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

18 Relief Defendants.
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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 7227 OLEANDER
 AVENUE, FONTANA, CALIFORNIA
 92336**

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

Date: August 15, 2016
 Time: 1:30 p.m.
 Ctrm: 6
 Judge: Hon. Stephen V. Wilson

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MEMORANDUM OF POINTS AND AUTHORITIES

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 7227 Oleander Avenue, Fontana, California 92336 (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 the substantial, 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 is presently in a negative equity position, meaning a sale of the Property at market rates would neither satisfy the senior liens against the Property nor result in any net surplus to the Receivership Entities. Moreover, absent an abandonment of the Property, the Receiver will continue to have to expend receivership funds on its security, maintenance, and insurance. The Property represents a net liability – and an

¹ APN 0240-052-47. 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 ongoing burden – to the Receivership Entities, and is subject to abandonment in
2 accordance with the Court's March 8, 2016 Order in Aid of Receivership.

3 **II. RELEVANT FACTUAL BACKGROUND.**

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

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

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

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

22 As reflected in the Receiver's Initial and First Quarterly Status Report to this
23 Court (see Dkt. Nos. 20, 53), the Property, also known as the "Fontana Project"
24 consists of the real property and improvements located at 7227 Oleander Avenue, in
25 Fontana, California. (Id.) The Property was apparently intended by Defendants
26 Yang and Kano, and the Receivership Entities, to be developed as a skilled nursing
27 or sub-acute care facility. While some construction had begun in the period before
28 the Receiver's appointment, the construction is only partially complete, and has

1 resulted in a number of complications for the estates of the Receivership Entities
 2 (collectively, the "Estate"), ranging from outstanding and unresolved issues with
 3 Celtic Bank Corporation ("Celtic Bank"), the construction lender for the Property,
 4 which has disbursed at least \$3 million in connection with two constructions loans
 5 (the "Celtic Loans") secured by the Property, and which claims a security interest in
 6 approximately \$2 million in funds recently turned over to the Receiver, which funds
 7 Celtic Bank maintains are additional security for the Celtic Loans², to multiple
 8 litigation matters with contractors presently pending in state court, to unresolved and
 9 pending mechanics' lien claims. (See Declaration of Stephen J. Donell ["Donell
 10 Decl." ¶ 2.]

11 Since his appointment, the Receiver has endeavored to manage and preserve
 12 the Property, initially in the expectation that it might retain some value to the Estate.
 13 The Receiver's value preservation efforts included: (1) obtaining a detailed cost-to-
 14 complete analysis from The Wieland Davco Corporation ("Wieland"), his
 15 construction and development consultants, that resulted in a determination that at
 16 least an additional \$8 million in construction funds would be required to develop the
 17 Property in accordance with Defendants' pre-receivership plans; (2) suspending
 18 construction at the Property, a decision bolstered by the cost-to-complete analysis;
 19 (3) working with contractors to ensure payments for post-appointment, pre-
 20 suspension services were paid, to the extent possible; (4) securing appropriate
 21 insurance; (5) arranging for the physical security of the Property by engaging
 22 Citiguard, Inc., and later American Security Force, Inc., to provide 24-hour security
 23 at the site; and (6) coordinating with Celtic Bank on matters relating to the Celtic
 24

25 _____
 26 ² The Receiver disputes Celtic Bank's claim of a security interest in all of these
 27 funds. In accordance with this Court's June 6, 2016 Minute Order (Dkt. No. 83)
 28 and June 22, 2016 Order Granting Stipulation to Amend Court's June 6, 2016
 Minute Order (Dkt. No. 94), the Receiver is maintaining these funds in a separate
 account, and expects to resolve the issue of the parties' competing rights in and
 claims against these funds in a later proceeding. The instant Motion is not
 intended to address the parties' competing claims against these funds.

1 Loans. (Donell Decl. ¶ 3.) However, over the course of the last few months,
2 including after the submission of his First Quarterly Status Report to the Court, the
3 Receiver has undertaken substantial efforts to determine whether the Property does
4 (or could) represent a benefit to the Receivership Entities. (Id. at ¶ 4.) Most
5 important among these efforts, and among other things, the Receiver has:

- 6 • Undertaken a detailed review of all liens secured by the Property and
7 all anticipated creditor claims against the Property, including the liens
8 attendant to more than \$3 million disbursed in connection with the
9 Celtic Loans, and the nature and amount of prospective mechanics'
10 liens;
- 11 • Retained Newmark Grubb Knight Frank, a leading real estate advisory
12 firm with specific experience in medical properties, to provide a
13 broker's opinion of value for the Property, resulting in a valuation of
14 approximately \$2.4 million, a figure which compares highly
15 unfavorably with the cost-to-complete estimate of \$8 million and the \$3
16 million already disbursed by Celtic Bank;
- 17 • Engaged Lee & Associates, the Receiver's real property brokers, to
18 develop and undertake a marketing plan for the Property, which, while
19 it has resulted in at least three (3) offers to purchase the Property, none
20 has been sufficient even to pay off the amount outstanding in
21 connection with the Celtic Loans;
- 22 • Reviewed the ongoing cost of preserving, securing, and insuring the
23 Property in its present condition; and
- 24 • Conferred with Celtic Bank regarding its request that the Property be
25 abandoned as soon as possible such that Celtic Bank could enforce its
26 lien rights, including via a near-term foreclosure of the Property.

27 As a consequence of the above, the Receiver has concluded that the Property
28 is "underwater" in the amount of at least \$600,000 in connection with the Celtic

1 Loans alone, to say nothing of pending contractor and other trade creditor claims,
2 attendant litigation costs, and the ongoing cost of preserving, securing, and insuring
3 the Property. (Donell Decl. ¶ 5.) Unsecured and other claims against the Property
4 will doubtless bring that figure higher. (Id.)

5 For these reasons, the Receiver has determined, in his reasonable business
6 judgment, that the Property is sufficiently "underwater" that it represents a
7 substantial net liability to the Estate, and is therefore subject to abandonment in
8 accordance with the Order in Aid of Receivership. Accordingly, the Receiver
9 respectfully requests that this Court enter an Order authorizing such an
10 abandonment, as soon as possible.

11 **III. ARGUMENT.**

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

26 Here, the Court has already confirmed the Receiver's general authority to
27 abandon receivership property in the abstract, and specifically in the event that the
28 Receiver determines, in his reasonable business judgment, that a receivership

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

9 **IV. CONCLUSION.**

10 For the foregoing reasons, the Receiver respectfully requests this Court grant
11 the Motion and enter an Order:

12 (1) Authorizing the Receiver to abandon the Property immediately, in
13 accordance with existing precedent and the authority conferred in the Order in Aid
14 of Receivership; and

15 (2) Releasing the Receiver for any and all liability arising in connection
16 with the Property, effective upon the entry of the Order authorizing the Receiver's
17 abandonment of the Property.

18
19 Dated: July 15, 2016

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JOSHUA A. DEL CASTILLO
KENYON HARBISON

20
21
22 By: /s/ David R. Zaro

23 DAVID R. ZARO
24 Attorneys for Receiver
25 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 MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER AUTHORIZING RECEIVER TO ABANDON REAL PROPERTY LOCATED AT 7227 OLEANDER AVENUE, FONTANA, CALIFORNIA 92336

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 **July 15, 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 (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 **July 15, 2016** at Los Angeles, California.

s/ Martha Diaz

Martha Diaz