defined in the Appointment Order, which he determines is "underwater" or
17 otherwise constitutes a net loss or liability to the estates of the Receivership
18 Entities[.]" (See Dkt. No. 46.)

19 **B. The Property And The Receiver's Analysis.**

20 As reflected in the Receiver's Initial and First Quarterly Status Report to this
21 Court (Dkt. Nos. 20, 52), the Property, also known as the "Hesperia Project"
22 consists of a parcel of substantially undeveloped (but entitled) land in the City of
23 Hesperia, California. It was apparently intended by Defendants Yang and Kano,
24 and the Receivership Entities, to be developed as a skilled nursing or sub-acute care
25 facility. However, no construction has taken place at the Property. Instead,
26 substantial excavation work was begun in the pre-receivership period, including
27 excavation and other work that resulted in the demolition of a fire access road
28 leading to the Property and that previously provided fire department access to an

1 adjacent, unrelated medical facility, the exposure of a water line used for fire
2 suppression, and the denuding of a hillside that, at the time of the Receiver's
3 appointment, was at risk of erosion or subsistence, due in part to anticipated El Niño
4 rains. (See Declaration of Stephen J. Donell ["Donell Decl." ¶ 2.)

5 Since his appointment, the Receiver has addressed a number of the physical
6 risks and other issues associated with the Property, including addressing the risk of
7 erosion and meeting and conferring with officials from the City of Hesperia, the
8 Hesperia City Attorney, and members of the Hesperia Fire Department, in an effort
9 to evaluate and preserve its value, if any, for the benefit of the Receivership Entities.
10 (Donell Decl. ¶ 3.) However, over the course of the last few months, and moreso
11 after the submission of his First Quarterly Status Report to the Court, the Receiver
12 has undertaken substantial efforts to determine whether the Property does (or could)
13 represent a benefit to the Receivership Entities. (Id. at ¶ 4.) In order to arrive at an
14 opinion on this matter, and among other things, the Receiver has (1) undertaken a
15 detailed review of all liens secured by the Property and all anticipated creditor
16 claims against the Property; (2) retained a brokerage firm to provide a valuation for
17 and market the Property and obtained a broker's opinion of value; (3) reviewed the
18 cost associated with the remediation of all remaining physical or structural issues at
19 the Property; and (4) conferred with the owner of the adjacent property, who has
20 repeatedly threatened to bring action arising in connection with the Property and the
21 effects of the pre-receivership excavation. (Id.)

22 As a consequence of the above analysis, and of his broker's valuation of and
23 efforts to market the Property for sale, the Receiver has concluded that the value of
24 the Property in its present condition is approximately \$750,000 to \$800,000, but that
25 the amount of secured debt against the Property exceeds \$1 million.² Donell Decl.
26 ¶ 5.) Unsecured and other claims against the Property will doubtless bring that
27

28 ² Including pending or anticipated mechanics lien claims, one of which, alone, has
a face value in excess of half a million dollars.

1 figure higher. (Id.) Likewise, and despite a concerted marketing effort by his real
2 property brokers, the Receiver has received no viable offers to purchase the
3 Property, and the holder of the first deed of trust on the property (with a face value
4 of nearly \$400,000) has indicated his intentions to seek authority to conclude a
5 foreclosure of the Property. (Id.)

6 For these reasons, to say nothing of the cost to the Receivership Entities of
7 continuing to administer the Property, the Receiver has determined, in his
8 reasonable business judgment, that the Property is "underwater" and represents a net
9 liability to the estates of the Receivership Entities. The Property is therefore subject
10 to abandonment in accordance with the Order in Aid of Receivership, and the
11 Receiver respectfully requests that this Court enter an Order authorizing such an
12 abandonment as soon as possible.

13 **III. ARGUMENT.**

14 It is axiomatic that federal district courts presiding over equity receiverships
15 have broad power and wide discretion in the supervision of such receiverships. See,
16 e.g., SEC v. Hardy, 803 F.3d 1034, 1037-38 (9th Cir. 1986). This discretion extends
17 to authorizing the abandonment of receivership assets, just as the Receiver has
18 requested here. See Helvey v. U.S. Building and Loan Ass'n, 81 Cal.App.2d 647,
19 650 (1947) (emphasizing that a federally appointed receiver or trustee "has the right
20 to determine whether the [receivership] assets are so burdensome or of such little
21 value as to render the administration of the same unprofitable, and if he so
22 determines, the court may upon his petition authorize the abandonment of the ...
23 property"); see also, SEC v. Lincoln Thrift Assn, 577 F. 2d 600, 606 (9th Cir. 1978)
24 ("The ... Court has broad powers and wide discretion to determine the appropriate
25 relief in an equity receivership"); SEC v. Wencke, 622 F. 2d 1363, 1369 (9th Cir.
26 1980) (emphasizing a court's broad discretion and authority in administering
27 receivership estates).

28

1 Here, the Court has already confirmed the Receiver's authority to abandon
2 receivership property in the abstract, and specifically in the event that he determines,
3 in his reasonable business judgment, that the property subject to abandonment is
4 "underwater" or otherwise represents a net liability to the estates of the Receivership
5 Entities. (See Dkt. No. 46.) The Receiver therefore finds himself in exactly the
6 situation contemplated by the Helvey court, administering a property that is worth
7 less than what he can recover from it, and incurring costs on a continuing basis to
8 maintain and preserve an "underwater" asset. Accordingly, the Receiver
9 respectfully requests that the Court enter an Order immediately authorizing him to
10 abandon the Property as contemplated by the Order in Aid of Receivership.

11 **IV. CONCLUSION.**

12 For the foregoing reasons, the Receiver respectfully requests this Court grant
13 the Motion and enter an Order immediately authorizing him to abandon the Property
14 in accordance with existing precedent and the authority conferred in the Order in
15 Aid of Receivership.

16

17 Dated: June 30, 2016

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

18

19

20

By: /s/ Joshua A. del Castillo

21

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

22

23

24

25

26

27

28

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 MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER AUTHORIZING RECEIVER TO ABANDON REAL PROPERTY LOCATED AT 17577 & 17579 SULTANA STREET, HESPERIA, CALIFORNIA 92345

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 30, 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**
mth@msk.com,kjue@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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- **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. 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.

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 30, 2016** at Los Angeles, California.

s/ Martha Diaz

Martha Diaz